ICANN

Moderator: Brenda Brewer
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2:00 am CT

Leon Sanchez: Yes, okay excellent. Well good morning, everyone. This is our Day 2 of our face to face meeting in Istanbul of the CCWG on Enhancing ICANN's Accountability. I remind you to please state your name before speaking for the transcript and for the remote participants that are not on the Adobe Connect room and are only on the bridge so anyone can identify who's speaking at the moment.

And of course the roll call will be those present in the Adobe Connect room at the moment. And if there is someone that is present in the audio bridge and that is not connected to the Adobe Connect room I would kindly ask you to state your name at this point so you can be added to the roll call. Okay I don't listen to anyone stating their name outside of the Adobe room.

Well we have a pretty packed agenda for the day. As you can see, we will be going through different aspects that we already discussed yesterday in some points but we will be going deeper and we will also be going through new aspect.

Is there any way that we could have scroll control for the rest of the participants in the Adobe Connect room? So anyone that wants to scroll up or down can do that? Yes, thank you very much.

So we will be going through a legal sub team update, we will be speaking about the jurisdiction issue for some moments of course and we will be going through the Affirmation of Commitments review. We will then have a coffee break only if we achieve our goals in time of course, and we will be discussing as well the golden bylaws as an option and the community mechanisms.

This will be to - a double session on community mechanisms, we will have one before the break and then we will resume right after lunch. And we will also be doing a recap of our progress of the two days. And we will be commenting with you the timeline and next steps we might be envisioning for future of the CCWG. And we will also open the public document structure preparation for discussion amongst the group. And then we will be able to build the (truth) statement and show it to you so you can of course comment on that.

So with that in mind is there anything that wants to be raised at this point, maybe something that were not seeing in the agenda or any opposition to any of the points seen in the agenda? No? Okay so - I'm sorry?

((Crosstalk))

Leon Sanchez: Okay so the agenda has been approved so we'll jump right into the first point of the agenda. Item Number 1 is the legal sub team update and I would kindly ask staff to display the corresponding presentation onscreen. Okay. Further

down. Further down. There it is. That's the one. Thanks, (Adam). Could you enable scrolling please? Thank you.

So what was the purpose of the legal sub team? Well the purpose was to select the law firm to provide independent legal advice to the CCWG. The group has identified several areas of course that we'll be needing legal advice from independent and external advice, I suppose, to in house counsel firm, ICANN Legal. And that was the purpose of establishing this legal sub team.

The foundation of this legal sub team was discussed in Frankfurt. You might recall that this is where we identified the need to have this independent legal advice. And there was also an open call for volunteers at the time. There was a chance for anyone that wanted to be a founding father to this legal sub team to join. And of course it remained open and it remains open still. That is something that I want to be very emphatic about. This is an open group. And anyone can join any time.

So this is how this was founded. This is how we first constructed this compact team. It was of course thought to be a compact team because it is easier to carry out any coordination between the group and the legal firms in a compact way rather than having maybe 80 or 160 person conversation with a legal law firm so this is why we had a compact group.

The actual status is that of course the legal sub team drafted a scoping document. You have all been able to go through that scoping document. We have reviewed it with a larger group and it remains open for contributions. This is meant to be of course a living document, a dynamic document. It is not a closed document nor a final version of it as it stands at the moment.

We also assessed two law firms, one being Adler & Colvin and the other one being Sidley Austin. Sidley Austin is currently working already, has been engaged with the CWG and we have a number of them present, Mike. Everyone say hi to Mike.

((Crosstalk))

Leon Sanchez: And he's - so he's part of Sidley's team that's here in Istanbul. We have also been having remote participation from Adler & Colvin's team. So we might have them present in the Adobe Connect or in the phone bridge. They are also following this session.

And so the legal sub team decided to engage with both law firms. We are right now at the stage of finalizing the engagement letters but it is a given that we will be in fact engaging with both law firms.

And the reason for the legal sub team deciding on engaging with both law firms is that when assessing each of them there was the feeling in the legal sub team that Adler & Colvin had a wider experience from the legal sub team point of view with regards to California law and nonprofit law.

And this doesn't mean of course that Sidley Austin didn't have any expertise in this field but we just felt that Adler & Colvin had wider experience. So for the case being of course we note that we have to make this right and we have just one shot so well for this we need the best advice we could get. And from the California nonprofit law point of view that is why we engage with Adler & Colvin.

But we also detected but there are needs that are not essentially or do not deal with California nonprofit law, we have other concerns, maybe antitrust law,

maybe international jurisdiction issues, maybe some other sorts of issues that are not covered by Adler & Colvin but are surely covered by Sidley Austin. So this is why I just wanted to take you through how we got to the decision of engaging with both law firms as messy as it can sound or it can be perceived our aim is of course to coordinate very closely with both law firms and have them work together and of course avoid duplicating any work that might be done.

And with regards to the California law point of view we are designating Adler & Colvin, as I said, as a primary source but not the only source of advice. We might double check at some point some opinions that we get from them against those given by Sidley Austin. So as I said, this is intended to have the best legal advice that can be enhanced for the CCWG and our work.

The first coordination call will happen tonight. We will be having this call at 8:00 pm Istanbul time. That is open of course for anyone that wants to join in. We have a room reserved for this, I believe it's Room 19. That's correct, right? Room 19, excellent. Thank you, (Nancy). So Room 19 will be the venue for this call. And as I said that this will be of course open to anyone that wants to join in.

The current team members are myself, David McAuley, Robin Gross, Greg Shatan, Becky Burr, Sabine Meyer, Edward Morris, Thomas Schneider, Alice Munyua, Rafael Perez Galindo, Mark Carvel, Suzanne Radell, Par Brumark, Pedro Ivo Ferraz Da Silva, Julia Wolman, Finn Petersen, Jorge Cancio, Olga Cavalli, Thomas Rickert, Maura Gambassi, Athina Fragkouli, Philip Corwin, Vrikson Acosta-Velasquez, Steve Crocker, Snehashish Ghosh and Samantha Eisner from ICANN Legal which has been great in supporting the legal team in many aspects.

And now the questions going forward or moving forward with this legal sub team. As I said, this was envisioned it to be a coordinating team, a compact team to lead - oh well yes, it's - there's more than meets the eye of course. And not everybody that's on the list that I just showed has actually taken a participative stance in the legal sub team work. I think that's one of the most crowded calls we had was maybe with seven people, so you can tell that it's a compact in its actions.

So moving forward with this I would like to call for agreement within the room, and of course the larger group, on whether the sub teams should continue to be the link and the coordinating body between what the CCWG, as a larger community is doing and to be engaged law firms.

After that I would like to ask you to of course tick with your green tick in Adobe Connect to see if we have agreement here or if there's any opposition as to having the legal sub team to continue being this link and coordinator between the work of the CCWG and the legal law firms that have been engaged. So could you please signal with a green tick, if you agree?

((Crosstalk))

Chris Disspain: Sorry, it's Chris. Can I just ask you a question? Can you just clarify, explain what the link team will do, what's actually going to do? Is it going to be the one that channels questions? Is it going to be - what is actually going to do?

Leon Sanchez: Thank you very much for your question, Chris. That's very useful. And yes, the essential work of the legal sub team would be channeling the questions and following with the legal - well with the law firms engaged that they answer in a timely fashion, etcetera, so they would do the follow-up about any

questions written by the community and they would hand in these questions to the law firms.

I will of course propose a couple of mechanisms for the wider community to interact. As I said, this is an open, and will remain open for anyone that wants to participate, but we need to of course face the fact that having a conversation between 160 persons and a law firm might not be the more practical approach. So that's why I'm - I just want to make sure that should this legal sub team continue to be the link between these law firms and the wider community, we have of course your agreement and your approval to move forward with this.

I don't know if that answered your question, Chris. Thank you very much. Next I have Sebastian and then Erika. Yes, Sebastian.

Sebastian Bachollet: Thank you, Leon. Can't we have really a small team with real engagement? Because it's not - if one day there are all appear then decide to do something wrong as we are hear about transparency and accountability I would like to ask member really accountable. Thank you.

Leon Sanchez: Thank you very much, Sebastian. Erika.

Erika Mann: I really would love you and this team to focus on one issue as well besides the purely building this bridge and getting the legal question answered. This is how you will give the replies you will receive from the legal side and the question raised in a form to all of us that it can be easily followed.

So what I would really love to have as a document when you would have - and I'm sure you're thinking about it so just let me elaborate on my idea, where you would have the questions, you would have the answers from the

legal side but the answer may have, you know, may raise questions as well. So it's not always just answers.

What I would love really to see from the legal side the answers in saying, look, one could sort out this problem in the following way but there are the barriers, you know, either because of the bylaws or there are the barriers because of California law. They could be overcome in the following way on (unintelligible). So I would really love to have a document one can work with afterwards so that not just, you know, the people which are engaged can follow it but everybody else as well and can send in, you know, complete comments to it. Does that make sense?

Leon Sanchez: Absolutely.

((Crosstalk))

Erika Mann: ...thinking about it already but just...

Leon Sanchez: Absolutely.

Erika Mann: ...take a lot of time on this one.

Leon Sanchez: Thank you very much, Erika. It absolutely makes sense. Actually as I said, we have already a legal scoping document that is supposed to be a living document, it's not a closed document. And that is - that essentially reflects your concern that we wouldn't expect to have just a one shot answer from the law firms but instead we would be expected to have an iterative process between the legal sub team and the law firms as to some answers may raise in time some other questions for us to go back to the law firms and back forth so - yeah and that would also - would need to be documented so that anyone that

has the needs to go to the document and review all the process through which we went at a certain point would be able to do so. Okay. How we are thinking to carry out this task. Thank you.

And so with regards to Sebastian's concern, yes, I agree that we need committed people in the legal sub team. And I think that we do have committed people. Maybe not saying something doesn't mean that you're not reading through the list and you're not listening through the recordings and transcripts - reading the transcripts but rather maybe you don't have any opposition or nothing to really raise at that point.

So I would like to - as compact as it can be I would like to have that group remain open so that anyone can jump in at any time for transparency's sake and of course for accountability sake.

So now, as I said, I would like to get the agreement in the room if I may on whether this legal sub team should remain coordinating team and the link between the law firms and the wider CCWG. Could you please signal with a green tick in the Adobe Connect if you do agree that the legal sub teams should remain as the coordinator and link between the law firm and the CCWG.

I see Sebastian is opposing. Okay.

((Crosstalk))

Leon Sanchez: Okay so from the green tick count I only see one person, that's not putting a green tick so far, that's Sebastian. So that would make me guess that the wider group agrees so then the - the agreement is we have a majority of consensus here.

((Crosstalk))

Leon Sanchez: And we'll have to move on this. Okay, so as I said this would remain open. We will have, and as we do have already, a public mailing list. It will be open for everyone to subscribe or observe. And of course just those that are members of the legal sub team would be able to post. And we will have open and recorded and transcribed calls and meetings. And as I said, the scoping document will remain dynamic and a living document.

The information, if you want to subscribe to the list or you want to post to the list is CCWG, you have all the information here. This presentation will be interned uploaded to the wiki space. The wiki space addresses also here and mailing archive can be consulted any time at this URL as well.

So what does I'd like to - Sebastian, you want to raise something?

Sebastian Bachollet: No, I think it's important to explain why I vote against.

Leon Sanchez: Okay.

Sebastian Bachollet: I think that we need to have a team in charge of that and not a open team and too much people. I think that you - we may define a small team really in charge of this coordination. That's not to say that the legal team can't be with all those member and open but those people responsible for this interaction must be clearly defined and a small group of people. Thank you.

Leon Sanchez: Okay. So I think the answer to these or the exit to this challenge may be having the legal sub team decide if they want to have an executive legal sub team that can be as compact as possible, and then they of course will need to

appoint the members, which, I mean, so far I think they have been already self-appointed with their participation in the calls. So, yes, I think that we can do that.

And I'd like to go through to the next agenda item in our agenda today and that is the jurisdiction issue. I'm sorry? Oh, I'm sorry.

Sabine Meyer: Hi, Sabine here. I just wanted to add that we kind of have that already if I recall correctly on the call that actually a few people volunteered to be points of contact so to speak for the law firms, so I think we are the have in a way that dedicated team of people. Thank you.

Leon Sanchez: Thank you, Sabine, that's correct. That's why I just said that we anyway just have people that are self-appointed to this task and that's right, you - we're on the same page. We already have that. Thank you. So anyone wants to make another comment or question with regards to this point? No?

Okay so the next point in the agenda is the jurisdiction issue. Can we have the jurisdiction document displayed on the Adobe Connect room? The last version. The last version, yes. Yeah, the last version.

So as you know, the jurisdiction issue is something that has raised some concerns from different members of the community. And they're his been a series of discussions in the email list with regards to this issue. And what we did is we set up a document that tries to review the different concerns and the different stances from different members of the community that have raised this issue.

And as soon as we are able to have it on screen we will go through it. But I can begin with saying that we need to view jurisdiction issue from many

perspectives. Jurisdiction may be of course the place where the organization has its headquarters. Jurisdiction may also mean the governing law for contracts. Jurisdiction may also mean those laws that will be applicable to the day to day administration of the organization as well.

Jurisdiction may also mean having standing to sue or to be used in a certain territory. And what else am I missing in the jurisdiction - from the jurisdiction point of view? I think that well of course, tax law, corporate law, etcetera, that might be applicable to the organization.

So with this in mind we ask the list to look at the issue as requiring some - or making a list of requirements with regard to jurisdiction. Some discussions have been raised as to having ICANN's jurisdiction just changed for the sake of changing jurisdiction. And I think that's something that is very dangerous at this stage and we should be looking at the jurisdiction issue from a wider perspective and analyze if it is indeed something that needs to happen in the first place. And if it does need to happen just have to be Work Stream 1 or Work Stream 2 issue.

So of course, since we haven't been able to have the document on the screen, I would like to, at this stage, open the floor for comments and questions with regards to jurisdiction in the room. So I see Becky, do you want to comment on this?

Becky Burr: Yes, I understand that there are significant issues and concerns about where ICANN is headquartered. But I think it's important for us to be precise when we talk about this. That is really not a determinative of jurisdiction meaning a place in which a court has jurisdiction over ICANN. Anywhere that ICANN is actually engaged in business and it's impacting people on the ground, ICANN may well be subject to the jurisdiction of the courts in that country.

So the fact is that ICANN is subject to the jurisdiction of many courts around the world, not just of course in California. And that is a - that is a fact that exists now. There is a question of choice of law that is an important question and then it's generally in ICANN's contract - it elects to be subject to - it chooses the law of California to govern its commercial relationships. ICANN could just as easily beside that with respect, you know, that registries and registrars could elect a choice of law of, you know, the UK or California or Japan. Those are business choices that ICANN can make.

But when we talk about a jurisdiction I think there's often a confusion about, you know, where ICANN can be called into court and made answerable or be held accountable, and it is not the case that ICANN is only subject to the jurisdiction of California courts.

Leon Sanchez: Thank you very much for this, Becky, this is very useful. And let's remind or let's go through where the current jurist diction is set for ICANN. And this is in Paragraph 8 of the Affirmation of Commitments in which it states that ICANN affirms its commitment to, B, remain a not-for-profit corporation headquartered in the United States of America with offices around the world to meet the needs of a global community.

And we also have Article 18, Section 1, with regards to the offices and seal of ICANN, and it states that the principle office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America. ICANN may also have an additional office or offices within or outside the United States of America as it may from time to time establish.

And that addresses exactly what you were saying, Becky, it's different having the choice of law for a business then that will be applicable for (unintelligible) reasons.

So are there any other comments or questions at this point? Tijani, yes. I'm sorry...

((Crosstalk))

Leon Sanchez: Okay I'm sorry. I see Pedro.

Pedro Ivo Ferraz Da Silva: Yeah, thank you, Leon. Just wanted to restate what I commented on an email I sent on Friday to the list. So I think we need to differentiate between jurisdictional issues that we may eventually come across, we are coming across, while discussing the community powers and also the mechanisms that related to accountability.

We need to differentiate that from the question of jurisdictional options which is related to the place where ICANN should be headquartered or have its legal presence, which - well this second let's say domain should be, according to my government, probably should be discussed within the context of Work Stream 2. And so I think we should initially have this in mind.

And with regards to Work Stream 1, apart from discussing this specific issues, like for example Affirmation of Commitments, that you have just mentioned, I think it's important that we clearly indicate where are the limitations of the current jurisdiction. So since we are making that split between the requirements in implementation and requirements being what we want to have and the implementation meaning what we can get.

So we should clearly indicate what we want to achieve and we can't achieve given the limitations imposed by the current jurisdiction. So I think this is something that we should perhaps prioritize at this moment of Work Stream 1, thank you.

Leon Sanchez: Thank you, Pedro. So just let me get this - so you're saying that this would be a Work Stream 2 issue, right?

Pedro Ivo Ferraz Da Silva: Talking about the different alternatives for jurisdiction, so ICANN is today California but maybe it should be somewhere else and let's discuss about different alternatives that we have. But at the moment I think for Work Stream 1 we should clearly indicate where are the limitations of today's jurisdiction.

Leon Sanchez: Could you elaborate and give us some examples of these limitations that you attend or so far have identified that should be discussed within Work Stream 1?

Pedro Ivo Ferraz Da Silva: Well I think it's up to the legal advisor firm or to the experts, you know, of this public expert group to say where are the limitations. But from what we have right now, which is this - which are these responses from Jones Day, I think one of the answers is that the board is the one who needs to have the final say about everything related to ICANN.

So maybe that's not correct but this is at least was one of the answers given by Jones Day. So there is where I see one limitation for example.

Leon Sanchez: My understanding of this is that if we do this right, and we address many of your concerns that of course will be discussed with the mechanisms, powers,

etcetera. There might not be at all you need to change jurisdiction if everything is in place, right?

Pedro Ivo Ferraz Da Silva: Yes, would be in our scenario, yes.

Leon Sanchez: Thanks, Pedro. Now I see James Gannon. James, could you please?

James Gannon: Hi, James. I think possibly echoing some of Pedro's comments. I think if this is to be - if the issue of jurisdiction is to be a Work Stream 1 issue it needs to have a driver behind it. There is a number of conversations around we would like ICANN to have this jurisdiction, we would like it to be there but for it to be Work Stream 1 it needs to have a solid driver.

We've identified an accountability issue that we are now looking to solve via a movement of jurisdiction. If we are to look at preferable jurisdictions and maybe it could become a Work Stream 2 item. That we need a solid driver of something that has been identified; there is an issue with the current jurisdiction that the CCWG or the legal team has identified a possible solution been a movement of jurisdiction Rather than the other way around of we like this jurisdiction and we would like ICANN to move there. That could be a Work Stream 2 issue.

Leon Sanchez: Okay. Thanks James. Next in the queue is Tijani.

Tijani Ben Jemaa: Thank you, Leon. I will repeat what the others said. I think that we had a consensus that the jurisdiction would be in the Work Stream 2. So we are - we want to in time, we are in a very tight timelines. So perhaps it should not be open now because it useless in my point of view.

Leon Sanchez: Thank you Tijani. Next in the queue is Chris Disspain. Chris, please. No? Okay so next in the queue is Erika Mann.

Erika Mann: Funny that I always follow Chris. Yeah, since it's a bit strange. But I just want to come to one point where I think we have to be super cautious. So if we're really thinking in the timeframe we have ahead of us in finding a new, you know, a location, a new location, which we think suits this environment better, I think this will be super complicated not just make the process complicated for the United States government but I can't see that Congress is going to support it.

So I wonder if there's not another way of all the complaints, the legal and judicial complaints which some of the community fear back to what the legal - our legal advisors are preparing so when we get - when we have these questions and answers and we get closer to understanding more, you know, the concrete fear, some of them we have already seen but I would imagine more of it come up.

So the answers may provide alternative solutions without moving the location elsewhere. In many cases I think there are - like in international law there are many ways of framing certain things how, you know, to shape the environment for a particular organization well. There's not a single answer so there are many different answers which are more suitable for an international ecosystem like we are.

So I think this is something I think will be crucial for the - for our legal - of the legal advisors to look into this and to give the appropriate, you know, advisors a hint so we then can follow up.

Leon Sanchez: Very much, you're right. This is something so important that making the bad choice could derail the whole process, you're right. So next in the queue is Alan Greenberg.

((Crosstalk))

Leon Sanchez: Yeah, you had your hand.

((Crosstalk))

Leon Sanchez: But you were next. You were next, yes.

Matthew Weill: ...follow up on what Erika said. I'm definitely not a supporter of getting too much of our energy focused in Work Stream 1 on jurisdiction. And yet I don't think the simple pushing the ball back to Work Stream 2 position is sufficient for our group. I don't think we can only say to - in our reports - that it's going to be Work Stream 2 so you don't have to worry about it. That would be a worrisome answer because then the next question would be come on, how are you going to address this?

                  Does that mean that once the transition happen then ICANN was going to move right away like this? It would certainly not be acceptable. And that is why I think we need to spend a little bit of time about how our group is planning to address this issue. And that's why I'm very much in favor of being requirement-based as was said earlier.

                  So it is, I think our role now to say whether we have identified gaps between the ideal jurisdiction context in terms of accountability - I'm saying ideal in terms of not another one. But what would be the perfect jurisdiction context? For instance, that would enable a community to have final say or whatever

just to take Pedro's example, and if we are seeing any gaps with the existing context at least that would ensure that there is a common understanding of what are the requirements and whether the situation if filled I mean, if we are not 95% of requirements filled obviously the situation is not the same if - as if we have a lot of gaps identified.

And I'm confident there's not so many gaps and the requirements we've gathered so far show that there's no so many gaps out there. But I think - and I don't think we can provide a fully satisfactory answer to that question for everyone. But at least we need to demonstrate we're taking this seriously and in a non-political manner meaning based on requirements and with the intent to enhance ICANN's accountability which is our mandate.

So that's why I think it's worth taking a bit of time, highlighting whether there are gaps identified or what the key requirements for us are in terms of choosing of the idea jurisdiction for ICANN. And I think that's in line with Pedro's input. Thank you.

Leon Sanchez: Thank you very much, Mathieu. And, yes, I mean, we're not supposed to decide on this in this meeting of course but I'd like what you put on the mailing list, Pedro, with regards to requirements as to maybe not having set the jurisdiction for only the US but rather have an open clause that would allow at any time to have this jurisdiction change to some other territory so long as that territory complies with certain requirements that that is what we need to iron out now between the working group.

So the document that is now displayed is supposed - or its purpose is for all of us to fill in those requirements that we might consider of course as essential for accomplishing an adequate addressing of this issue. So next on line I have Alan Greenberg.

Alan Greenberg: Thank you. I'm hearing a lot of the same things repeated in different words. It's quite clear, you know, it's fine to say this is - we shouldn't treat it politically but this is a political issue for many people. I have heard, you know, people say we must be headquartered in Geneva and other ones say we must not be headquartered in Geneva. We're not going to satisfy everybody, that's quite clear.

We have been hearing for eternity in ICANN, according to California law, X, X, X. I suspect personally, and I'm not a lawyer, that one can change the lead-in to that sentence to be almost anyone's law and there's going to be a lot of similarities.

So just because it's true under California law does not mean it's not true under someone else's law. We are not the jurisdiction CCWG, we're the accountability CCWG. We need to focus on accountability issues. If we find deficiencies in California law or in Swiss law or in whatever, then we have to act on it but let's act on some facts to begin with. There may be some political decisions that are made later on; that doesn't need to be our, you know, our focus.

So I think we need to find out what the issues are to satisfy our accountability needs, if they can be satisfied within California law then it's as good to stay there for the moment as, you know, I would think that's a reasonable choice if we're trying to minimize change. And try to put together a brief so that if we have to make a apolitical decision later we can. You know, clearly we don't want to move to a country where, you know, companies are nationalized on a regular basis, that violates the control by government issue.

So we're in - we have a simple job to do on a relative scale here, let's focus on that and make use of our legal counsel we retained to make sure we can go forward sometime in the future if we need to.

Leon Sanchez: Good. Thank you, Alan. Next in the queue is Keith Drazek.

Keith Drazek: Okay, thank you, Leon. So Keith Drazek for the transcript. I forwarded an email to the list just a few minutes ago which was a follow on or basically it was an email exchange that we had on our list back on March 5 on this issue of jurisdiction.

Where I noted that Fadi, during his testimony before the senate committee on February 25 actually went out of his way to tell the senators that he expected the Affirmation of Commitments obligations, including the jurisdictional issue, to be incorporated into the bylaws coming out of this process. So he has set an expectation in the US congress that that will be done.

So while I agree that changing ICANN's jurisdiction is not a Work Stream 1 issue, and perhaps could be considered in Work Stream 2 at some point in the future, I'm concerned that Fadi has actually set an expectation that it is a Work Stream 1 issue for the community and that because we are the group tasked with coming up with the bylaw redline or amendments to the bylaws, that the US congress is now going to be expecting that we are to do that.

And so I just want to put a note out there that this is - while we may want to push this issue off we may not be able to based on the comments that Fadi made. And I noted in my email that, you know, this was not sort of just an off the cuff comment that he made in response to a question, this was actually part of his prepared testimony that was actually in response to the letter that the senators had sent to Steve Crocker last July.

So I think it was actually intentional and that it's something has we can't lose sight of. It complicates you work but I think with that expectation set we can't lose sight of that. Thanks.

Leon Sanchez: Much, Keith. I see, Chris, do you have an immediate reaction to that?

Chris Disspain: One of just for clarity because it's all about nuance. What Fadi actually said was there are no plans to change currently - there no plans for changing the jurisdiction. That's not actually the same thing. And so I think it's really important.

You could equally argue, or at least I could if I spent five minutes thinking about it, argue that his statement was a clear statement that we shouldn't be looking at plans to change or - in Work Stream 1 because he said there are no plans to change.

So I think it's really important we don't try and read too much or too - or for that matter too little into sentences that people say in front of the senate or in front of any other body. He did not say he thinks that ICANN should remain in the US which I think is about the only statement that you - clear statement you could use to suggest that we should be working on it. Thanks.

Matthew Weill: And then probably Keith can answer but - let's not fall in the trap of discussing other people not in the rooms, decorations, but the fact is - and I can testify because every time I engage with people outside of this group among the top three questions I get is, jurisdiction. So I mean, whether it's in our scope or not this is expected for many reasons.

So we at least need to explain how we are addressing this. This is - it's - I think this is not necessarily something we write in the report as a recommendation from the group but that least we need to be able, and I mean, as co-chair I engage outside and I think that's part of our role as co-chairs, and if you say to us well do what you will, answer as you wish. But I think it's too important an issue to not be discussed together so that we sort of have a common view of how we respond to this kind of questions because it's been an approach that's been discussed within the group.

Leon Sanchez: Thank you very much, Mathieu. Keith, you wanted to react to that?

Keith Drazek: Yeah, thank you. Just briefly. Yes, Chris, he - Fadi did say that there were no plans to change but he then went on to say that there was an expectation that the Affirmation of Commitments obligations, including the jurisdictional issue would be incorporated into the bylaws. So you're right in that those were the words he used but he actually went further.

Leon Sanchez: Thanks, Keith. I'm mindful of the time so I will be closing the queue now on Thomas Rickert and next person on the queue is Paul Rosenzweig.

Paul Rosenzweig: Yes, I would - Paul Rosenzweig for the record. I would simply add that the reason jurisdiction is at least partially relevant to our work in Work Stream 1 is that maintaining ICANN in California may as a matter of law, and in fact as I read Sidley, is likely to exclude certain structures that are at least still on the table in Jordan's structural analysis, the European Supervisory Board model, for example, is probably - and I'll let the lawyers to it - but is probably not a lawful structure under California law.

And so the jurisdictional decision necessarily brings with it implications about permissible community oversight structures and that may be okay. We may

not like the supervisory board structure for other reasons but if the consensus were that that was the one structure we wanted we would have to move to a jurisdiction that permitted that.

And so while I certainly agree that the political choices of moving jurisdiction should not be discussed to the maximum extent possible in this group, and I also think I agree with Keith that to some degree a decision on that has been preempted by the CEO, nonetheless we have to recognize that it restrains us in a great degree in - or not a great degree but to some degree in the choices we are free to make.

Leon Sanchez: Thank you, Paul. Next in the queue is Sebastian Bachollet.

Sebastian Bachollet: Sebastian Bachollet for the record. Thank you, Leon. I want to remind you that there were study made by ICANN bodies on both the subject and it's important to take that into account to - not to say the we need to agree with the conclusion of those groups but the first one was a study done by the President Strategy Committee and (unintelligible) to me tenure and we have people quite close who can - who are a member of this group I just take two of them and (unintelligible) Marilyn Cade, that could be useful.

The second I guess that staff take this issue, the discussion again, before the opening of the office in Geneva. And I think one question who is not on the table or in the discussion now it's - it's not too much the fact that there are Swiss law but in Swiss there are specific law for international organization who are not the Swiss law as such.

And it's why there are so much international law organization based in Zurich or in Geneva is because they have some specific - I will call that extraterritorial laws and it's maybe what we would like to look for knowing

that we are talking here about international organization and we are not an international organization or a treaty organization. And we may need - that's not even Work Stream 2, it may be Work Stream 3 to find a specific extra-territory law for multistakeholder organization. Thank you.

Leon Sanchez: Thank you very much, Sebastian. Next on the queue I see Avri Doria. Avri.

Avri Doria: Thank you. Avri speaking. And good morning. I think a couple things on this. First of all we need to look at this from the perspective of accountability, not just where the legal home is, and take that as a whole package. I think what Fadi said is interesting but it doesn't really count because the decision really is up to this group and then going further as to what we want to do about accountability.

And while I doubt it is necessary to move to achieve accountability, if we were to decide that that was absolutely necessary then that's something that we would just have to deal with. I think what the congress says is interesting, and it's enough to cause fear and loathing. But it's not something that should govern what we come out with.

Whether they have anything to say about this or not is an open question. They certainly get to say a lot but at the end of the day if it's there decision or not is, A, not our problem, and, B, not even determined. So I think that we have to do whatever it is that we think is right.

Now I tend to believe that staying in California is as probably as good as any of the other alternatives but that's something that we need to determine not do it because Fadi said it or not do it because the US congress will be mad at us. And incorporating the AOC into this, into the bylaws, there is a lot to

incorporate about the AOC and, you know, part of my role here is to represent that.

I do not know that that also means we need to include the clause, and in fact I'm not even sure how much sense it makes to include a clause in the bylaws of a corporation saying you will stay in that home, in that juridical home.

So, you know, it doesn't necessarily follow that putting all of the AOC commitments into accountability, transparency and all the other reviews, necessarily includes domicile in California. Thanks. And of course I'm not a lawyer.

Leon Sanchez: Thank you - thank you, Avri. Next on the queue is - I think Erika Mann, is that an old hand? That's an old one? An old hand? Okay so next in queue is Tijani. Yeah, or is that an old hand too? Okay so next in the queue would be James Bladel.

James Bladel: Hi, thanks. James speaking. I'll just be brief because I know there's a long queue is and people are beating this to death. So, you know, just concerned that we're getting into a bit of a - and perhaps even a dangerous side tangent here that, you know, it's sort of a grass is greener approach to jurisdiction.

I feel that whatever problems or limitations we need to identify them as part of this legal team exercise, and if they are something that needs to be solved for California jurisdiction let's solve them there, and then that I think will help us, inform us for future work in Work Stream 2 but I think that's the task in front of us for Work Stream 1 and that gets us to the point where we're out of the political firestorm perhaps, or at least into calmer waters and then we can proceed on this issue from a better standpoint.

I think trying to tackle those issues right out of the gate is - I'll just say it, it's dangerous. It brings the kind of attention to this work that we don't want.

Leon Sanchez: Thanks, James. Next in the queue I have Roelof Meijer.

Roelof Meijer: Thank you. Roelof Meijer. Yeah, very much what James said. What I'm missing also is what are the real questions that we are trying to answer, something like does California law limits enhancement of ICANN's accountability to a level that we find unacceptable? Or is there another jurisdiction that would increase ICANN's accountability to the level that we want?

Because I think really if I read this paper, this - we're diving into details before we actually have answered the question why are we looking into the subject other than a lot of people are telling us that we should.

But the overall question, And I have my answer but I would be interested to get the answer from the room, is do we really think that it is realistic to expect that if we propose that the jurisdiction should be changed during the transition or before it or immediately afterward that this will actually happen? MIA the only one who thinks that's foolish to assume that?

((Crosstalk))

Roelof Meijer: So why are we spending time on this subject than? Because one thing I think we all agree on is that we are short on time. We are not short on items to discuss at length and in that, but we are short of time.

Leon Sanchez: Okay, next agenda item. So I have - next is - thank you very much, Roelof. I have next on the queue Chris Disspain.

Thomas Rickert: Why are you ignoring me?

Leon Sanchez: Because you are...

((Crosstalk))

Leon Sanchez: Oh I'm sorry, I'm sorry, yes. You're absolutely right, you're next.

Thomas Rickert: I think this is - again this is very delicate. I think the choice of words is decisive whether we are going to wake sleeping dogs or give raise to suspicion with those that are going to look at our proposal. So I think being vague about what we're doing and what we're not doing is dangerous, right?

So but I think that ultimately looking at what we are chartered with its accountability, it's not finding a better place for ICANN. I do not buy the concept of, you know, moving it elsewhere will solve any problems; it will cause an awful lot of additional problems during the transition, right? But it's not easily be taken.

But I guess that, you know, to the level of detail, as Roelof said, in this document is far too great. I think we need to simplify the message and I think, you know, one suggestion for example that I've been making in the GNSO Council for years is that ICANN should be looking at offering contracts by governed - by legal systems other than US law.

I think it's outrageous for European company to ask ICANN for permission to abide by European data protection laws, right, and to ask for a waiver not to be forced to do data retention. And I think it's these practical matters that people might really be interested in.

So, you know, I'm not a native speaker, I don't claim that this question is phrased perfectly but I hope that you get the idea. Maybe we could simply state that in Work Stream 1 we ask the following question: Can ICANN's accountability to its stakeholders be improved depending on the law applicable to its actions? Right?

So we're looking at the contract - the law governing ICANN's contractual relationships but also if ICANN there's something wrong and people are seeking legal remedy against that then we might say okay governing law is the law of whatever so that people actually have an anchor, a tool to challenge ICANN either in arbitration or in court. That might be subject to other legal system than the US or California law.

I think that would be concrete enough to address the concern that many others share. And at the same time if the US government reject then we're saying well we're not desperate to move it elsewhere but that were actually focused on what ICANN is doing and not where ICANN is currently sitting.

Leon Sanchez: Thank you very much, Thomas. Well the queue was closed but we still have some time, we still have five minutes, and we have two new hands (unintelligible). I have just - let me go through this, Chris hand - is that an old hand or...

Chris Disspain: No, that's a brand spanking new hand.

Leon Sanchez: Okay well then you're next.

Chris Disspain: Thank you. And if Erika would like to jump the queue to come straight after me that would be fine. So look, at the political level, the international political

level, there is a desire on behalf of a number of countries, I don't know whether it's majority or not, but there is a desire that in the future ICANN moves - doesn't move out of California, it moves out of the US.

You might be able to solve some of the California law difficulties by moving ICANN from California to Delaware, for example, that that's not going to solve the political problem. So let's put that as a high-level political problem, and I think Pedro is basically saying that's a Work Stream 2 issue.

In order for it to be a Work Stream 2 issue, and in order for it to be in Work Stream 2 it's not exactly helpful to it is in Work Stream 1 the result is that ICANN's jurisdiction is cemented - at the end of the day is cemented in California. It doesn't mean you can't overturn it in the long-term but in the short term it would be hard.

So Jordan's type the question into the chat which is basically, isn't a question can we get through the transition without having to cement ICANN's jurisdiction in California/the US. So that's actually a tactical question, not a strategic question.

So I'm going to sew this together in a second. So Thomas, to go to your question, I think I agree with you that we need to get really focused on what it is that we ask. I think your question is a little bit - need a little bit of refinement. You said something about law applicable to its actions. I'd rather turn it on its head and ask the question is it possible that ICANN can use different jurisdictions to govern different contracts or different aspects of its work.

Because that's a positive rather than a negative, and it'll get a better response from lawyers to that question I think then you will to the other one. But that's something we can work on.

So that then brings us to the final point, is if we all agree, and I think we do, that we can't move the jurisdiction as part of this even if we wanted to, the question becomes how can we strategically do this so that the resulting - transition plan does not - is acceptable to Congress but does not say the clause about ICANN's jurisdiction goes into the bylaws.

That's really what we need to answer, and that's not necessarily a question to be bounced around in this big room. It may be a question for a small team of people to go in and think about.

But one way of dealing with it would be - and it's a risk but one way of dealing with it would be to, instead of moving the Affirmation of Commitment holus-bolus into the bylaws and excluding the jurisdictional clause, actually go through the affirmation - I'm sure there will be other things in the AOC that aren't applicable to the bylaws.

So what we need to do is to choose the ones that we want to move into the bylaws instead of referring them to as Affirmation of Commitment, refer to them as the bits of it. But it's a risk. At the end of the day let's be clear, there is a risk here that Congress will say to any transition plan that doesn't cement the US jurisdiction, that is not acceptable. That we had to take that risk anyway and deal with it if that happens. Thanks.

Leon Sanchez: Thank you, Chris. Next on the queue I see Alan's hand is a. Is that an old hand or new hand?

Alan Greenberg: You can change the order of the queue by having an old hand so it's a new hand.

Leon Sanchez: It's a new hand? Okay so please, Alan.

Alan Greenberg: A couple of things. I find a fair number of contracts in my day and many governments that various locales, will only signed contracts in their own jurisdiction, and the companies doing business with them somehow manage. So, yes, we can sign contracts in whatever jurisdiction understanding that the cost to us may be higher, you know, if there is litigation. That's a cost of business; it's a pure business decision, it's nothing else. That one should be off our scope altogether.

I find it a little be humorous to be talking about the concept of putting in our bylaws that we will remain a California corporation. A California corporation implicitly remains a California corporation. If we move to Geneva or to Montréal or to Australia, where the new corporation with a new set of bylaws.

Now that may be skirting around the intent but let's face it...

((Crosstalk))

Alan Greenberg: ...the words that are spoken were completely true, maybe not the intent or what people read into them, so just for a little bit of humor here. I think we know where we have to go, I'm not sure we need a lot more discussion on this item, but I'll leave it up to the co-chairs.

Leon Sanchez: Thanks Alan. Thank you. Next in the queue I have Malcolm Hutty.

Malcolm Hutty: Thank you. I would like to suggest that the question of where ICANN is
                headquartered, for its own sake as a question or for reasons of pride or
                concern about a distrust in the United States or any of those sorts of reasons, is
                outside our scope of this group. We are here to come up with specific
                recommendations for improving ICANN's accountability. And in this WS 1
                work we are here to come up with those that must be put in place before
                transition.

                So changing the jurisdiction is not intrinsically related to that. But it might be
                consequentially. So if we discover, on the basis of the advice we receive, that
                some of the measures that we are minded to propose cannot be implemented
                while we are headquartered in California then it is relevant to identify that as a
                problem and it is relevant to say - to express a view as to whether we consider
                this to be sufficiently important, does it need to delay transition. That is within
                our scope.

                So for my own - to give an example in my own view, while I would expect
                that this is entirely surmountable, if it were to turn out that the IRP process
                cannot be made binding on ICANN while ICANN is headquartered in
                California then I would support at that point moving from California in
                preference to abandoning, making the proposal to make the IRP process
                binding.

                But that's - that places this question then as a consequential question and not
                as a primary question. As a primary question I think we should really out of
                scope. The only final point I would make is that moving out of California
                doesn't necessarily mean moving out of the United States. And re-
                incorporating in...

Leon Sanchez: Delaware...

((Crosstalk))

Malcolm Hutty: ...for example, would be an option that we might wish to consider in those
circumstances that might satisfy US Congress while at the same time
resolving and identified issue with the specific nature of California legal...

((Crosstalk))

Malcolm Hutty: ...that's a possibility that we might wish to consider at the time if we need to.
But I would say that we should only consider these in relation to specific
recommendations that we are making as within our scope.

So Thomas, I would support your proposal that we should be specific, that we
should not consider this in the abstract. But I think we need to be more
specific than you've proposed.

Leon Sanchez: Thank you very much, Malcolm. Next in the queue I have Jordan Carter, and
then Arun Sukumar, and I don't know, Roelof, is that an old hand or - it's a
new one? Okay so we're closing the queue with Roelof. And so next on line is
Jordan Carter. Please Jordan.

Jordan Carter: Thanks, Jordan here. The issue of jurisdiction, the kind of political dimension
of it I'm not sure it's in scope here. I think that that is in scope of the CWG in a
way. And I think the only thing I'd say about that is that if the United States
thinks it can say we're going to transition Internet governance to a
multistakeholder community and then isn't going to accept the
multistakeholder community's needs about how that looks, it's on a
(unintelligible) to nothing, but that's not our problem.

The specifics the time as mentioned in terms of contractual stuff, I don't think that's an accountability issue either; I think it's a quality of ICANN's operation issue. And I'm not sure it is in scope as either.

The third point is the one that Malcolm made, if we can't give the community the powers that we need in the California jurisdiction, then we have to challenge the community to say, this is the set we can do, these are the things you said that are important that we can't do. Are they important enough to try and move jurisdiction?

So that's the bit that's central to our work. And balancing those is important. I haven't seen anything so far that suggests we're going to get to having to ask that question but I think in the jurisdiction discussion, in this group at this time for Work Stream 1, that's the that we should focus on; can we implement our powers or not?

Leon Sanchez: Thank you very much, Jordan. Next in line is Arun Sukumar.

Arun Sukumar: Thank you, Leon. I think jurisdiction is important in the context of - I agree there's no productive discussion to be had in simply discussing whether ICANN should be moved to another home or not. If you're looking for - if you're looking in the context of accountability from the transition to that - from NTIA oversight to that of a multistakeholder body, jurisdiction is important in that are you discussing whether ICANN is accountable to this multistakeholder body and the constituency it represents.

So maybe perhaps one way to look at it is not whether ICANN should be moved to another jurisdiction that whether the constituent documents, per instance the Affirmation of Commitment, as a document that has been discussed primarily with the United States government and ICANN. Other

stakeholders, especially those from the international community, were not involved in that discussion.

How can we potentially look at how those principles enshrined in the Affirmation of Commitment are made accountable to a larger jurisdiction or a larger constituency. Thanks.

Leon Sanchez: Thank you, thank you for that comment. Next in line I have Roelof Meijer. And with that I'll close the discussion and we will break up.

Roelof Meijer: Thank you. Roelof Meijer. Yeah, I'm not sure if I understood you correctly, Thomas, but I got the impression that if we would look at it from the perspective as you phrased it that would force us to look at every jurisdiction in the world to see if it was better.

In line with what Jordan said, I would propose that we consider this - and maybe that's also a way to communicate it, that is out of scope for this working group unless we find that the existing jurisdiction prevents us from obtaining our goals then we would have to look at it. But I would suggest that we consider this to be out of scope unless we see that this is an obstacle we can't reach what we intend to reach.

Leon Sanchez: Thank you very much, Roelof. Yes, Thomas.

Thomas Rickert: I've opened up my statement saying that the language may not be perfect. I guess that we - that there's a lot of traction for the notion behind it, right, I think we need to try to find the right set of words to describe this.

Leon Sanchez: So doing a small recap on this, we can so far conclude that we agree that nothing is to be decided on Work Stream 1 with regards to jurisdiction. And

we will only be opening the scope of this issue if we find that a requirement cannot be taken or implemented under California law, that would be one of the conclusions.

And we need to rephrase the problem as a statement for Work Stream 2. and we will work on Thomas's question along with what Chris Disspain added, and then we can have a better wording for this issue in order to address it on Work Stream 2.

Okay so next point in our agenda I'd like to turn to Mathieu.

Matthew Weill: It's a nice transition into the...

((Crosstalk))

Matthew Weill: Oh yeah. No pun intended. Can I ask Steve to join us for the next item of discussion which was actually the way we are incorporating the Affirmation of Commitment into the bylaws which was one of our Work Stream 1 items we identified in Frankfurt.

And just as an introduction reminder that we've already been discussing some items of the Affirmation of Commitment to be reincorporated into the mission and commitments and values, so we've discussed this. So this is more focused on the review system that is a décor of the Affirmation of Commitment and how it can be translated into the bylaws.

The Frankfurt outcome was that we wanted this to be part of the bylaws plus the ability to sunset or sunrise - sunset existing reviews or sunrise new ones I think. And there was a question also about the level of binding - how binding the recommendations from a review team could be. And of course there's also

the small issue of who appoints members of the review teams once the NTIA
is no longer in this because Larry Strickling, the NTIA is currently one of the
appointing - in some of them or at least part of the review team, something
like that. There's a question around this. And Steve will be...

Chris Disspain: It's the chair of the GAC and the chair of the board then generally speaking
appoint...

((Crosstalk))

Matthew Weill: Okay. Steve, can you recap the whole - the very strong work that's been done
so far on this?

Steve DelBianco: Yeah, happy to. (Adam), I think you're going to try to load the one which I
linked to there. Thank you very much and I just pasted a link to the PDF in the
chat as well. This was about Affirmation of Commitments reviews, because
those reviews were deemed to be important as about the only way that
community has been able to hold the corporation accountable and have
recommendations that the corporation had to implement.

And I'm talking in this case about the Accountability and Transparency
Review Team, the infamous ATRT of which there have been two, Security,
Stability and Resiliency Review, one has been done. A pending review on the
new gTLD expansion, where would the devaluation of the application process
as well as whether the new gTLDs have promoted consumer trust, consumer
choice and competition; and then finally the Whois review.

So the AOC, written in 2009 is a bilateral agreement between ICANN and one
other party, one other government, the US government. It contains a slew of
commitments from the US government to support the ICANN model but it

also supports commitments that ICANN is making to the global interest, not commitments specifically to the US, although it is a bilateral agreement.

There's wide recognition that that document becomes the next target in trying to eliminate any kind of unique role for any one government in the management of the DNS. So having gotten rid of the IANA contract just clears the way to focus on the next unique document which is the Affirmation.

There's a widespread understanding that the Affirmation is probably something we ought to work into the bylaws to the extent that's applicable and we ought to do it as part of the transition.

There's another reason, as Mathieu indicated, Stress Test Number 14 looked at the fact that the IANA contract itself provides a powerful incentive for ICANN to remain in the Affirmation of Commitments, because after all the Affirmation does obligate ICANN to some pretty significant undertakings when it comes to these reviews.

Would ICANN prefer to cancel the Affirmation of Commitments? Board members have told me they would love to get out of it. But that's really neither here nor there. Let's just look into the future and say could happen? Yes.

The Affirmation of Commitments is cancelable with 120 days notice by either party. And because it's cancelable Stress Test 14 suggested that as a result of the transition they would no longer be the leverage of the IANA contract to keep ICANN in the Affirmation of Commitments. So that is one of the reasons that to the extent we want to retain the commitments in that Affirmation, we ought to bake them into the bylaws.

And then the third reason is that we've just discussed for most of the last hour which is that at a hearing on February 25 the ICANN CEO declared that the Affirmation would be brought into the bylaws, you know, without getting into the specificity of every paragraph, that ended up framing an expectation. It isn't itself a commitment as much as it set up an expectation.

So there are two aspects to this. The first was there are four specific paragraphs in the Affirmation of Commitments, where ICANN makes commitments that are candidates to be brought into the bylaws. Those are Paragraphs 3, 4, 7 and 8.

Now Matthew Shears, on Work Party 1 did a good deal of work on that, and several of us reviewed it on Work Party 1 phone call and that was folded into some of the work that Becky Burr were talking about yesterday morning where if you recall the very first document that the put up the right-hand column was the Affirmation of Commitments and there were three or four sentences that were brought into the core values section.

Not, by the way, Paragraph 8 intersection of US jurisdiction, that wasn't part of that combination that Becky did yesterday morning.

The second aspect of this is the reviews, and the reviews are all part of Paragraph 9. And for this work Fiona Asonga, Matthew Shears, and I drafted up all four of the reviews in language that would fit into the bylaws. And we did so in a way that made four improvements that were documented by the community over the past several months in the comments that came back on accountability.

One was the ability to sunset old reviews and create new ones. Another was the community would appoint the review team members instead of the chair

of the GAC and the chair of the Board. The third is that we would enhance obligations on the part of ICANN to actually implement the recommendations that the community comes up with any review team. And finally that there be transparency and better access to internal documents if the review teams need to have access to it.

So the easiest way I can walk through this document is to have you scroll to the section where the first review is discussed. And it's on Page 4 of the document in the chat, Page 4.

So the language here would suggest that in Section 5 there's already a periodic review of ICANN execution key commitments because in the articles today under Article 4 of the bylaws we would add a new Section 5, and I picked that section just because that's where the structural reviews are committed to by ICANN.

First one is the ATRT. So the language here is imported very closely from the language that's in the Affirmation. And Fiona Asonga put this document together initially. If you wish to see the actual text of the for affirmation reviews you can simply control your own scroll, they're in the first three pages of this document.

So the Board shall cause a periodic review of their commitment to maintain and improve robust mechanisms for public input accountability. So what you'll notice is that the Affirmation reviews contain commitments in the first sentence of each review.

One of the things we need to do is to be sure that if those commitments live in the review should they also live in the core values section. So, Becky, that may be an area we need to double check. There are sentences that lead off

each of the four reviews that may have extra phrases that weren't in the core values yesterday.

They seem entirely consistent, right, robust mechanisms for public input accountability, transparency, public interest and accountable to all stakeholders. I think we're pretty close on that one.

The next section there lists A through F, and that's verbatim other than the comment from Kavouss, that's verbatim from what's in the Affirmation today. Work Party 1, during one of the sessions where we read through Kavouss had asked that we not necessarily import from the Affirmation this notion of evaluating the effectiveness of the GAC.

And it was a fair point. It was a fair point. Item B on the screen was to assess the role and effectiveness of the GAC. So our work party wanted to bring this to the attention of the entire CCWG, but it was a suggestion that Kavouss made that evaluating the effectiveness of the GAC may not exactly be what the Accountability and Transparency Review Team should look at.

The role of the GAC, for sure, but maybe not the effectiveness. And then he asked whether - Jordan had asked whether other structural reviews look at effectiveness. And they don't entirely but the word "effective" shows up in the structural review of the GNSO to ask whether it's being used effectively for the purposes - of the structure is effective for the purpose of the GNSO.

The next thing we did on here was to evaluate the review team and recommended termination of other periodic reviews as required by this section, this section being, what, the four reviews that we're bringing in. This is the notion of giving the ATRT the opportunity to sunset, say, the Whois review, two or three years from now or to create a brand-new review, a new

review of whether ICANN is adequately diverse and reflecting the needs of a growing global economy of Internet users.

The review would be conducted by a volunteer community review team. That's identical to that Affirmation and it lists advisory committees, supporting organizations, we added stakeholder groups, and the chair of the board. This particular one has the chair of the board on it and that's from that Affirmation.

We added the notion that the review team may, not must, but may also solicit and select independent experts, not management but the review team could, to render advice as requested by the review team and that the review team could choose to accept it, so it's not something that would be a top-down imposition but an option.

This paragraph, that's here next, talks about transparency and openness so to facilitate transparency and openness the review team should have access to ICANN's internal documents and the output published for public comment; that's in the Affirmation today.

We thought that it would be important that they would take care on any documents that it would review that were confidential, and that the review team would published for public comment and then produce final recommendations to the board.

Currently it says the board shall take action. We all felt that that was a bit vague; but does take action really mean? And so we are considering the phrase, instead of "take action" to say, quote, consider approval and begin implementation. Consider approval and begin implementation within six months of receipt. The six months comes from the Affirmation as well.

This particular review right now is supposed to happen every three years in the ATRT, there's already been two of them. There's another one coming up in 2015. So that ATRT looks at every three years, and we had - did our best to try to rationalize this and space them out a bit more. So you can see that our proposal here, our draft, is to say every five years. And you would measure that from the date that the board received the final report of the review team.

So, Mathieu, I assume that - if I go through the next three it could go quite briskly because in many respects the changes and improvements we made are the same, would that be all right? And what's our timing on this? Until 10 (unintelligible).

((Crosstalk))

Steve DelBianco: Great, with commentary. Alright the next review is the SSR or Security, Stability and Resiliency. This is a review that's required every three years; one of them has been done. We also suggested that the go to five years.

So there's a commitment in here, the execution of ICANN's commitment to enhance the operational stability, reliability, resiliency, security and global interoperability. Becky, I believe, those were in the core values that you discussed yesterday. They might have even have been in the mission statement part. So this commitment authority locked into the discussion we had yesterday. The question is how do we measure ICANN's achievement of that commitment? That's what this review would do.

The rest of this language is imported from the Affirmation plus the notion of letting the community goes on the review team, letting the community take the advice of outside experts. The review team would not disclose or

distribute any ICANN internal documents under legitimate duty of confidence.

We're trying to satisfy the urge that when documents are requested that ICANN not be able to claim you can't have them because they're confidential. We need to have a way of bridging that gap. And Ed Morris, you're here today as well. When we get to the Q&A I do want you to try to get in the queue and describe the challenges that you were able to document on getting access to the documents necessary to do a review as well.

All right and again, the same notion of publishing for comment and take action. No, not take action but consider approval and implementation. In our draft we suggested this be done every five years instead of every three years.

All right, two more than we'll get to Q&A. This next one is the review that we haven't performed yet; if the review of the new gTLD expansion. In 2009 we were still three years before opening up bids for the new gTLD program, so the 2009 Affirmation passphrases in it such as "If and when ICANN expands the new gTLD space it would move on."

So we took that out and suggested as it expands the space, and there is an anticipation that we're not done yet; there could be an ongoing evergreen round of applications are there might well be another round or it could be some combination of a permanent expansion round.

So let's just write the words generally. That as it expands the TLD space that will adequately address competition, consumer protection, security, stability, resiliency, malicious abuse, and all of these words are taken from the Affirmation of Commitments. So probably we will have a lively debate on about whether all those commitments are likely to be here and not reflected in

the core values. I think anything that's in here we're going to evaluate against, it probably ought to be in the core values.

The Affirmation calls for this review to occur one year after new gTLDs have been in operation. Everybody debates what "operation" means But delegation or contract or public availability.

That Affirmation then requires another review two years later, and then reviews no fewer than every four years. That's what's in the Affirmation of Commitments and since this is a review we haven't begun yet there's a lot of work that's been done.

Jonathan Zuck had shared a working group, Cheryl was on it as well, where we came up with metrics, metrics that could be used to measure the effectiveness of the new gTLD program on promoting consumer trust, so that should help as well.

The rest of this is verbatim from the Affirmation plus this notion of transparency to documents, the fact that the community selects the members within six months. And then in yellow I have highlighted a comment that in our work party discussions Kavouss have proposed adding that subsequent rounds not be opened until recommendations of the previous review required were implemented. And that sounds sensible but we would welcome input from the group on that.

So the group itself - we came up with a draft to suggest here that the periodic reviews should be no less frequently than every four years. The notion there is that we are going to do one under the current Affirmation of Commitments, it's going to begin this year. It will begin before the transition is over. So that one will be in the bag.

And then the notion here is that every four years after this review is done, there would be a review of the ongoing new gTLD expansion as opposed to a year out, another one, two years out and then every four years so we're trying to rationalize it and make it a little bit simpler.

All right, the final one in here is the review of Whois. And this is part of the extent to which its implementation meets the legitimate needs of law enforcement and promotes consumer trust. So that's not a line of commitment, that the line of what the review is supposed to look at because however it got here, Whois is a current obligation of ICANN and as such that Affirmation sought to evaluate whether it's been faithfully enforced and applied.

There is a commitment line in the second sentence of the Affirmation there and ICANN commit to enforcing existing policies subject to applicable laws, and that's always been a phrase that, well, for the most part looked to compromise if applicable law protects privacy then that is why certain registrars don't have to enforce all of the Whois under the new RAA.

It does expect and mentioned the legitimate needs of law enforcement and promote consumer trust. Becky, did the law enforcement line make it into the draft we looked at yesterday with respect to core values? I don't think it did. It was discussed on Sunday afternoon as I recall.

Becky Burr: But we did talk about the fact that the Specification 1 specifically addresses Whois issues.

Steve DelBianco: In Specification 1 from the Registry Agreement and Registrar Agreements, is incorporated up under the first section of the core values that we came up with yesterday. Okay, a given, there's the notion that we appoint the review team

members. We have access to documents. The board shall take action. And we are suggesting no less frequently than every three years.

Now if we're going to replace Whois with a new directory services in the next few years, if we're fortunate enough to do something like that, right Avri?

((Crosstalk))

Steve DelBianco: I wanted to point out that we baked into the ATRT proposal here is that the ATRT - the first team could recommend the sunset of a review that's no longer applicable or the modification of the review if we have to change the name of the system. The word Whois may not even be applicable in five years.

There's a line in yellow on there that both Robin Gross and Bruce Tonkin had suggested on our call that there be an addition to this, OECD privacy principles as part of the criteria to the review. That wasn't in that Affirmation, it was offered for suggestion.

So with that, Mathieu, happy to have you manage a queue.

Matthew Weill: Yeah, sure. So just before we get into discussions, a couple of points. Let's not get into the precise wording at this stage. What we are looking at is the main requirements around this review system and we need to be in agreement on that way before we get into the actual drafting, so that's the first thing.

And so I just would like to encourage everyone to discuss about the features that have been highlighted by Steve around the five-year, or four year, or three-year periods, about the sitting of the review teams by the community, about the enhancing of the disclosure processes, the way the board would only

be tasked to consider implementation. Those are the items we need to make sure we have some agreement on.

And maybe another - a few others that have been touched on were not touched on can be relevant here. But I think - so my warning is let's not get into drafting details but please keep up the feature requirement level.

And with that I turn to Avri who was kicked off the queue unfairly.

Avri Doria: Thank you.

((Crosstalk))

Avri Doria: As opposed to fairly, right. Thank you. Avri speaking. First let me explain my giggle about things happening in the next year. As a IETF participant who has worked on protocols I've never seen a new protocol implemented quicker than a decade, implemented and deployed. So that's the giggle, not a policy giggle.

Okay, in terms of this, I tried to get some comments in on this but by the time I found out where the work was being done my comments I guess got there too late to be included. I have some editorials, I won't get into those.

I wanted to explain one thing on the issue that Kavouss brought up about effectiveness...

((Crosstalk))

Avri Doria: Right, what they meant by effectiveness and came out into discussions was not whether the GAC was an effective organization but whether the GAC provided an effective voice for governments within the ICANN system.

So perhaps we need to word that differently to make it not look like we are criticizing the GAC and its effectiveness as an organization, but what it really meant is it being an effective vehicle for governments. So I just wanted to get that one.

The other thing I wanted to actually suggest was a fifth thing to list under it. And this is not something that is in the AOC itself but is something that has been developed by the ATRT over time and that's the requirements for annual reports on the implementation of accountability and transparency and the state of accountability and transparency.

So this is something that came out of the ATRT 2 but it's something that gives the AOC commitments are going into the bylaws I would recommend that we - and I had written up some text that could be included and I'll just read it quickly so it's, you know, "ICANN will be responsible for creating an annual report that details the status of implementation on all reviews defined in this section. This annual review implementation report will be open for public review and comment period that will be considered by the ICANN Board," etcetera.

So I basically would like to - and I sent the text to the list but I would like to recommend that that be added to the list of changes to be made. Thanks.

Steve DelBianco: Avri, this is Steve. I apologize for missing that March 20 email you sent over, I found it now. Thank you, and I'll take care of it.

((Crosstalk))

Avri Doria: ...last minute that it took me a while to find out where you guys were working and where the text was.

Steve DelBianco: Yeah, quite all right. And I will need to get the phrase that we need to show Kavouss so that the effectiveness is whether it's effective for governments which is I think what you're getting at. Would look for a phrase I'm not. And I'll look for your annual report text as well. Thank you.

Matthew Weill: Thanks. Very useful contribution. Sebastian, you are next on the line.

Sebastian Bachollet: And useful contribution. I agree with Avri about the GAC. I think what it's important for me each part of this organization must be on - I will say - equal footing and there is no reason to see that - the end-user are working well or not well and the government can work well or not well. We need to have for everybody to see how they participate to the overall structure.

Select by that community, it is already the case except that at the end there are two people who are balancing the selection. But the people proposed by these - the - are proposed by the community, by SO and AC and so want to be number of this community of this group.

And I think it's important to find a way because it's, at the end, the only thing that really we're doing it is to diversity issue taking into account. And if it's done by the community, which it's already the case, what it's important that the end is that we are sure about a lot of diversity items within this group.

And it's maybe too much detail that you talk, Steve, about maybe not having any new round, and at the end of the first paragraph, the review must be taken after any rounds. And there is some contradiction between what you say and what is written. Thank you.

Matthew Weill: Constructive.

((Crosstalk))

Matthew Weill: I think that if I was to rephrase your point on the selection it would be something around the community selects, and then the two existing or others, that could ask for reconsideration if the diversity criteria are not met or something like this, right? That's your idea - for consideration, not for approval at this point. I'm just wanting to make sure we have your point is correct.

Steve DelBianco: Right, and the drafters were solidly behind the notion of not wanting to get approval for the chair of the board of the organization that we are about to review. And so we are uncomfortable with that but I understand the need for diversity.

Matthew Weill: So that's the - I think one of the discussion points we need to have. But I wanted to phrase that correctly and ensure we have this captured. Next in line is Chris Disspain, ladies and gentlemen.

Chris Disspain: Thank you. This is sort of a meta-concern. I just want to make sure that we make sure that everybody knows what we're doing here; I don't mean everybody in this group, I mean everybody in the community. I'm slightly concerned - I know there's no intention but I'm slightly concerned that people might skip over this section because what they think we're talking about is simply taking the AOC and putting it in the bylaws, we're not.

We're actually talking about taking the AOC and redrafting it, adding to it, making changes to it. So I think it's really important that we make sure that

people understand that. It's on the agenda it just refers to the AOC and so on. I want to make sure that everybody is aware - I don't have any problem with any of this stuff but what I don't want is to find out in two months time or three months time with people suddenly realizing that we've re-crafted a whole heap of stuff, so we really need to be very, very clear. Thank you.

Steve DelBianco: Of the document that we put out for public comment we will probably need to do side-by-side and explained the rationale for every change.

Matthew Weill: That's right. That's one of the aspects I think we need to have at the end of this conversation is starting to highlight the various features we're introducing or changing for...

((Crosstalk))

Matthew Weill: The next is Alan.

Alan Greenberg: Thank you very much. I have a number of comments but first a question for Steve, you've used the term "community appoints" now in ICANN we use that - there is to sort of meanings; one is each AC/SO or whatever group it is, appoints their people; or a community group comes together to do the selection and appointment. Which do you mean? I think we need some clarity there. Because that goes to the diversity issue and other things like that.

Steve DelBianco: Alan, work with me on this. Compare the language in the Affirmation to what's here and it's ambiguous in the Affirmation; we have the opportunity to make it clear here if we wish. And I would say currently we're just as ambiguous as the Affirmation because the review will be conducted by volunteer community review team comprised of representatives of the relevant AC, SO and SGs.

So that could mean anybody who wants can volunteer or it could mean that each of them appoint a representative or several representatives. Do we want to be clear on that? And it would be good to get a sense of the CCWG if we want to be clear on that and link it in any way to the mechanism for the community whether it's a council of councils or members or delegates.

Alan Greenberg: I wasn't trying to advocate one or the other but as Sebastian said, some people worry about balance. If you look at the composition of the - I think it came up most in the ICG, the community demanded that they each a point there people and then people complained about balance. Well, you can't have it both ways so we need to be definitive of what we're trying to achieve and then make it clear so there isn't ambiguity there.

A whole bunch of things, and I'll try to be quite brief. The AOC was drafted in 2009. It used 2009 language or the best we thought we could. We've learned a lot since then by doing some of these reviews and some of the language itself changed. Though I personally would not put Whois in our bylaws today, I would say generic, you know, directory services, and perhaps a reference to what it is today. But let's try to keep the general, but there's a lot of other examples.

As a member of ATRT 2 we felt rather frustrated that there was wording put in Section in of the AOC describing our review and we had NTIA people on the committee who basically said we have to follow those exact words. They are less than appropriate and our report was significantly weaker because we were limited.

((Crosstalk))

Alan Greenberg: I can make a number of suggestions so I really think we want to try to approve things. There's a concept in there that the ATRT reviews the other reviews.

((Crosstalk))

Alan Greenberg: Yeah. I'm not trying to redraft here, I really, you know, I'm talking about concepts. We decided in ATRT 2 that we would review whether the reviews were sort of - weren't listened to by ICANN but not the technical evaluation of did they really do the Whois things. So we sort of took half of it out and said the other half will be done by the other review team.

Because of the timing of them it was a really awkward thing to do. I think we need to fix that. And again, we had pushback from NTIA saying that's not what we meant, but what they meant doesn't work.

((Crosstalk))

Alan Greenberg: The - I won't go into all of them; I'll document them later.

Matthew Weill: ...in writing.

Alan Greenberg: No, no I will. The spacing that you should be aware, that you didn't change three to five, you changed three to six plus. As long as you're aware that you did it consciously because the original content implication of three says the next one was started three years after the previous one started, not after it was proposed. So I'm happy with changing three to six plus but we should now we're doing it, and it's not an accident. That's it. Thank you.

Matthew Weill: I'm conscious of time and we still have a lot on our plate so I'm closing the queue after Jan and I'm urging people in the queue to try and make brief and

focus on the higher-level requirements or key issues that they think we need to address. And then I will try to - we will try it with your help to recap as we did yesterday that what we have in common in terms of to give guidance to the group. The next is James.

James Gannon: Hi, this is James. And so just for some context for my remarks, I do security and risk management as my day job so I'm possibly hyper-sensitive to this. For the SSR reviews I would have serious concerns about moving them out to five years; three years is almost a push in my opinion. One of the core things that the SSR will be reviewing is ICANN's security plan, which I would hope is nice, comprehensive. But in security terms five years is an absolute lifetime.

I would make an educated guess that the internal security plan of ICANN is changing on a monthly basis. So looking at an overall security strategy every five years is an extremely long timeframe. If anything I'm - apologies that I didn't look at the document earlier but I would have been pushing to move it the other direction closer down to a two year or a one year review but five years in security and stability terms and business continuity is an absolute lifetime. I have serious concerns.

((Crosstalk))

Steve DelBianco: ...for the SSR review team which starts in a few a months.

James Gannon: I most certainly will.

Matthew Weill: Thanks. Next is Edward. Ed.

Edward Morris: Yeah, thanks. Steve asked me to walk everybody through our current documentary disclosure policy, the DIDP, theoretically it's called the

Documentary Information Disclosure Policy, The way it actually works it's the nondisclosure policy.

It's supposed to be ICANN's freedom of information act. You want a document from ICANN, they have it, unless there's a compelling reason they have to give it to you. ICANN have lots of compelling reasons. They are listed in the defined conditions of nondisclosure which are 12 reasons ranging from attorney-client privilege, personnel records to it's not reasonable for ICANN to disclose the documentation.

So how does this process work? Staff decides what's made public or not. You don't see something that's out there in the open, you ask staff do the DIDP...

Matthew Weill: Sorry to interrupt but we're very short on time so...

Edward Morris: Well I'm going to make this point, Mathieu. I've been - we're trying to work with Jordan and Becky to get the DIDP reviewed. We are not currently reviewing it. We have to. You cannot have accountability without transparency, and we've been given the short shrift.

Let me give you the numbers, the numbers are stark. Since 2008 76 requests for documents through the DIDP have been filed with ICANN, 71% have been denied citing the DCND. Since 2011 it's up to 81%, since the NTIA announced the transition it's up to 94%. You cannot get documents from ICANN.

In the system Lee talked about the value of precedence. My favorite denial came last year when a third party that had an interest in a CEP extension that was given to Donuts, independent review extension, they said ICANN, why did they get the extension? Give us the documents. Well ICANN says, well

we can give you that because that is a confidential business - for confidential business reasons or it's an internal policy or goal.

So we have no idea why Donut was given the extension. There is no presidential value. And if confidential. So we are in the organization where accountability itself is not transparent, and it has to change. And I hope you guys will commit to doing the review with the DIDP because as Jordan and Becky can tell you I've been on their case for six to seven weeks trying to get this done. Thank you.

Matthew Weill: Edward, I think the point is well made. And I come back to this aspect when I try and wrap up. I am informed that Jonathan was on the list as well but got dropped unfairly as well. So I have Matthew Shears, Jan and Jonathan.

Matthew Shears: Thanks...

((Crosstalk))

Matthew Shears: ...well Steve's done a great job of summarizing the work we've done in WP 1. And a couple of issues that were left over that weren't part of the reviews have been moved into Becky's work, but there are still two issues that are kind of hanging out there that we need to find a home for. Both of them are related to accountability and transparency in Articles 7 and 4 of the Affirmation of Commitments, so that's just a flag that those still need to be accounted for. Thanks.

Matthew Weill: Jan.

Jan Scholte: Yeah, thanks. Jan Scholte. As advisers were meant to have her rather than be in the bowels and this discussion is mostly in the bowels of detail. But I'm just

- as we are listening and thinking that we've gone through I think probably nine hours of discussions now and each time - or many times one hears the community will do this and the community will do that, and in this case on appointing the review teams and so on.

And I keep having this questioning the back of my head, the accountability of the community. And I just want to say it one time because we do see it every now and then and then it disappears and then into discussion of all the things we know in the back of our heads that it's an issue, but it's lost every time again.

And I'm just thinking that when the congressional hearing comes or when NTIA wants to look at it, anyone who wants to scupper this proposal will be looking for a reason. And if the stakeholders - the stakeholder accountability isn't addressed I think they will go for the jugular.

Matthew Weill: A point I was actually planning to address this afternoon when we try and recap the overall stuff so I think we'll come back to this certainly. So, Jonathan and then I'll try to take stock of our discussion.

Jonathan Zuck: Thanks. Jonathan Zuck for the transcript. I just - I want to go back to Kavouss's second comment about not having future TLD rounds until the recommendations are implemented. And I feel like that sort of speaks to this question of community accountability - or accountability of ICANN to the community as a whole, perhaps even beyond the ICANN regulars, etcetera, is the notion that in each of these reviews proposals are made for things to happen for a reason.

And if we don't measure whether or not we accomplished what we meant to accomplish with each of those recommendations then the whole thing just

becomes a sideshow, it becomes a joke to actual policy development and accountability.

And so I want to definitely strongly agree with the notion that in the case of CCT that there aren't new rounds of TLDs until recommendations are implemented so that they're not just irrelevant. But I think we also need to find a way in each of these reviews to review the progress somehow of the things that were recommended along the way, make sure they were implemented.

And without a gTLD program to kind of hold up how do we force implementation in a timely way? What's the stick in that case as opposed to holding up a program the way that we have in the case of the gTLD program? You know, there needs to be a way to create momentum behind the implementation of these recommendations in the other reviews and not just in that one but certainly in that one.

Matthew Weill: Do you want to answer this question?

Steve DelBianco: One quick thing, Jonathan, and I think that Avri brought this up. If you look at the ATRT - Item F under the ATRT review is assessing the extent to which they've implemented the recommendations arising out of the other periodic reviews in this section. So that was part of what ATRT 2 was able to do, couldn't do it on ATRT 1 because there hadn't been any other reviews. So it's supposed to be in there and I don't know whether that gives you the momentum and leverage you were talking about.

Jonathan Zuck: It didn't given the number of things that were not implemented. So the fact that that threat that they were going to be reviewed later didn't cause expedited implementation of those initial recommendations means that it's not a sufficient stick to get them implemented in a timely manner.

Steve DelBianco: In Frankfurt I believe it was Alan on the mind map that we had up on the wall in Frankfurt one of the powers we had for the community with the ability to force management to implement recommendations from review teams that had previously been approved but hadn't yet been acted on. And that's a community powered that's been in the Work Party 1 inventory somewhere, Jonathan, that I think we probably need to revisit that too.

Matthew Weill: To revisit that in light of the existence of the IRP where the community could go to the IRP to say force - to act against and in action from the board. But that's something to revisit in terms of consistency. I'd like to take stock of what I've heard so far so that we provide guidance for the group on this aspect.

I think - so there's a group proposal to - for the board to consider implementation, to change the way the board is actually taking into account the phrasing at least for taking into account the recommendations. And there's this remark to be taken into account, but otherwise I think this is pretty much going in the right direction. Are there any objections - are there objections on to that?

You have a question, Chris.

Chris Disspain: Just to build on Jan's points about the challenge of what the community is and being sure that we explained, and I have some thoughts about that which we will get to later. But my question is, is this working group or this subgroup looking at the actual mechanism that you would use to make all these calls for things to be looked at?

Because it strikes me that a lot of stuff is the community will be able to force this, the community will be able to make this happen. Now all of that stuff is fine but it all needs to actually have some kind of mechanism. And if by the community we mean that community, in other words a number of SOs or ACs or bits of them, then they're going to need to come together to make all of that happen.

And it strikes me that we're using an awful lot of large comings togethers of the community to make some quite small things happen. And I wonder whether we're going to look at that as a sort of overall stress test etcetera.

Steve DelBianco: (Unintelligible) yesterday morning when Jordan put up a matrix showing five different potential ways to structure quote unquote the community. And until we figure that out whether it's permanent cross community working group members, delegates, until we can figure that out, Chris, we use the shorthand word "the community." There's a hope that one of those structures, council, for instance...

((Crosstalk))

Steve DelBianco: ...will work for everything. But there is an acknowledgment that it may not work for everything.

Chris Disspain: Because I thought - I thought that what those gray boxes were about was looking at the structure you would use for one of - for any of the four major topics that we talked about, by law blocking, spilling the board, budget and something else. I'm fine with this...

((Crosstalk))

Chris Disspain: Yeah, so but that would mean then that if we settled on just - we would need

to settle on different levels because you couldn't have a situation where you

have the same barrier to build the board as you do to have something else

revisit it.

((Crosstalk))

Steve DelBianco: ...mechanism that there would be different voting thresholds for each thing.

((Crosstalk))

Matthew Weill: After the coffee break - if we can make the coffee break so if we can proceed.

But I think there is one thing that I want to stress is the review system is the

continuous improvement part of ICANN. It's the commitment for ICANN to

continuously improve based on bottom-up processes, multistakeholder

processes. It is not meant to be the binding part which is the appeals

mechanism we've been discussing.

And I think that's the initial contrast that within the existing ICANN some

were expecting the review system to be the binding thing on ICANN. And I

agree with Chris, doing reviews and list of recommendations is not the most

appropriate improvement system you can make because in the continuous

improvement where you have to focus at some point. Otherwise you don't

deliver anything else and it's very difficult. So it's a difficult balance.

But the agreement I see is on enhancing transparency so the first one might be

on - the Avri report, on the Avri annual report, and the second one is the work

that we need to still flush out on the document information disclosure policy.

Are there any objections to these increased transparency features? Yes?

((Crosstalk))

Matthew Weill: You just want the conversation to go on, that's right? You don't want coffee.

Alan Greenberg: No, no there was an expression used in ATRT 2 of a culture of openness. And we need something like that because these are specific embodiments. But I think we need something, you know, maybe one of our - maybe it's the core mission - a core value that we do not have right now. And I think we need to generalize and not have specifics.

Matthew Weill: Values and mechanisms don't create culture, they create incentives for the culture to thrive, whatever you call it. But, yeah, yeah, ideal world would be the culture. Avri, you want to react?

Avri Doria: Sorry, I don't - I lost my connection on the network. We also talked about a notion in the ATRT report of a default - and refer back to it - of a default transparency where basically everything was transparent unless there was a stated reason for it not to be. And that's something that really hasn't come about even after two ATRTs.

Matthew Weill: Okay. So that's one clear direction that I'm hearing from the group. The notion of flexibility on the periods of reviews I've heard some inputs on the proposals that might need to be refined.

((Crosstalk))

Steve DelBianco: ...in five years.

((Crosstalk))

Matthew Weill: ...for the security when - trying to ignore the noise - for the security one I think there - that's something that we need to consider. And so I don't think we can say now that we - that there's full agreement on the existing proposal so we need to further work on that. But some flexibility on some reviews at least I think is something that's okay to consider obviously because of volunteer I think as well as the ability for the organization to implement all the recommendations.

There was a discussion on the relationship between GAC and effectiveness in the wording which clearly where we have I think a promising approach to build on. But that needs to be - it's certainly something, unless someone objects, that I think we should pursue to clarify. No one's objecting.

And, Steve, am I missing any feature in your recommendation that you would need to have confirmation that a group agrees on or if there's any objection?

Steve DelBianco: Just wanted to note that it says no less frequently than every five years. If the community felt compelled - the community, Chris, right? Felt compelled to do a security, stability, resiliency review every year it could; it could even under the current Affirmation of Commitments.

Matthew Weill: And I think - so that certainly something the group should discuss further before we can actually say this is our CCWG recommendation. And regarding community selection plus diversity, that's also somewhere where I think we need to be creative about how we are going to combine those two can be explicit about the selection process we're setting up.

Steve DelBianco: May I suggest though that in the chat and in the discussion if there is a balance between diversity and autonomy, autonomy wins. We have to be able to select the people we want to be on that team. The best people from the ALAC, the

best people from the CSG, and not be told no, sorry, can't have them. There should be aspirations for diversity for sure. But when it comes to a balancing - remember Becky brought up this notion of balancing core values? This is one where I think the balance is going to tip towards getting the right people on the review.

Matthew Weill: There is a need for balance, and before I turn to Sebastian I'd say I fully appreciate this but I am hearing the notion of best as not a contradiction with more diversity at all, because how do you define best? Is that defined on experience within ICANN? No, that's not what we necessarily want.

I don't see where the contradiction is between best and diversity. So we want - we need I think - it's extremely important for our group that we overcome this - and I think we are currently in the bias of we know each other, and a CD advisors nodding, we know each other and we know how we work but this is our bias; this is our bias that we don't take diversity as actually creating the best people for the reviews.

I think this is something where we don't have agreement now, and it's not just a small minority objecting, I think there's more. And I'm hearing a lot from the outside of our group about this. And that's why I'm stressing it and stressing it again.

This balance opposing the best people against diversity or the most representative of the communities and the autonomy of the communities and diversity, I think, is dangerous for our group and for our proposals because it's setting the stage for outsiders to just say that dismissed our proposals as being too self-serving. And so that, to me, and speaking as co-chair now I want to be able to express our proposals and show that they are taking into account the global community expectations.

And that's - to me that's where we haven't really refined this enough yet on this matter. So I wouldn't qualify this as we have agreement on this; we need to refine this. Sorry. Thomas, go ahead.

Thomas Rickert: I think we do have agreement on the community to select that. I think we don't have to drill down to that detail here and we're making sort of high-level recommendations here so there needs to be a community process to select members taking into account the diversity standards. And I think if that's agreeable we are done. Right?

And then let the implementation find the correct language for it but I think that's the guidance that we give, and it can be a little bit more high level, count it.

Matthew Weill: Yeah, we can always work on the level of details. Sebastian.

Sebastian Bachollet: I will try to summarize. Individual best is not the collective best. And what we are looking for is the collective best. Thank you.

Matthew Weill: Sebastian. I see there are - Mathew is an old hand? Yes. Two last comments standing between us and coffee. Alan, is that an old hand? That's what I feared.

Alan Greenberg: Okay. I'll be very short. I do not think we have come to closure on what we mean by community selects. One of the things we didn't even talk about was there's a pre-stage before this election that is deciding how many of each from each group are on a review team and they've changed every single time and it's a really political issue. I'm not sure the community can decide that itself without a lot of fistfights or something like that.

And To be honest we have a problem in ICANN attracting diversity into the group. That's the problem. Some of you, I'm sure some groups within ICANN have a surplus of really good people and they can pick which one is the right one. Within At Large, we have often found that we do not have a surplus of good people. And if we want to put someone on who's not going to - and I'll be quite candid - embarrass us and hurt the group, we don't have a lot of choice sometimes. So...

((Crosstalk))

Alan Greenberg: Got to remember the realities.

Matthew Weill: Malcolm and then coffee.

Malcolm Hutty: Thank you. Yes, Mathieu, I really just took the floor to say that I was troubled by how strongly you were putting that. I share - certainly from the ISP constituency we have a relatively small number of people, and we would find strict diversity requirements, would be very constraining in anything that we are asked to contribute to.

And more generally I fear that too strict diversity requirements or the kind that's being talked, tends to encourage protected or supported categories such as gender diversity and regional diversity at the expense of viewpoint diversity.

Matthew Weill: Please consider that I have not mentioned any kind of diversity requirement nor any mechanism so this is pure speculation about what was implied. However, however I note that this is the typical diversity discussion in any context. And, I mean, the kind of discussion we have here exists in all

diversity discussions whether it's social diversity requirements in companies, in corporate social responsibility, whether it's women on board discussions, this is exactly the kind of discussions that happen.

So there are options out there, and we need to take a step back and look at them. That's what I meant. And I really look to the external advisors for input here because I think it would be very valuable of input on best practices. Enlightening for us to have stories from the outside.

I think this is - as close as it. I just want to stress how great a work it's been from the group so far and this direction. We need to stay focused at the requirement level for our proposals because, as Chris said, this is what we want to draw attention to rather than the wording. But at least having this is a demonstration that we can move forward fast on that. And we've identified a few items for further work.

But clearly incorporating the system of reviews is part of our recommendations. Thomas, you don't want us to go for coffee, right?

Thomas Rickert: Exactly, I don't want to go for coffee. But as we continue thinking about this, I'm particularly responding to Alan, we're talking about language to go into the bylaws and we can't put all the glorious detail into the bylaws. So I think that, you know, with the general statement that I suggested we get enough room to have all that drill down at a later stage in another forum.

Matthew Weill: So the coffee break is going to be open for only 15 minutes so we'll reconvene at 11:30. And we still have plenty of work to do. Thank you.

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