

ICANN

**Moderator: Brenda Brewer
March 24, 2015
4:00 am CT**

Coordinator: Recordings are started. You may now proceed.

Mathieu Weill: Thank you very much. And we are going to reconvene.

Our next agenda item is going to be about a small discussion with we're joined by Becky on an idea we touched upon yesterday on which was the golden by law concept without which we would like to clarify. So Thomas I hand over to you.

Thomas Rickert: Thank you very much Mathieu. The purpose of this session is to shed some light on the concept of a golden bylaw which I think everybody is using the term but we may be talking about different things.

So Becky has volunteered to provide us with a quick summary of three options that we see how golden bylaw could work.

And then we should discuss which of these options if at all we deem appropriate to perpetuate some of the topics that should go into the bylaws.

And as a second step as time permits we should be discussing which of those items if any should be framed as golden bylaws to give them special protection.

And with that I'd like to hand it over to Becky for a quick summary of the available options.

Becky Burr: Thanks. Just as a general point of introduction the notion of a golden bylaw or a durable bylaw provision really speaks to the ways, the terms and conditions under which a bylaw provision can be changed.

So you could start at the most extreme example of saying this provision in the bylaw, the mission statement for example may not be changed under any circumstances.

That creates some legal issues about corporate governance. But I just want start of post that out there as on the one hand to the situation we have now where, you know, a, either by a majority or a supermajority vote of the board of directors bylaws can be changed.

And then there's a continuum from one end of that spectrum to another.

So we have talked about creating a set of golden or durable bylaw provisions that would require a very high standard for modification which would could be - would go from it had to be approved by the community. It had to be it has to be adopted by the board following, you know, a supermajority of the board following certain procedures.

I think that in our conversations we've talked about sort of the durable bylaws, golden bylaws being part of the being essentially the mission statement and the core values.

And then using the veto or approval as sort of applied to the rest of the bylaws changes that we're talking about. So nothing is written in stone here obviously but certainly in the mission and compact working or mission and core values working group what we have been contemplating would be a very, very high standard to support any change or expansion in the mission statement itself.

And perhaps a slightly lower standard to permit change in the articulation of the core values and then the use of the veto or approval process that is coming out of the community empowerment for the others. So I think that's - and you can do any variation of that that you want.

Thomas Rickert: Can you maybe (unintelligible) on some options how to implement that?

Becky Burr: Well...

Thomas Rickert: I think in the preparatory discussions that we had you mentioned three options that you think of.

Becky Burr: I mentioned. So one is that I mean, again it's a spectrum as opposed to three options. One is that if you want to change - one is subject to the legal intricacies. This may not be changed.

One is this provision of the bylaws may not be changed unless there is essentially a publication of a proposal followed by a detailed description of why it's justified and how it fits in with the mission statement and the like

followed by a vote of the community for example or a vote of each of the SOs and ACs.

But, you know, we figure out how to do that based on the work that WP1 is doing followed by a public comment period followed by, you know, whatever.

So you just load it up with process so that there is no ability to be for the community to be asleep at the switch and it would require the affirmative vote of the community to support that kind of change and that would probably be for the most important ones, the ones in which being asleep at the switch is never good. We're never going to permit that to be an issue.

We also talked about, you know, how many bytes of the apple one would have to be worried about?

Could you, you know, propose a bylaws change, have it voted down by the community, come back and propose it the next day or, you know, at what point how do you introduce finality and clarity and predictability with respect to that?

So I think that the three sort of issues the three scope is kind of you cannot change this without the affirmative approval of the community based on very precise procedural requirements.

And on the other end of the spectrum is the community has the right to veto or send back to the board of proposed change. And in the middle would be something in the middle of those two things.

Thomas Rickert: Excellent, thank you Becky. So, I hope that this clarifies a little bit the concept of a golden bylaw. So are there any immediate questions for Becky on this

explanation? And if there are none I would like to try to maybe capture some interim result if any.

So I - is - can you please give me a signal if I'm not accurately capturing this?
So yes, Jordan has his hand raise. Jordan? No.

So I think there is agreement that we do need a golden bylaw that we need to make some provisions in the bylaws more robust than others right?

Also I think that we would follow Becky's group's advice not to try to make it unchangeable but that we just establish very high bars to get it changed.

There was a vivid discussion on the subgroups list that we better not cast everything in concrete because times may change and ICANN might need to adopt. So we need to leave that, leave some flexibility for that.

With respect to thresholds for that or procedures for that I think that requires a discussion that we might find time to have a little bit later.

But what I think we should try to get clarity on in this slot is what items we think should get this special protection?

And Becky mentioned one of them which is yes, the mission core values. So, if - is there any objection to give special protection to the mission and core values?

I don't see any...

There's a queue forming.

Sebastien Bachollet: You should split them.

Thomas Rickert: So let's move to the queue. Sebastien is first.

Sebastien Bachollet: Thank you. My question is more we are talking about the current bylaws with the possible change. But the current bylaw for my point of view it's too much things inside and we need to split what is the operational part and what is real bylaws.

And if we end up with a short text with real bylaws maybe we don't need or all of the text will be golden because it will be short enough to be taken into account as really the basis of the organization. Thank you.

Thomas Rickert: Sebastian let me just try to understand the point that you're making. So you're suggesting that we should try to condense the bylaws to a minimum and make all that golden.

I have a concern with that. I think that our mission is not to completely rewrite the bylaws but just to do those tweaks that are inevitably required to increase ICANN's accountability right?

So I wait for others to chime in. So if your suggestion gets more attention than we should definitely come back to it. I think that just might be a little bit ambitious to get it reduced to a level where everything can or should be golden.

Next in the queue is Chris please.

Chris Disspain: Thank you Thomas, a couple of points. I think I'd suggest I think (Steve) has put this in the chat but I would suggest splitting mission and core values and not treating them as the same.

You might make them both golden but you might want different levels of requirement to change.

But...

((Crosstalk))

Chris Disspain: And as for your question I think certainly things like the stuff that we talked about yesterday need to be covered by this.

So, you know, the board's bill mechanism would need to be something that could only be changed with community input or agreement rather, things like that sort of stuff is the stuff that should be we should be looking at.

But I - but, I'm just a little bit concerned that we don't - we have lumped everything together so that it assumes that they would all have the same threshold because I think we do need to do work on the thresholds.

And whether that work is best on this group as a large group or best to take it away by the smaller group to come up with some specific strawman at that deep level I don't know.

Thomas Rickert: So your - the idea is potentially to have gold and platinum bylaws right? So Jordan?

Jordan Carter: Jordan here for the record. I - while I hesitate to agree with Chris under any circumstances I think that the one bit I think you'd want to make platinum in this is that in some ways the power that ICANN has over the root is a monopoly power because we're trying to keep one route right?

And so this organization is established to technically coordinate the DNS.

We would want to be very confident that it doesn't start doing other things like providing a scholarship program to attend the IGF or start funding SSAC or all sorts of other things even if the community at the time wanted to do that because it would be an inappropriate use of resources derived from the function of the organization has.

So to me it's that mission and purpose stuff that needs the very highest level of protection. So that's just one point to offer an opinion on that.

The second point is that in terms of what should be protected by a golden bylaw or the normal standard of protection.

I've got four specific suggestions or three actually, protecting the core accountability measures that we've sent out or that we end up proposing so we don't want them to be easy to remove later.

So you may argue that the veto of bylaw changes will deal with that in which case that would be the power we had to protect.

And we need to protect the ability to implement our Workstream 2 work. I don't know if that fits in the golden bylaw or not. And maybe again it's dealt with by vetoes to bylaw changes.

But we haven't yet worked out the mechanism by which we say hey here's Workstream 2 accountability improvements. Do you, you know, you have to implement these ICANN? So that may be connected with this golden bylaw discussion in some way.

And the last point is that if we have a section of the bylaws that entrenches some of these provisions as golden bylaws that clause itself has to also be entrenched and has to face the same higher threshold for changing the drafting point.

Thomas Rickert: Thanks Jordan. Just before we continue with the queue, I think we do the community does have another angle to approach things.

Because if we introduce the power of spilling the board if the board fails to implement changes that this group or the community requests as an outcome of Workstream 2 I think they're going to be in trouble right?

So I think we should be very careful with painting things golden because don't - please do remember yesterday we talked about bylaw changes.

So, you know, once we establish the status Cuomo for the post-transition day and age right every single change of the bylaws will have to undergo will have to survive the blocking possibility by the community.

And I think that we will likely come up with a mechanism where we have blocking for ordinary bylaw changes and an explicit approval process for golden bylaw changes right?

And I think that this mixture of a veto is highly unlikely to have ordinary bylaw changes done without the community knowing right?

So we have - we're pretty well protected by both the IRP as well as the vetoing opportunity. So I think there are not too many things we actually need to paint golden.

With that I'd like to move to Paul.

Paul Rosenzweig: Yes. Thank you, Paul Rosenzweig. The golden bylaw is a protection not against board overreach because as you pointed out the community can do that but against corporate overage, that is overreach by the board acting in conjunction with the agreement of the community as Jordan suggested.

That suggests that the only two things that are essential to be golden are writing in stone the mission so that the corporation along with the community can't move to do that which it is not chartered to do and writing in stone the independent review process so that it cannot eliminate the oversight, the external oversight mechanism that would be in place to prevent it from disregarding the golden bylaw rule itself if the community and the board were to try and disregard the golden bylaw to change the mission statement.

So those would I submit be the two things that are absolutely essential to be golden. And I'm willing to accept that others might be but those are the two that are most important.

Thomas Rickert: Would you be as brave as saying that this is an exhaustive list by what - judging from what you know so far?

Paul Rosenzweig: I would. I would say that it's a mini max that is that's the bare minimum but I would not go any further because I would not as you have pointed out want to

tie our hands any further for other mass - other changes that might reasonably be adopted.

But I would also say that it's an absolute minimum in the absence of which we have not enshrined sufficient accountability into the system to satisfy external people against capture of the corporation.

Thomas Rickert: Thanks Paul. Next is Roelof.

Roelof Meijer: Yes. Following-up on most of what Jordan says again let's - I think we should keep this as simple as possible. I don't know why - I don't understand why we should need a mixture.

I think that in the bylaws there should be the provision. That's the community through the mechanism that we still have to decide upon can block a change to the bylaw.

And that particular bylaw provision should be a golden bylaw can only be changed with the approval of the community through the same kind of mechanism.

And we can maybe extend that to all the powers if we decide upon. But the most important one is the power to block a bylaw change. Do I make myself clear because I see you looking...

Thomas Rickert: You do. Nonetheless I would respectfully disagree from what I've heard over the last couple of months. We have one contingency which is the accountability of the community, you know, so let's say let's assume for the moment that everything works fine.

Nobody comes to ICANN meetings anymore because everything is running so smoothly right? Then the community might not even notice something which could be vetoed.

And I think in perpetuating the most essential parts should...

Roelof Meijer: No, no so I didn't make myself clear.

Thomas Rickert: ...have the more than the veto right because you say that it's good enough to have the veto right.

And I think that for certain changes you should have specific attention and the approval of the community. At least that's what I understood from the deliberations.

Roelof Meijer: So I didn't make myself clear. In the bylaws there should be among the other powers also the power to veto a bylaw change.

Those powers including the power to veto a bylaw change should be protected as a golden bylaw provision that can only be changed with the approval of the community.

So yes there are other parts that the ICANN board would be able to change in the bylaws if the community was not paying attention and they didn't take the opportunity to block it.

But these the particular powers that we are designing here are protected by the provision that they can only be changed with the approval of the community.

Otherwise we have to golden bylaw all the bylaws. And I think that's - I mean that's going to be an endless discussion again and we're very good in endless discussions but...

Thomas Rickert: Okay but, then...

Roelof Meijer: ...like I said before we don't have endless time.

Thomas Rickert: I think in essence what you're advocating is that we have a golden bylaw enshrining the community powers. Can we agree on that maybe?

Roelof Meijer: Yes.

Woman: End of topic.

Thomas Rickert: Okay thank you.

Roelof Meijer: Yes. Well it depends on how we define it with the provision that they can only be changed with the approval of the community.

Thomas Rickert: Yes but I think you were starting to connect which is good. Chris is next.

Chris Disspain: I think I get where you're going. I think I agree with both of you if indeed you agree with each other.

It seems to me that there are in very simple terms it seems to me there were two types - we're talking about two types of bylaws.

We're talking about normal bylaw over which a change with the community would have a veto over a change and we're talking about an additional type of

bylaw enshrined bylaw, golden bylaw where there has to be affirmative agreement to a change.

And the ones that fit into that top categories seems to me are the right to veto bylaw changes, the binding independent review process, the board spill mechanism.

And I think in essence that's probably it, or the mission sorry, the mission, adding the mission to that. That's it. I can't see that there's a need to do anything else as long as we're clear that Golden enshrined means we have to all agree or whatever we decide is all agreed and everything else is the right to veto.

Thomas Rickert: This is starting to take shape which is very encouraging. Tijani?

Tijani Ben Jemaa: Thank you. I agreed to put the mission in the golden bylaws that as you said but something that Jordan said made me a little bit worried.

Today ICANN don't change its mission in the bylaw to go to the IGF. They are - ICANN is participating in the IGF and yet the mission is not changed.

That means that the understanding is that participating like this is not (unintelligible) the mission. So I don't understand putting the mission in the golden bylaw as being close to any interaction with the external enjoyment, external how to say external how to say ecosystem. Thank you.

Thomas Rickert: Thank you Tijani. Alan?

Alan Greenberg: Thank you. Just one caution perhaps as we decide whether the veto was sufficient for things that aren't a golden bylaw.

There's going to be a time lag perhaps significant time lag from the time a bylaw is approved by the board which can be done without any public comment or anything at the moment and the time the community can react.

That's probably measured in weeks at best for the - for each individual community to make a decision to take action.

Lots of bylaw changes can have real effect in those weeks. So as we try to limit things to where is a veto sufficient and where isn't just we need to make sure that we're not allowing the board to take action which could have substantive irreversible change while the community is getting together to veto.

Thomas Rickert: Yes before we moved to Chris a quick response. I think that we have a combination of different community empowerments and that that might, you know, when you properly implemented might reduce the risk of the contingency that you're describing but your point is well noted.

Chris?

Chris Disspain: Thank you. Alan there's a simple - I think a simple solution that is the drafting exercise.

The golden bylaw that enshrines the veto provision would be drafted in a way that enshrines a process by which those bylaw changes would be dealt with.

So I would simply say any change is not - cannot be implemented until such time as a period of time has occurred when the community has had an opportunity to veto. It's not - that's a fairly simple thing to do in any - as long

as you put that in the golden bylaw then you've dealt with it and it solves your issue.

Thomas Rickert: Thanks Chris. Jorge?

Jorge Cancio: Thank you. I'm just responding to Mathieu on the chat because I pointed out in the chat that in the GAC input to the discussions of on this group there was reference to a set of basic principles which ICANN should operate according to.

And perhaps the, although in the GAC inputs there's of course now reference to whether this is the golden bylaw or not a golden bylaw.

I think personally that there's some confusion with what we are trying to identify as elements of such a layer of basic rules or principles for this organization. Thank you.

Thomas Rickert: Thanks Jorge. And I think we will mark this as an action item for Becky's group to go through the GAC's input and compare the two words currently and the mission and core values to see that - whether that's properly captured.

Any further comments? Well (Lee).

Lee Bygrave: Thank you. Lee Bygrave, Special Advisor. I just want to flag the issue of the future role of this future IRP and extent to which one could have a situation where panel decisions are being made the de facto at least have an effect on the status of some of these values and mission clauses.

To what extent is work being done to take account of that risk and eliminate it?

I'm thinking of, you know, ordinary judicial review processes where you will often have a constitutional court come in and actually change the meaning of the constitution and sometimes give certain elements of the constitution high status and other elements even though they began as presumptively the same nominative priority.

So the (unintelligible) immunity issue needs to be addressed.

Thomas Rickert: Yes. I guess my answer to that would be twofold. I guess the first safeguard might be that actually all the decisions made by the independent review panel are published so that there's transparency with the outside world is to how the mission is construed and how it is operationalized.

And if there are effects in the bylaws identified in the IRP's decision-making I think that's a clear call to action for both the board as well as the community to go and revisit the clauses and where needed rectify.

I think I would appreciate your guidance on potential language to go into the bylaws to reflect that.

For my personal liking I think that it's unlikely that the community will ignore warning signals from the Independent Review Panels. So I think it could go without saying that we will have a review process triggered by such decisions.

But if your recommendation is that we have specific provisions procedurally to deal with that then I think the group would welcome such input and further discuss it.

Lee Bygrave: Yes. And one could also bake into the remit for the IRP that, you know, there you can go so far but you can't go any further in sort of altering the status or the internal status of certain provisions.

Thomas Rickert: Yes. Becky says that this is captured by her group. Okay. So I think the way the discussion has evolved I am taking away a couple of core themes.

And Alan said that we should be cautious when we make decisions. And again we're not making decisions today right? So let me be very clear on that.

What I'm taking away is we do want golden bylaws. We do want a couple of items get special protection. And those would be the mission, the IRP, the community power to spill the board and the veto provision including the procedural aspect that bylaw changes should not be operationalized or implemented before the community has the opportunity to veto.

I haven't heard any other must haves for the golden bylaws from the script there might be more. But I think we might be quite good to go with those because if you combine this with the veto process for the bylaws with the community powers with the IRP that gives the community more or less all the tools at its fingertips that it needs to get full control over ICANN's doings and omissions I should say.

So is there any objection to that? We see - there's a...

Man: (Unintelligible) put his mic on.

Thomas Rickert: ...I think (Jorge) and (Lee) that's old hands. So could you please lower them? And then Malcolm has put his hand up.

Malcolm Hutty: Just one potential need for addition as parts of what you said almost. And it was and (George) has just mentioned this on the chat. I was mentioning it before as well and that's the notion that the core values will be interpretive of the mission.

So by changing the core values you may be effectively changing what the mission means. So you may need to in - when you say make the mission core you may actually need to make the core values in order to have that effect.

Thomas Rickert: Then that the mission is a must, that the core values are optional. And I think that Becky's group will further...

Malcolm Hutty: Yes. What I was suggesting...

Thomas Rickert: Yes.

Malcolm Hutty: ...is actually maybe the core values are not optional. They might be that they're not optional because it might be that they're sufficiently interpretive to the mission that the mission is only golden if the core values are golden too.

If the core values are not golden effectively the mission is no longer golden.

Thomas Rickert: I understand your point. Let me just clarify. I think that the points that I mentioned are a minimum set of requirements that I think got traction with everybody in this room.

I think there is no consensus is too strong of a word but I think that the atmosphere in the room is not like we have unanimity on the core values right?

So that is subject to further review. But Malcolm certainly your voice is an important one in this process and we leave it up to Becky's group to come up with additional tweaks to the language.

But let's try to confirm this interim understanding and revisit it what we meet next time.

And actually if you look at the subset Sebastien to get back to your earlier intervention, you know, we might not have a single document which is very stripped-down.

But we would have the most important clause is actually in a very short set of language. And maybe that comes closer to the suggestion that you made.

Maybe it doesn't make you perfectly happy but I think that maybe it helps make your day a little better.

Okay. So I think that's been a very good discussion. I think this is something that will help inform the CWG discussions quite a bit because I guess that it's - this is essential.

And I'm very thankful for this constructive dialogue because when we hand over to the CWG chairs I think this is very - a very promising outcome because this is the foundation for a very robust accountability architecture. So that's great. I'm very impressed with the group.

So I think Becky is there anything else to add on this one? And if that is not the case then we can move to the community powers. And I'd like to ask (Adam) to bring up a table that is the result of a request from this group from during yesterday's discussions.

You might remember that we presented to you a table that had kindly been prepared by Jordan comparing the different mechanisms.

And when we discussed the community powers some of you said well it would've been nice to have such a comparison table for the community powers.

And we are at your service. So we've done that overnight. And I'd like to ask Jordan to come to the table if you would like to.

And while as (Adam) is trying to get the results of the document what you see here are community powers.

So we have the community powers filling the board. We have the community power to challenge or veto bylaw changes. We have the community power to veto or challenge budget and the strategic plan.

We put in there for the sake of completeness the community power to as it appears to be approve golden bylaw changes.

And we have the community power to maybe use or otherwise impact on the independent review process, you know, by having standing for the community as a collective to invoke an IRP.

And as a side effect of that this has been discussed yesterday and during Becky's session to confirm or reject panelists for that work on the Independent Review Plan which we think is also a power that the community exercises or can exercise.

So this is the overview of the five community powers that we would like to discuss. We will move from left to right.

And I'm not sure whether we have sufficient time to discuss the IRP in detail. But the idea is actually to confirm the findings of yesterday's meeting.

And what you see as filled out fields or cells on this table is what we captured as the outcome of yesterday's meeting so we would like to confirm that.

And then to the extent possible we would like to have a discussion on how to populate cells that are still empty.

Now just so that you get an overview of what areas or what questions we're going to discuss let me quickly run you through the first column.

So we will have to discuss the question of who has standing to exercise community powers right? So is it let's say a registrant who can invoke a process but certainly not you might say. But the question is who can do it?

Then we have the question of the threshold to initiate a process. And that's a question is it one SO or AC only or does it need to be more of them? So we should identify threshold for each of those.

Reason for that being that I think we are all interested in safeguarding ICANN from being (DDOS)'s with such processes from a particular group that is dissatisfied with ICANN's operations or actions.

Then we have to discuss who gets voting powers. So we - one of the takeaways from our who forms the community discussion yesterday was that

the Community Council or whatever Multi-stakeholder Council whatever name you may give it should be inclusive.

But not all of those present at the table should actually have the power to vote. Some of them could be liaisons or observers.

Then we should discuss the question of whether everybody has the same weight or whether there should be a balance of weight so that certain groups which might have more impact on ICANN get more voting power than others.

Then we should discuss diversity requirements which have been brought up numerous times. There certainly this hasn't been on the table yesterday.

But I think we should start thinking about the conflict of interest policy so who can do what or who is - who should rather abstain from discussions or votings in what - under what circumstances.

We had the question of directed votes which might be - might have different answers for the different powers. We need to talk about quorum, a voting threshold, you know, how much of affirmative votes do you need so that a motion to do certain things is carried.

We the ones on the same ground things - simply means that we need to answer the question of whether somebody who doesn't get his or her will can after having - not having gotten its way can start the same process again and again or whether we put in some barriers for frivolous complaints.

And then other matters - that's something that you might want to bring up that it's just a placeholder for further components to this.

So Jan do you think we should just dive into the discussion and maybe start reviewing the agreement that we hopefully had on this billing the board power? Would you like to quickly run...

Jan Scholte: That sounds fine to me. What - I will - I've got another version of the same table in front of me and I'll as we come to consensus I'll add in text that represents that.

And then when we finish this discussion I'll circulate it. If we don't come to consensus I'll try and note the different alternatives that have been built out for any of these boxes.

But maybe rather than just as an entirely general discussion Thomas it might be good to just go through these one by one.

Thomas Rickert: Yes. We had a question from Alan which I'd like to take before we start the discussion. Alan?

Alan Greenberg: Sorry just a suggestion. We may want to look at the voting threshold in quorum the before the threshold to initiate. Because clearly it should be - the threshold to initiate should be less. And until we know what the other one is we may not know what less of what?

So the approval to actually enact the change perhaps we should the side before looking at initiation.

Thomas Rickert: If it's so easy to please you we'll just do that.

Alan Greenberg: If no one else thinks it's important ignore it.

Thomas Rickert: Well, no, I think it's an excellent idea actually. Sebastien?

Sebastien Bachollet: Thank you. I was wondering if we can't have distribution this document to everybody and everybody write what they think about and that you gather them and it's a way to have the voice of everybody and not just a few of us in this work.

And to see if everybody writes the same thing at the same place then it's obviously close to the consensus. And if not you will have different solution proposed in the document and it can be done through the (launch) I imaging, just a suggestion. Thank you.

Thomas Rickert: I suggest we do is we make sure that this empty table is circulated to the whole group so you can toy with it.

Nonetheless I think we should have an open discussion rather than people filling out the form in isolation because your behavior in filling this out might be influenced by an informed discussion by this group.

I think let's do both in parallel. Is that an okay compromise?

Sebastien Bachollet: Yes. But my thinking was it's interesting to see where we come from and where we are going but it could be useful to do that now without discussion and then to have the discussion and see if we change.

Man: (Unintelligible) by order it's always good but sometimes (unintelligible).

Thomas Rickert: But that appears to me a little bit like an academic approach.

Man: Can I...

Thomas Rickert: Yes. Please, I welcome your views.

Jan Scholte: There's nothing in this table I don't think that doesn't have its genesis in the templates that were prepared as part of Working Party 1.

So if we operate on the assumption that everyone here read all of the documents before the meeting started and then everyone should have already been thinking about all of the questions that are listed in this table.

So Sebastien it may be reasonable to assert or to hope that people have already done that proceeding thinking process. Maybe I'm being naïve or overoptimistic but who knows.

Thomas Rickert: I think it could be a combination of both.

((Crosstalk))

Thomas Rickert: So Jan would you mind showing us through the first column and we try to confirm the understanding that we get and then fill in the blanks?

Jan Scholte: I can do that if you'd like. So the standing question was discussed quite a lot yesterday the idea being that it would take the SOs and ACs to have standing to make the decision here.

And the threshold that we discussed we had the discussion about the three options to spill the board yesterday. People didn't like the idea that there could be just one SO that did it.

And so the kind of central proposal was that it would be two SOs or two ACs or one of each too so that - but they would communicate with the whatever the mechanism is, the community council and that would start the ball rolling.

In terms of who gets voting powers so far I think from what we've been able to detect the consensus view is that it's within the ICANN community.

So it's the voters in this process to fill the board would be comprised of representatives of the various SOs and ACs.

Blank is how it's balanced. And I think to be clear what that means is what is the relevant relative voting weights between the SOs and ACs. Is that what that means?

Thomas Rickert: Yes that's correct. But...

Jan Scholte: Yes.

Thomas Rickert: ...maybe we should rest with third item who gets voting powers and just have the explicit confirmation from the group.

So the idea is basically when it comes to a request for spilling the board that the community group would send out a notification to all SOs and ACs and ask them whether they want to participate in the vote.

And they can then opt out as the SSAC which was used as an example yesterday would likely do. And then you would have the total amount of votes that can be cast on the basis of those that haven't opted out.

You know, so that would be the idea behind it. So we - there's a queue forming. Avri?

Avri Doria: Thank you, Avri speaking. First of all on the threshold of initiate, I did want to bring up that I had offered a counter thought of it requiring more than that and it requiring at least two of one and one of the other.

So it's not a full consensus but I may be alone in thinking it needs a heavier threshold.

In terms of the who gets voting we had also talked about the notion that it had to be a certain number of the entire group.

Now that means someone could opt out but that their vote would not count as a positive vote. The idea that let's just say that only the three that put up the threshold to initiate care and that all the others opt out does that mean that we have an automatic spill the broad vote by the ones that suggested it?

So we had really talked about not changing the size of the population that could vote. Yes you could opt to abstain but that and then we would define that there needed to be a certain number of positive votes for spilling that would determine and not being in a situation where not enough of the world cared so it was easy to kick the board out.

So I would suggest that we not have an opt out but that we have sure you can abstain and say you're not voting and therefore you're obviously voting against building the board because you don't care. Thanks.

Thomas Rickert: So that changes things slightly or substantially. I'm not opposed to populating the cell with two of one, one of the other and see what traction that gets right?

With respect to the opt out option I think the idea that was presented yesterday was that we give those that obviously don't have an interest in joining a call for making such decisions to get the opportunity to remove themselves. And automatically making that a no vote might not do that idea justice.

So my - I have understood this lets say we had in theory 100 votes that can be cast. And if then one group that contains ten votes ops out then the remaining 90 votes would make 100% of the achievable votes.

I think...

Avri Doria: And that's specifically what I'm objecting to.

Thomas Rickert: Yes.

Avri Doria: Right.

Thomas Rickert: But I think we need to try to get some sense of the atmosphere in the group in the room. So I would suggest that in order to I know that this is going to destroy the queue though right? Because if we use the Adobe agree disagree thing then all the hands are cleared.

Mathieu Weill: No, no, no note that hands are not cleared.

Thomas Rickert: The hands are not cleared? Okay. Then let's use the...

Mathieu Weill: One more question...

Thomas Rickert: ...the Adobe voting mechanism. And Mathieu has just volunteered to specify the question.

No. For those who agree that my understanding of the opt-out mechanism should be used say agree now which means that we're not using Avri's suggestion whereby only an abstention model is possible. So...

Woman: (Unintelligible).

Mathieu Weill: I'm not sure the room is understanding the question.

Thomas Rickert: Yes so click the agree button if you follow the suggestion that I made?

Mathieu Weill: Yes but I think you need to rephrase your suggestion so we're all clear about what we are voting on.

Man: Yes.

Mathieu Weill: I am seeing some puzzled looks so I don't think only referring to a suggestion that was made is sufficient right now to...

Thomas Rickert: Okay. I thought I had made that clarification like 120 seconds ago. But the idea is individual groups can opt out.

And let's say we have total - a total number of votes that can be cast of 100. If one group containing ten votes ops out then the remaining 90 votes would make 100% all votes.

So if you agree with this understanding...

Man: Golden (unintelligible)...

((Crosstalk))

Thomas Rickert: No.

((Crosstalk))

Woman: (Unintelligible) opting out correct?

Thomas Rickert: Yes in essence there would not be any opt out but just, you know, opt out would be equal to abstention would be equal to say no.

Avri Doria: That's really not what I said. What I said is we will determine that there is a threshold for success. But that threshold for success is based on the entire population not on a group of those who care.

Thomas Rickert: Okay so I say...

Avri Doria: In other words, you know, if we say it takes 3/4 of the total population to spill the board it takes 3/4 of the total population even if some people don't care.

Mathieu Weill: And I think that was what Thomas was trying to recap abstentions...

Thomas Rickert: Abstentions are nos.

Mathieu Weill: ...give the same impact as nos.

Man: That's right.

Mathieu Weill: That's...

Man: (Unintelligible).

Mathieu Weill: It is. It is but it's technical. It's I like the way you're phrasing it. It's more clear to say if they are 100 votes and the threshold is 75 then you'd need 75 yes to achieve...

Thomas Rickert: Not 75%.

Mathieu Weill: Not 75% of the votes, you need 75 yes.

Man: Can I - I just need to interrupt with a procedural problem. By us putting what I've got up in front of that the people in the Adobe room can't see it.

I think it's probably more equitable and fair for us to not be showing a live transcription that we can't share with the Adobe Room. We can't do it on my computer so we just need to go back to the Adobe room being displayed.

Man: May I ask a question for clarification (Thomas)?

Thomas Rickert: Okay.

Man: Have we considered when we talk about opt out are we talking about opt out on each individual circumstance?

Thomas Rickert: Yes.

Man: We're not talking about SSAC just to use them as example saying we will provide each - we will provide you with advice if we see that there are

security and stability issues in a process that you're taking but we will not participate as an overarching point.

You're saying every SO and AC has the option to opt out every time. Is that right?

Thomas Rickert: That...

Woman: Yes.

Thomas Rickert: That is correct.

Man: Thanks.

((Crosstalk))

Man: So for the record that's not what I understood yesterday but...

Man: Not me neither.

Man: (Unintelligible) these are not the only options so I would like to signal that I don't actually support the procedures that you're suggesting.

But I don't want by any sense to give an indication that I agree with what Avri's saying which frankly is even worse.

((Crosstalk))

Man: Well I think I'm not proposing. I'm just saying that I don't want - you know, what Thomas is signaling is that complex mix of proposals there which actually I think we should look at in the working group in more detail.

I don't think a signal well we agreed on this now, certainly not on the proposal to the choice between that and what Avri is proposing is the way forward. I don't think it should signal a consensus in the group certainly since it doesn't consider all the options.

Thomas Rickert: But I guess what we can clearly state is that what we thought to capture as the group view yesterday needs to be an empty cell.

Now, you know, so we need to revisit that so we can't - we're not confirming this from yesterday's discussion. Sebastien?

Sebastien Bachollet: I lost what I wanted to say a few minutes ago but my point is that we need first to decide if an organization cannot participate to this discussion and to these votes.

I think it's an important point because and maybe it's why I was joking with the garden group but maybe there are groups who can't need to be to participate to those discussion and those votes.

But some - and we talk about SSAC. SSAC is I guess is the only example where I think that they can decide not to participate.

But that could be as a general view for them they don't participate except they provide advice.

And then the question it's for a single topic I really don't see why one group will not - will decide not to participate. They will decide not to vote in the vote is yes no or abstention.

I think we need really to be careful in proposing people not to cast their vote.
Thank you.

Thomas Rickert: Thanks. Alan is next.

Alan Greenberg: Yesterday I really had the impression we were going to pull each group and find out whether they wanted to participate in the overall process or not, not on a pole by pole basis.

Because we started off the discussion saying everyone, you know, the people were across (Barry)'s spreadsheet which one should be in and which one should be out.

And then I suggested maybe we should talk to them. I think Chris said, you know, we need some sort of interaction.

So I thought we were talking about on our overall global basis. So that's the first discontinuity.

The second one is we really need to have the discussion of what abstentions mean before we start looking at thresholds.

There is a real danger that we're either going to fabricate something which one group conceivably could ditch the board if everyone else says I really don't want to take part in this.

On the other hand we may build a process where we can never take any of these actions because we'll never make the threshold. So I think we really need to talk about what we're doing before we start counting numbers.

Thomas Rickert: Okay. But maybe that allows us to get back on or back in line with what was discussed yesterday.

Alan you were saying that you mentioned the opt-out option for the participation in the Community Council as such right as a voting member.

Alan Greenberg: That is what I thought we were discussing yesterday.

Thomas Rickert: Okay. But, you know, maybe it's just us as co-chairs having mis-captured that if that's an English word.

So if there - let me just test whether there is objection to this notion of testing at the establishment of the Community Council what groups want to be in that. Because if there's common understanding that we ask who wants to join it as a voting group, then, you know, this discussion might be redundant.

I'm sure that those who really have an interest will not opt out. So we need to worry about opt-out if - actually up front. Let's say SSAC says they don't want to be a voting member. They can still advise or liaise or whatever they want to, but maybe that's the way to approach this.

So upon composition or convening the Community Council, we would approach the groups and ask them whether they want to have a voting power in there, and then we do this on the assumption of those that have not opted out of the process as such.

So is there any opposition to that?

Okay, so James is next.

James Bladel Hi James (unintelligible). Apologies if this just goes to yesterday but I just wanted to make a point.

I think we need to look at the context of what we're talking about here. We're talking about spilling the Board, it's going to be one of the largest decisions that will affect ICANN.

And personally, I don't feel that you should have an option to opt out. It's too important a decision. It effects every SO, every AC, SSAC, everybody.

I think that this should be option possibly -- possibly -- for an abstention vote. But I don't agree with the concept of opting out of one of the most critical decisions that the ruling community will actually make within ICANN. I can't - it's too important a decision to have opt-out.

Thomas Rickert: Please use the microphone because otherwise the remote participants get...

James Bladel Yes, sorry. There would obviously need to be a very strong discussion around what an abstention would be. Personally my own personal view would be I don't think an abstention should really take place; every AC should have an opinion even SSAC. They should have an opinion on how it affects the stability and security. It's a very important decision to make.

Thomas Rickert: Okay but I think this discussion is now taking place at two levels. You know, if SSAC, let's say, chooses not to be willing to have a voting responsibility -

let's put it that way - in this group, then I think we can hardly change that.
That would ultimately result in them being absent for all those votes.

James Bladel: Disagree with that personally. I think that in the question of this stature, they should be required to vote.

Thomas Rickert: Okay, well just trying to capture this. Chris is next.

Chris Disspain: Thank you Thomas. And I basically I think I agree with what James just said. But I think we may need to step back a second and look at this in slightly a different way.

If you start with the internally mechanism - so just to be clear, we're talking about spill the Board here; that's the only one we're talking about because that's the most important one.

If you start with what will the requirements be to what will an abstention mean when it comes to a vote, so let's be clear. We're talking about not individual members of a community council or whatever else we end up having voting here. And spill the Board, we're talking about voting by the SOs and ACs who will then instruct their communities in how to vote because it says on there or it did, might have been taken out, but it at one point said that the SOs and ACs...

Thomas Rickert: Directed vote.

Chris Disspain: ...directed vote. Thank you, that's the one. Directed vote; it is there.

So it would be extraordinary if one of the SOs and ACs was unwilling to take part in the process. But it wouldn't be extraordinary, it might be unlikely, it

wouldn't be extraordinary if one of the SOs and ACs decided, having taken part of the process, that they didn't wish to vote.

So the question then becomes what is the status of them not voting? If the status of them not voting is that it counts as a no vote, that has one effect, if the status of them not voting is that the numbers are rejigged, that has a different effect.

The GAC as a general rule, if I understand it correctly, an abstention from the GAC is not (unintelligible), is not a no-vote; it's neutrality.

So if we were to suggest that in our model that an abstention is counted as a no vote, that would not work for the GAC because their principles are based on the fact that it's neutrality. So they would step out of, in their view - not wishing to speak for them but it seems to me - that would be stepping out of the game rather than having abstention counting as a no vote.

So if we could work out a basis upon which voting would occur in the SOs, the thresholds that would be necessary in the SOs and ACs on that basis, that would then help us to solve the higher problem I think.

And it seems to me that you could argue that - on the one hand you could argue that if three of the SOs and ACs were so disinterested in this that they decided not to vote -- not to not take part but not to vote -- I mean that would be extraordinary. And you could argue I suppose that that should mean that the spill shouldn't go ahead because you don't have buy-in.

But on the other hand, if they believe they still shouldn't go ahead, then they bought in and therefore presumably they would vote.

So I don't in principle have a problem with adjusting the numbers on the basis of SOs and ACs abstaining in the process. But I agree with James, I can't conceive of a model that would allow an SO and AC to opt out at the very beginning; it just doesn't make any sense to me.

Thomas Rickert: Jordan is next and I'd like to close the queue after James on this one.

Jordan Carter: Thanks. Jordan here for the record. When we were discussing this yesterday, I thought that the opt-out that was about whether that SO and AC feels like it should be participating in this Community Council or whatever it is.

So - and a particular question came out to the SSAC I think - or was it - yes, it was the SSAC. Someone made the point that there's not necessarily a community of (unintelligible), that that's an advisory committee to ICANN on Security and Stability issues.

So I didn't think that on each of these votes we were going to go and ask, "Hey, do you feel like playing today." Because I agree with the gentlemen there who was just speaking and said, "This is too important for that."

If you're not prepared to stand up and take responsibility for an issue like this, then probably you shouldn't be stepping up and taking responsibility for any of these kind of decisions. You should advise us if you think that's useful, but if you're here to play you're here to play, and you can't just go meh.

So then I find myself agreeing with Avri that the consequences that people either vote yes or they don't, and you have to tally up enough yes votes for this Board to be removed.

And all we've said is that one unified SO and AC shouldn't be able to stop that happening. So the only thing we need to know about the number of yes votes is that it needs to be set at that level.

Man: (Unintelligible).

Jordan Carter: That's exactly what that attempt to be - that's what the voting threshold box on the bottom does mean, so what I just said.

Man: (Unintelligible).

Jordan Carter: So if this was being done through a mechanism that had each SO with five notional votes, and the Advisory Committee had fewer notional votes, then the number of yes votes you'd have to have to remove the Board would be however many total votes could be cast minus five.

So even if - I don't know - the ccNSO loved the ICANN Board and thought that its conduct was great, it shouldn't be able to stop that happening. But the ccNSO plus one other vote in this whole system should. So that was put up yesterday on a couple of different occasions and no one particularly disagreed with it.

My last point would be that what I think this conversation is showing is that there isn't a lot of consensus around these issues.

I have an instinct that one of the reasons for that is that we're not looking at a couple of coherent options; we're talking about this all in the round with lots of moving parts.

And so while the discussion is very useful for me as Working Party 1 (Unintelligible), not the Working Party 1 members, I wonder whether with some of this stuff we could make more progress by taking this discussion and trying to land it channeling it into a couple of coherent options for the ccWG's then debate.

And between now and our public consultation, we might find we do have a consensus or we might find though some of these that we don't and we want to ask the broader community. And that's my last point.

Thomas Rickert: Thanks Jordan. James?

James Bladel: Thanks. So I will be brief. I agree with the other James that what is the point of existing as a community structure if you're not going to participate in a decision of this importance, and I think that an abstention really is an acknowledgement of irrelevance, and that structure should consider folding itself into other meaningful bodies.

But setting aside all of that, I just wanted to - I can't shake this feeling that we're trying to pick out the colors of curtains and drapes and carpets for a house that hasn't been built yet. And I feel like - you know, what is critical in front of us now is to establish some broad brush strokes.

There are, you know, plenty of lawyers in the room and there are plenty of probably folks who at least took one political science or relative mathematics course to understand that there is a whole science of mathematics around voting power and voting thresholds and everything, and that we could probably beat this one to death and call in all kind of outside observers and things.

It's just a question of do we want - can we boil this back to what our common elements are that we agree. This should be a community power. The established communities should have some voting representation in this power and then let's build up from there as opposed to starting with the end and working backwards. I think that that's kind of a fragmented discussion and it doesn't really get us back to where we need to go.

But generally I agree with James. Thanks.

Thomas Rickert: I think James, I sympathize with the house example, but we're not building a house or we're not discussing colors for a house that hasn't been built. I think we're quite concrete in our general statements, right.

So I think we know the building blocks, and I think what we're doing here is not at the level of specificity that should scare us. I think that this is something that we need to discuss here and then, you know, sub team will actually bring that or advance that by putting it into writing. There's far more detail to be discussed at a later stage. And this level of detail that we're not discussing, I think that's the color of the curtains.

But your point is noted, and depending on how this discussion is going to go, I think we need to move to more general principles.

Next in the line is Chris. And I'm really going to close the queue after Alan. I had originally closed it after Jordan I think. We do want to break for lunch on time, so please keep it brief.

Chris Disspain: I'll be brief so thank you.

I think the key to this is that - I think Jordan is right really. The key to this is that we should be using this discussion and I believe we're going to carry on after lunch.

Thomas Rickert: We will.

Chris Disspain: Is to use this discussion to help Jordan and the team get as much information as they possibly can at a high level to go away and create a series of suggested straw men. So just to take one example and then I'll close my microphone.

We need to get clarity around -- if we've got consensus -- that it's directed voting. Then that by definition means that in effect, question mark, does it mean that in effect there are only the number of votes that there are SOs and ACs. Or are we contemplating the possibly that the directed voting would be we the ccNSO direct three of you to vote one way and two of you to vote another. I'm assuming we're not going to do that, but then we know the number of votes we're dealing with which then helps us to be able to work out the numbers when it comes to thresholds and so on.

So if you build it from there we'll start making some progress. Thanks.

Thomas Rickert: (Unintelligible).

Tijani Ben Jemaa: Thank you. I agree with you that we are not building houses; we are doing much more serious things; spilling the Board. So I do think that we need to be very careful so that not a few number of consensus managed to spill the Board because the others are not interested.

So I agree with Avri to have a minimum number of voter (unintelligible) for such a decision -- for such a serious decision. Thank you.

Thomas Rickert: Thank you Tijani. Alan.

Alan Greenberg: Thank you; two things. In a group such as the GNSO where in the past there has been strong statements saying the groups have different opinions, we may need either sufficient votes or waiting with sub-votes -- fractional votes -- to allow multiple people to cast different ways.

So the ccNSO may be more unified -- maybe -- but the GNSO certainly isn't. The ALAC probably may not be because of regional differences. So I think we need to factor that in.

The statement was glossed over that the SOs will have more votes than the ACs. I don't think that's something we decided and I think that's a really conscience issue, and before we can come up with what the thresholds are we need to settle that one. So just some little notes.

Thomas Rickert: Thanks Alan. With that we can end this part of the session. We're going to reconvene after lunch and have another hour of this discussion.

Please use your discussions over lunch to advance this, right. So I will hold you accountable for coming up with great proposals. Thanks so much.

END