

ICANN

**Moderator: Brenda Brewer
April 8, 2015
4:00 pm CT**

Jordan Carter: My name is Jordan Carter for the record. I'm (repertoire) for our Working Party One in the CCWG on Accountability. Welcome to our seventh meeting on the 8th of April at 21:00 UTC.

We've got two significant things on our agenda today, which I'm hoping (unintelligible). The main thing we need to do is to work through our draft column report to talk through the content the way it's been drafted to get some overall feedback on it and any specific to take into account. That item in our agenda should last us for about an hour until 10 o'clock or so.

And the next string, the discussion with the legal advisors on the mechanism side of things is the next item, and we can deal with that as it comes. I've just to have an agenda for us to think about in terms of our next call on the 10th and 13th of April. And the thing I forgot to put on the agenda which we should do straight after our agenda is just a little check back on our work plan.

So the first document and - for the staff to put on the screen if they could is the work plan that we circulated on the 1st of April. But the first thing is the agenda review. So are there any items that need to be added to our agenda for

this call? Nobody has any items to add at this point? If not, we will - Steve DelBianco, you have the floor.

Steve DelBianco: Hi. Thanks, Jordan. On the stress test call this morning we were walking through the stress test and identified a couple of measures that we were not sure were going to make the cut for public comment, and we wanted to bring those to the attention of work party one.

One of them is the general community detail, and as Robin indicated in the e-mail, this could be a misunderstanding that'll be easy to clear up. I hope so. And the other is being able to force the board to implement a decision or to formally consider advice of an AC. So I think this could take in the neighborhood of ten minutes of discussion at some point in the call if there's time.

Jordan Carter: Thanks, Steve. In terms of the - do you think it would be good to do both of those after we run through the comment on the forum before we do so?

Steve DelBianco: I think after is fine.

Jordan Carter: Okay. So let's put that in in between items three and four on the call. And, you know, the length of this call in terms of dealing with the draft co reporting is entirely up to all of us. We have time down to do it. If people prefer to do a collective entity and comment modes, we can do that.

But the first thing to do is to just quickly look at our sort of work plan. If you have a look through that, you'll find that we did a little bit more than we thought we would. All of those first set of items for the draft is done as of the 6th of April were indeed done by the 6th of April and circulated to the working party.

The AOC reviews into the bylaws was also done, the draft text we got from Steve. So we're a little bit ahead of the game in terms of the work plan so far, which is good, better than being behind for sure. And this is our first chance today on Wednesday to work through that content and have a look at it. And we've got a second chance on Friday on the 10th of April.

The other thing that we're meant to get out today is some draft text on the mechanism, but we need to have a conversation with our legal advisors I think before we would have exactly how to take that, and it is an agenda item later in the call. So from my point of view I think that we're going okay with the spring forward plan.

The thing that I think is missing maybe a little bit from this is there's a topic there about the AOC reviews turning into the bylaws, but there isn't a topic there about other AOC matters being included in the bylaws. And I haven't looked carefully at the work plan for the entire comment report.

Is there anyone on the call who has and who can advise me? I'm thinking Steve might have paid attention to that, or Matthew if he's on the call, or (Fiona) might have done so. Is there anyone else from the comment report where that is actually captured that we are meant to draft content for? Because I didn't notice it. Can anyone help answer that question? This is other ATRT matters that aren't about the reviews but things that we think ought to be included in the bylaws.

Steve, please go ahead.

Steve DelBianco: Thanks, Jordan. In the draft document that we prepared there's a section there that talks about bringing AOC into the bylaws. The part we fully fleshed out is

the four accountability - the four reviews that are from the affirmation, and we followed everyone's advice and we show the proposed text of the review and alongside it, notes that describe how it's differs from what's in the affirmation.

But prior to that, it was the notion that Matthew Shears had started working on. And it was the idea that affirmation commitments as paragraphs three, four, seven and eight, and certain elements of commitments are part of three, four, seven, eight. And those commitments to some extent they've been reflected in the core values admission statement that Work Party 2 has been working on, where they show up among the bylaws and core values, and they would also end up being the standards that are used by an independent review panel that's reviewing a decision.

And the current - I talked about this on the chat with Matthew Shears yesterday, and I'm looking to see if Matthew -- yes you are on the line -- that's it's possible that some of those commitments in the affirmation haven't yet made their way into the core values and mission statement on Work Party 2.

And I think it probably falls to us in that section of our document to list the powers that Matthew had proposed to us probably eight weeks ago, and then indicate next to it it's in the core values, it's in the mission statement, or it's not in there at all, which may well be the case with the affirmation of commitments paragraph eight which says that ICANN would maintain a headquarters in the United States with offices all around the world.

That was an example that we discussed briefly in Istanbul. It's controversial and yet it's still in play because the CEO of ICANN promised he would bring all the affirmations in the bylaws and promised Congress that he wouldn't, I guess, pull the headquarters of ICANN out of the United States.

So there's political aspects to it, but just for practical purposes let's just suggest that maybe our community powers document where we describe the affirmation of review being brought into the bylaws that we simply list half a dozen commitments and indicate whether they've been brought in.

To pick up on that, in each of the affirmation of commitments reviews, the first sentence of each review from the affirmation iterates a commitment that ICANN is making, you know, a commitment to security, stability and resiliency is the front end of the SSR review. So each of those commitments need to be checked against the core values as well to be sure that they're in there.

Like in particular, 931 has a commitment to continue to enforce and implement the Whois requirements as long as they're in effect. So those commitments probably need to make their way to the bylaws. They could potentially just be there as part of the reviews, but we should acknowledge that they exist in the affirmation and they may or may not exist in the draft that we put out for public comment.

Jordan Carter: Okay. Thank you, Steve. So the suggestion in there is that at the end of our document where there's 6.1, which is bringing the AOC reviews into the bylaws, you're suggesting basically we add a table that identifies the key points that Matthew had raised and just note where those things have gone, whether they're in the reviews, whether they're in the material that Working Party 2 has done but what they haven't yet imported across as a way to make sure that through our work the whole CCWG does pay attention to that question and doesn't let it slip. That's the basic logic, am I right?

Steve DelBianco: That's it.

Jordan Carter: Okay. Thanks. Well, Matthew, you're the person who drafted a lot of it and you've got your hand up. So go ahead.

Matthew Shears: Yes thanks, Jordan. Can you hear me all right?

Jordan Carter: I can yes.

Matthew Shears: Okay. So yes, so I think actually what you're raising is a very important point. I think it is incumbent upon us generally to look at the affirmation of commitments as a whole and to indicate how we are addressing each of those. And I think we've done it a little bit piecemeal to date, and in fact Steve has addressed the review affirmation of commitments very thoroughly and there were another what I had identified as four articles in the affirmation of commitments that had elements in them that I thought were important for us to consider bringing into the bylaws in some form or another.

And as Steve has said, some of those now are being -- including article eight, which is about - which includes the issue of jurisdiction -- are now being addressed more in working party two in the mission and core values. But as I circulated in an e-mail a couple of days ago, there still are a couple of other affirmation of commitment issues related to a transparency and accountability that I think that we do need to still consider. So I did send those around for comment.

But I think that probably it is worthwhile, given the importance of the affirmation of commitments as a whole and to how we are addressing them, that we do look at them article by article and clearly identify where those are being addressed and how across the two different working parties, your work and Becky's as well. So just to endorse what Steve said and that we probably need to look at this a little bit more holistically. Thanks.

Jordan Carter: Okay. And thank you, Matthew. So that then leaves me with a question about where a table like this would be best placed in this draft content for our comment report or whether it might be either the document that you're already sent around being an agenda for the whole CCWG to talk about or I don't know. I apologize, I haven't read the document that you're discussing.

Does it need another iteration or does it need another pair of eyes over it before it goes to the CCWG? Because I've got no problem with us incorporating here. I just think that if the purpose is that we actually do want to say something in our part of the comment report then we should definitely put it here. If our purpose is to make sure the whole CCWG discusses it with the input that we've developed then I think a standalone document might make more sense.

Do you, Matthew, have a view on that question? And then does anyone else have a view on that question?

Matthew Shears: I guess, you know, my perspective is it maybe more work but it might be useful to have a standalone document addressing the affirmation of commitments as a whole and indicating where each of those articles is being addressed and what element of those articles is being proposed to take into the bylaws in whatever capacity or into the core values or whatever.

So, you know, I think for completeness's sake, if I can use that term, it may make more sense to look at the affirmations in that way, but obviously I look to Steve as well, as he's put a huge amount of effort into this. Thanks.

Jordan Carter: Thank you, Matthew. And Avri has (unintelligible) so she might want to chip in some words to this, I don't know. The next person on the speaking list is Kavouss. Kavouss, your turn.

Kavouss Arasteh: Yes I have a question about a comment. The affirmation of commitment, one side of affirmation of commitment is U.S. government currently and the other side are ICANN. If and when we transfer that to the bylaw, who are the two parties of this commitment? Who is committed to do what with respect to whom? Are we clear on that?

Jordan Carter: Kavouss, that's a very good question. The answer that I've seen was either in the (Adler) or (Sidley) memorandum, the legal advice, the initial stuff that we got. And what they said was obviously it isn't like the AOC and that there aren't two parties here. If you're incorporating these things into the bylaws, parties aren't involved.

But the suggestion that was made was that for some of these commitments you might put them in the bylaws as obligations that the board has to uphold, and that would be the mechanism by which they would stay binding on the companies. So it would be in the bylaws. Assuming our powers get implemented, the board wouldn't be able to change those bylaws without our, the community's, approval.

And by binding the board of directors to uphold those commitments through the bylaws, that would be the way it would be maintained. So that would not just be in the bylaws, it would be specifically aimed at the board to uphold them. And I think that's one of the questions we'll need some further clarity from the legal advisors.

Kavouss Arasteh: If you allow me a follow-up question. I think one side of that remains unchanged and that is ICANN. The other side from U.S. government now goes to the communities. Is it clear that this affirmation of commitment talking of the two sides, one side with ICANN and the other is whatever, I still don't know what the CWG is doing for that. And the other side is the community. Is that right, the two sides? So we need to replace the U.S. government, right?

Jordan Carter: No, no. Because you have to stop thinking of it as an agreement. At the moment, the affirmation of commitment is a bilateral agreement between the United States government, NTIA, and ICANN. What we're proposing, what I understand we're proposing, is that there wouldn't be an agreement anymore. There wouldn't be an agreement between two parties.

Instead, the commitments that ICANN undertook to live up to in the affirmation of this agreement, those commitments would be incorporated into the bylaws and the board would be charged to uphold those commitments. So they would kind of become part of the founding charter of ICANN and the board would be obliged to uphold them.

There wouldn't be some kind of contracting party in the community group or anything like that, it would be a bilateral agreement with the affirmation between ICANN and a different party. Instead the substance of that agreement would be ported into the bylaws. That's what we've been talking about in that.

Kavouss Arasteh: Okay thank you.

Jordan Carter: Okay. Thanks, Kavouss. The next person is Steve DelBianco.

Steve DelBianco: Jordan, between yourself, (Fiona) and Matthew, I believe you've answered Kavouss's question. This is generated partly by stress test 14 which said it reminded us all that the affirmation of commitments could be cancelled by ICANN with a 120 days' notice.

And once it had no longer needed to retain the IANA contract from NTIA, we raised the stress test that ICANN could then cancel the affirmation of commitments and thereby escape the commitments that it had, as well as the commitment to perform the four structured periodic reviews. And we said that that stress test, to answer that stress test, we should move the commitments that ICANN makes from a bilateral commitment to the united government to a commitment to the community that lives in the bylaws where all the other commitments live.

We also suggested that once the IANA contract was gone, there would still be this one remaining agreement between ICANN and one government, the U.S. government, and that it would logically become the very next target for those who wanted to remove any special role for any one government, in particular the U.S. government, in terms of ICANN oversight. So the affirmation itself, for those two reasons, is ripe for moving its commitment into the bylaws.

Fadi Chehadé said as much at the Senate hearing at the U.S. Senate in February, and I think that we had a general agreement that it made sense to move it. But once those commitments are moved into the bylaws with the improvements that this group is recommending, it becomes a nonissue whether the U.S. government or ICANN were to terminate the affirmation. The affirmation isn't necessary anymore, nor can we rely upon it.

So given that ICANN can cancel it with 120 days' notice, if there's anything that we believe has to live, outlive the affirmation, then it's a candidate for

bringing it into the bylaws. And that's why the work that Matthew did on those commitments makes sense. And I don't think it's another document, to your point earlier, Jordan.

I mean Matthew did circulate a set of analysis of paragraphs three, four, seven and eight from the affirmation. Robin and others, myself, provided comments on that, and it was discussed on Work Party 1. Although that work ended up dumping over into Work Party 2 because Becky was putting it into the core values and mission statement.

So I don't know that we need a new document as much as a section of our document just before the affirmation reviews, just a short section, as Matthew indicated, that lists the commitments from the affirmation and then maps them to where they are likely to end up in the core values and mission statement of ICANN.

Jordan Carter: Thanks, Steve. Avri, go ahead.

Avri Doria: Yes. Just a quick comment. I pretty much agree with what was said. A couple quibbles. One quibble is that it's not up to us to cancel that AOC between the U.S. and ICANN. So I think it's the right thing we're doing to incorporate it and incorporate into more detail if we need to. I think that that's very good.

I think that Matthew already pointed out a couple things, and I had added one earlier, where we're actually taking out of ATRT 2's recommendations and actually including some of that in as additional to that - to the AOC. And whether it's a table, whether it's a separate document, whether it's another, I think doing that intentional mapping that says this one was covered there, this one was covered there, it doesn't really matter whether it's in a document or not, but just having that checklist to make sure that we have covered them all

is probably a really good thing to do. And finally, I was just, you know, offering to help with this. Thanks.

Jordan Carter: Thanks, Avri. That's helpful stuff. Next for us from the team is Greg.

Greg Shatan: Thank you, Jordan. Greg Shatan. I think some of this has already been covered, but, you know, clearly if we are taking the entirety of the affirmation of commitments into the bylaws, then the affirmation of commitments is essentially - the teams would - or should go away. There's nothing left for it to do. If there are elements or paragraphs of the affirmation of commitment that are not being taken into the bylaws, then I'm not entirely clear -- and maybe it's just me -- what we're going to do with those.

Is there going to be a - are we recommending a truncated affirmation of commitments? Are we recommending that the affirmation of commitments stand and that the sections that are in the bylaw are somehow written into those in the AOC itself? Or would we believe that the - any leftovers are not worth having in the bylaws or so it's just kind of a question of making sure that we've kind of disposed of the AOC in totality one way or the other, including letting it live in some steady fashion. Thanks.

Jordan Carter: Thanks, Greg. That's a good point. My initial kind of response to that notion would be that we need to - if we use this as a mapping exercise, I can imagine a table that kind of critiques them and then it's like where it has gone into the core values in Working Party 2, where has this one gone here, where has this one gone here, where has this one gone? It hasn't gone anywhere.

And then we might find that there are two or three that haven't gone anywhere. When we know what they are, I think we'll be in a better position to work out what our advice might be to the CCWG, whether it is that hey

actually we should include these as well just for completeness or whether it is these don't have any relevance anymore. But I think once we've identified them and we've now got a crew who have volunteered to identify them, we'll see - Matthew may not realize he volunteered, but I think he has. He's always done most of the work. Steve and Avri, those three at least can pull that together.

The next speaker is Michael Clark from (Sidley).

Michael Clark: This relates back to one of the speakers, you know, several times ago was asking about well how do we enforce these things once they're there. And one of the things that we're talking about on a number of different points with the legal group is really how do we devise an enforcement mechanism for various rights, either a contract or something else.

But several of the mechanics that we've been talking about do involve maybe creating members or something of that nature. And if we were to do that, it's a fairly simple matter to have any of these affirmations of commitments that have gone into the bylaws be enforced by the members, because they would have standing to do that.

Now designing who the members are is a little tricky task, but I think there are a number of ways that we could work out to do that. So I don't think you have to worry that if you decide you want to put them in bylaws that we wouldn't find a way to enforce them.

Jordan Carter: Okay. Thanks, Michael. That's helpful. Greg, I'm thinking that's an old hand for you and Michael as well. So I think that some of you we do want to do this table. We've got some volunteers to do it. We'll start off by putting it in the

comment paper that needs to go out afterwards if it becomes just a working part of the document for us to use. That would be good.

And the volunteers who I have listed, are you able to commit to doing that table for us to review on our call on Friday or are you able to commit for us to review it in our call on Monday? Please don't answer that question now. Oh, (Fiona)'s joined you as well. But please just let us know on the e-mail list maybe after you have a chat together straight after this meeting or in the chat, whatever. Just let us know what a realistic timeframe is. It has to either be this Friday or next Monday that we discuss it, because we're trying to close our work by next Monday.

Kavouss, you've got your hand up.

Kavouss Arasteh: Yes. I think listening to the debate and looking to the chat, I think there seems to be a little bit of ambiguity. On one hand, somebody says that we don't plan to live by the AOC, on the other hand we ensure that the accountability remains. And my question is that if some part or many part or the majority of the AOC goes to the bylaw, what remains? If anything remains, what do we do with that? Thank you.

Jordan Carter: I don't think we can answer that question, Kavouss, until we know what does remain. Because until we know what it is, we won't know whether it's relevant or not. So I think you're asking the right question but I think you're asking it at the wrong time. I think we have to ask that question when the table is done, because then we'll know what we're talking about. We'll either think gosh, it's really important for us to deal with this, or we will think nah, that's okay, it could lapse, it doesn't matter. So that's my suggestion that once we see the table, we ask your question again.

Okay folks, now we're in an agenda item that is about commenting on the comment report. We just needed to deal with item of work. So we've now got an action point. Matthew Shears. Staff, if you could note that in the discussion notes. The action point is for Matthew to lead the team, and Steve, Matthew, Avri and (Fiona) to prepare this mapping table between AOC commitments and the work of the CCWG.

This takes us nicely into our substantive point. It's a little later than I thought we would be, which is that you've all had the first draft of the comment paper in your inboxes. It came through on the 6th; today's the 8th. We've had a few comments in writing come through from (Matthew Strong) and (unintelligible) from ICANN. And I'm sure that everyone has read it carefully and diligently.

I'd make just a couple of points about it. Some of these items that were noted as kind of bold and you underlined them because they weren't agreed, did end up being discussed on the CCWG call yesterday. Obviously that discussion has not been incorporated back into the draft yet. And none of the other comments have either.

Rather than ask for a link to the paper or to see the paper here, it would be helpful, staff, if you could put both the discussion paper up onto the screen, not revision or comments from anyone but just the original one that was circulated.

Robin, on the (unintelligible) of whether this is linked anywhere, I don't know the answer to that, but maybe ICANN staff could let us know about that. I'm sorry, this might take a little while to find the (unintelligible) advice specifically that we would be looking at this document at this time. So (Mary) is getting it.

It's important to note that this is - we're sprinting and that means we're doing work very quickly. This draft is a very first draft and I already get the sense from some of the comments that we need to do a big more specification so part of the comment is going to end up a little bit longer than it is in the next draft. But this is a chance for people to raise points they would like to share with the group about the draft.

I definitely do not propose that we are going to read it through and paragraph by paragraph on this call. I think we should we do that on the next two calls, because this is just the first look. My own feeling, and I'm happy to say this as the person who wrote quite a lot of the content, is that it does need a lot of improving work.

So the way I was thinking we would deal with this in the end would be that we have a few more days for people to add the - reading it, adding comments. What I'll do straight after this call is I will -- how will I do this? Not straight after this call but this afternoon in Euro time. So in about six hours I will add - I'll open a Google Doc that's got commenting ability added, and that can be a place for those who don't want to send in a separate Word document to add comments for it to make suggestions without text editing. I might be able to actually create that after this call.

Just so there's a venue for people to add further thought and input and refinement if you haven't had a chance to do so yet. It's a little bit easier than necessarily (unintelligible). And then probably over the weekend I will get the chance to edit all that and incorporate it into a revised draft for us to look at on the 13th. As I've been talking, I'm realizing that time period doesn't work. I may have to do that tomorrow because we need to discuss some of it on the 10th.

So that's the biggest thing for us. But the floor's open for general comments about this content. (Mary)'s just noted she had a copy of this with AM comments ready. I'm assuming that AM is reference to I don't know who in this section. (Mary) can you tell us? Oh (unintelligible). Right okay. (Unintelligible)

So this is your chance to comment. You have full control. If you don't want to raise comments here, you can do that. The first person who has his hand up is Malcolm Hutty. So, Malcolm, please go ahead.

Malcolm Hutty: Thank you, Jordan. Actually I have a question. Reading this, it immediately becomes apparent to me that this - that as soon as you write this out, it gives either further clarity and detail to the things that we've discussed and agreed or at the very least it may raise awareness or understanding in us to read it, not the public, but us reading it, but we didn't - hadn't necessarily appreciated about the discussion that come before.

So my question is this, you're asking for comments on the drafting as to whether or not this clearly represents what we want to be asking, the way we want to be asking and so forth, but what about the substance? If we, in reading it, suddenly realize that we actually have a comment on the substance that we didn't realize that we had before, what is the appropriate mechanism for bringing that up now?

Jordan Carter: I think that's a really good point, Malcolm, because of course, yes, when you concretize something and write it down in a summary and it has made its way into a bunch of templates, it does make it clearer and people will maybe see things that they didn't expect or don't agree with.

The best thing to do that was to raise it on the call and - or to raise it in a particular comment in the document. Because what I foresee in our next two calls is -- and only that we don't go through today -- will be exactly clarifying those points of those things, either identifying that the text doesn't represent an agreement. So Robin has just identified one of those in chat, where we can highlight things.

So I've used a crude mechanism to that bolding and underlining to just draw people's eyes. And what we need to have by the end of our call on Monday is a version of this where we are at least all happy that things that we think there isn't agreement on are all bolded and underlined so that the readings processed in the CCWG can sufficiently discuss them. So that's my view. This is the time to raise substance. The next call on Friday, the next call on Monday as well, we need to make sure that we've got kind of clarity about this. So good question, Malcolm.

Malcolm Hutton: Thank you.

Jordan Carter: Robin in the chat has said that the power to recall the board in terms of directed voting wasn't agreed. I have a different view of that, Robin. I think that that was pretty much the consensus of the room. Not the consensus, that's the wrong word. There was a pretty sizeable majority on that in Istanbul, but it is something that we should discuss.

So if it isn't highlighted here, so let's just scroll down. We're talking about Page 4, and that is bolded. So that's clear that isn't agreed and is a matter for discussion. So we need to make sure that's on the agenda for the CCWG to resolve. And I haven't talked about this with the co-chair but I imagine that they will be open to us having - if we can't come to an agreement to consult

the community with, I imagine they'll be open to posing questions about options.

And an obvious question here would be do you think that the voting with respect to this should be direct or not. There may also be consequences for that question arising from the mechanism that we flesh out, which we'll be having a chat with the legal advisors about.

Now it's a little tricky to deal with, I don't want my voice to be the whole voice on the recording, so I read Robin's point into the record. Avri, do you want me to read yours as well or do you want to do it? Avri's hand's up. Go ahead. We can't hear you, Avri, at the moment. Somewhere we'll hear from Avri to allow that may be coming to work. Okay. I don't hear Avri on the dial out. Can other people hear Avri? That's really awkward.

Greg Shatan: This is Greg. I heard Avri. I had nothing else on so I don't know why there was an echo. It's not from me.

Jordan Carter: Jordan speaking. Avri can be heard on the Adobe Connect but not heard on the dial out.

Avri Doria: Aha.

Jordan Carter: But now she can be heard on both.

Avri Doria: Oh okay. In which case let me quickly try to say what I was writing, and I was making two different points. One, I was agreeing with Robin's point that in terms of how an SO or AC does its vote, whether it believes it directed voting or not is one of those things it seems like it should remain in the province of bottom up, determining how they're going to do it.

I also just wanted to point out while I was talking that on the removal of the individual board members, we need to acknowledge that the At Large also selects or elects, or whichever, one of the board members so they would - that's more of a just they need to be included also in that ability. Thanks.

Jordan Carter: Thanks, Avri. Those two points make sense. Thank you. In terms of this directed vote question and so on, the model of a mechanism, if you like, that we had in mind when we were doing most of this discussion about voting in Istanbul was the kind of a community council model, whether it be five reps from each of SOs and ACs. So the - if we end up with a different mechanism to that, there'll be consequences for the voting system. But certainly if At Large is appointing a director, then At Large would be a natural thing to add.

I'd also add that it is possible for us to recommend a blanket rule or how the SOs and ACs need to do it. It isn't entirely unreasonable for the organization to apply organization-wide approaches from these powers. I'm not saying that we should, I'm just saying that it isn't something that we should just assume that it's impossible for us to do.

Robin's hand is up. Robin, go ahead.

Robin Gross: Thank you. Can you hear me? This is Robin.

Jordan Carter: Yes, loud and clear.

Robin Gross: Okay great. So I'm wary of us trying to focus on the community council mechanism as the means for making these kinds of decisions. Some of us are still considering more lightweight approaches by which the members of these

SOs and ACs are the ones empowered to make these decisions, and not our councilors or our leadership.

So I'm concerned about the suggestion to sort of leave aside the proposal that the SOs and the AC members themselves be empowered to make these decisions and that somehow we've settled upon there's going to be a council to do this, make these decisions for us, an additional layer of representation. That seems - I wasn't in Istanbul but I did - I was online the entire time, so I guess I missed that decision being made. Thanks.

Jordan Carter: Sorry, Robin. That's not a decision that's been made. What I said was that when we were discussing it, that was the kind of model that was in the room. We really can't get into a discussion here or we'll tangle up the powers that we're talking about and the mechanism that we use to implement them.

But I just want to reassure you that there is - there are no decisions that have been made on that. I was just saying that the context of the discussion about this voting thing and whether it would be directed or not assumed there would be some people who would be casting votes. That's all I was saying, not meaning to imply anything else. So I hope that puts you a bit at ease. And if not, feel free to speak again.

The - are there other comments on the text? I realize it's quite hard to just make comments on the text and definitely for a specific drafting suggestion, making general comments on the text, specific comments on the text through a phone call isn't the ideal way because you risk a process of a mistranslation between what you said, what gets noted, what I read, what I later write. So it's much more effective in terms of specific text suggestions if you write them down and send them through.

Robin, your hand is up. You want the floor?

Robin Gross: Sorry that was just an old hand.

Jordan Carter: Okay. No problem. Roelof, I saw your hand up but then I saw your hand go down again. Look while there aren't too many hands, I think people - well I don't know what you think, but I'm assuming those hands mean that specific text comments might come through later.

I'm going to Roelof first, Steve, just because his hand was up before and vanished, and then I'll come to you. So Roelof, please go ahead.

Roelof Meijer: Can you hear me, Jordan?

Jordan Carter: Yes I can hear you.

Roelof Meijer: Hello? Okay. First of all, did I understand you correctly that you solicit any comments on the text now?

Jordan Carter: If you've got specific drafting comments like how to improve a sentence or a suggested rewording or something, I think that's best done in writing. If you've got a question we all need to hear now or a comment to make about it, then the phone call's a good way to do that.

Roelof Meijer: Okay. First a general comment. I felt that there was a kind of a dis-balance between -- and maybe you call it rephrasing but I think it's a bit more than that -- what you give as titles of the powers which is reject budget, and I think we called it vetoing before. And then in the end in the body text where you say the right to demand reconsideration, especially if you add if the board

considers a matter and decides not to change, then other mechanisms are available.

I would suggest that it's not the right to send back for reconsideration. We talked about a veto, which means that we're not telling the ICANN board that we will appreciate it if they will reconsider the budget or the strategic plan or a proposed change to the bylaws, but we will actually block in the end the implementation of that change, or the implementation of the budget, or the implementation of the strategy.

It seems that in the document at the moment there's kind of a dis-balance between the title, how we describe it before, a veto, and the body text where very often the text or the document talks about the right to send back for reconsideration. So that's one of my comments.

And the other comment is on the voting on recalling individual ICANN directors. If I understand it correctly now, it seems that there's going to be quite a difference in the threshold that has to be met to remove a board member that is appointed or elected by a supporting organization and a board member that is appointed by the NomCom.

Because if I understand you correctly, if it a board member selected by a supporting organization, it's the supporting organization itself that needs the majority vote, and if a NomCom appointee, it is the whole community mechanism that needs a voting threshold. I don't understand that this doesn't, why it would be more difficult to remove a NomCom appointee as compared to a supporting organization appointee, or electee.

Jordan Carter: Thanks, Roelof. Those are two really excellent points and questions. If I just can briefly on the second one first, that the issue with the NomCom appointed

director it's relatively straightforward in California, as I understand it, when a group of people appoints a director, that same people are given the power to remove them. It's pretty straightforward. So that's why with SOs and ACs it's relatively straightforward to say if they appoint a director giving them the power to remove that director isn't too tricky.

But there was a discussion on the CCWG call and I think even in Working Party 1, they do blur a little bit, about whether we wanted ever to turn the NomCom into an un-NomCom. In other words if you wanted to give the NomCom the power to remove directors that it appointed. And people, the general reaction there was pretty negative.

So that's why there was talk about whether the community mechanism that's being given that power, not that it would have a different threshold, probably it would have the same threshold for decision as individual SOs and ACs, but a lot of this in flux because we don't yet know the overall structure. If we end up going down a membership structure, there are going to be ways that we can have the same threshold. So that's the question we need to do some more work on.

On your first point about the veto, and this may attract some comment from the lawyers, what I was trying to do with the drafting was to find a way through that meant what I thought that were looking for in a way that it's the least possible to disrupt the, if you like, the kind of general responsibility of the board to govern the organization.

And so that's why it tends to refer to budget and so on. Back, you know, the idea is that the document is sent back to the board because the only alternative that I could see was that you actually ask the community mechanism, whatever it is, to do that redrafting itself. And the purpose of this power is to

reject a budget because the board hasn't taken community feedback into account. And it's part of the framework.

So if you say, the community says no, we're not going to let you pass that budget, go away and look at it again, to me that was the veto because you still need to have a budget, you still need to have an operating plan, you still need to have a strategic plan. If the community's gone to the effort to pass a threshold and saying that this one isn't up to it, the board would be insane to just resubmit the same thing.

And then the CCWG call on Tuesday, it was pretty clear that people didn't quite share the perspective that there should be a restriction on the number of times an issue could be sent back. So that's already - there seems to be some views towards changing that.

So what I would like of appeal, Roelof, if you were interested in thinking about this is just to give us an idea of what you would like to see instead. And you don't have to do it on the call right now. I'm completely open to doing it a different way. I don't have any kind of possessive feelings about the way it's structured. I just explained the logic that I used in structuring it.

So if you want to just respond verbally now or if you want to have a go at rewriting these so that they take a different approach, how about you let us know? What do you think?

Roelof Meijer: I'll put it in writing. I think that's more efficient than trying to do it during the call, if that's okay with you.

Jordan Carter: That's great. Yes, no fantastic. Then everyone can have the time to ponder it and think about it. Thank you.

I'm going to turn now to Steve. Steve, go ahead.

Steve DelBianco: Thanks, Jordan. Some of this went on via e-mail today, a chat between Robin and I. But in the section of the document that lists other powers, that's 6.5.7, and it's on Page 5 of the draft that you put up into the chat, and it mentioned other powers. And those are distinct from the explicit powers for the community to veto a budget or strat plan. That was 6.5.2. And then for the community to veto a bylaws change or a golden bylaws change, which is 6.5.3 and 6.5.4.

So on the question of other powers, the stress test team had picked up on conversations that happened on that Saturday in Singapore when you first took over as (repatore), and there was a discussion of the community having a broader veto of any board decision.

And then we narrowed it during that Saturday afternoon, and Robin was leading this discussion to say well we'll come up with a set of limited issues the community could issue a veto on to use a general recognition that you could - well you could probably shut ICANN down if you had the ability for a supermajority to veto every single decision the board ever made.

And perhaps this is my problem, but I kept that community power alive until I could learn what the limited issues would be. And I frankly didn't learn about them until we arrived on that Sunday in Istanbul. And that gave me a chance to see, oh those limited issues are things like budget and bylaws, and they're not as general as what the stress test team had been using.

So the stress test team's goal was to assess the package of accountability measures, and there are several stress tests, eight of them in particular, where

one of the potential proposed accountability measures was a community veto of a general decision. I'll throw one example out. Stress test number four is a government would issue a consumer protection law to find some other reason to force ICANN into taking a reaction and that if ICANN's board decided to take an entire TLD down, for example, would that decision be subjects to a community veto.

And it's a general decision, it's not a decision that's rooted in a set of limited issues. But if you took a decision like that, we had listed that one proposed measure was to empower a supermajority of the ICANN community representatives to veto a board decision. So we had kept that in those eight stress tests over the past several weeks, and it's only one of several mechanisms, because as you know, there are other mechanisms like reconsideration, independent review panel, and those may also be adequate toe challenge the board's decision in certain circumstances.

So the stress test team took a cue from what we discussed on that Sunday in Istanbul and said hey, you know what, a general unrestrained community veto is probably no going to make the cut for public comment. And if it doesn't make that cut, then let's not reflect it in the stress test as one of the major powers.

There's really no significant implications to that. In every stress test that listed that community veto, there were already community powers that are well in development to veto a budget, to veto a bylaws change, to do a reconsideration request or to do an IRP. And all of those powers are sufficient to say that hey the community can hold ICANN accountable. So the absence of a general purpose community veto is not going to cause us to fail any stress tests with respect to our proposed, and that's what the stress test team came up with this morning.

We were trying to be aware of the discussion and I'm happy to have Robin clarify what are the limited issues outside of budget and bylaws from which a community veto could still be alive. And if it is, hey we'll keep it alive. In fact we didn't delete it at all, we just put it in strikethrough to make sure that it got everyone's attention.

So that's an example of how the stress test team tries to follow along closely at Work Party 1 and Work Party 2 are doing, but we really can't take action until the package of measures is approved and about ready to issue, which I guess is in about a week from now. And at that point, we quickly reassess the stress test to see whether anything changes.

At some point in the call, I want to hear from Robin if I can, but at some point in the call we wanted to discuss another set of community powers that are absent from this list but might need to be included if we're - the stress tests are to determine that we have solved some of our bigger issues (unintelligible) with motivating the board to consider advice from an AC or motivating the board to implement recommendations from an affirmation team.

But let's save that for later and see if we want to discuss does there need to be a general community veto or do we - have we covered the veto adequately with things like vetoes of budgets and vetoes of bylaws.

Jordan Carter: Thanks, Steve, for saying that in that way. With your permission, folks, I would ask Robin to just respond to that as the originator of that proposal and maybe we can close this issue out in the next couple of minutes. Robin, are you able to or interested in commenting on that?

Robin Gross: Great. Can you hear me? This is Robin.

Jordan Carter: Yes.

Robin Gross: Okay yes. I really appreciate Steve's explanation of what they were referring to earlier when they said a general community veto, because I had - I wasn't aware there were other veto proposals under consideration, and so I was a bit concerned when I saw that it had been struck.

But now I'm feeling so much better and so much relief, because I understand that that was about something more of a general power other than the very narrow specific issues that the community veto that had been proposed in March would apply to. And I'll go over what those are again and - because I know Steve wanted to talk about whether or not these are sufficient to meet our needs.

And what we're talking about here, or at least what's in the initial draft proposal, is the adoption of the organization's strategic plan, approval of its budget, and approval of its bylaws. So, you know, this is pretty narrow but it was really intended to only apply to predetermined, high impact board decisions. So that was really sort of the goal in crafting it this way. But if folks feel it's being crafted too broadly or too narrowly, you know, now is the time to have that discussion. Thanks.

Jordan Carter: Thanks, Robin. My interpretation -- tell me if I'm wrong -- the list of powers that we've got in our doc to deal with the budget operating plan, strategic plan, bylaws changes and so on, that list does cover all the ones that you specified in your original veto proposal, right?

Robin Gross: Yes. That's right.

Jordan Carter: Yeah, so in my head that means we've got those veto's in place as far as our set accounts, so is that kind of the way you understand it?

Robin Gross: When you say we've got those veto's in place you mean they're heading towards the final recommendation stage?

Jordan Carter: Yeah. Yeah that we will be recommending them to the community (unintelligible).

Robin Gross: That's my understanding.

Jordan Carter: Okay. So, I think that means we're all on the same page here then. And I think...

Steve DelBianco: Jordan? Jordan would it be possible for me to do one follow up? This is Steve.

Jordan Carter: Yep. Yep.

Steve DelBianco: Great. Yeah Robin even if the February 7 meeting in Singapore, vetoing a budget, vetoing bylaws when listed separately than the general veto, and the understanding was that there would be a "limited set of issues," for which the community veto would be applicable, so my confusion was thinking that okay we've got budget and bylaws they're on a track at the community power, the veto of budget and veto of bylaws and strat plan, they're on their own track.

And, in fact, Jordan has them in this document is Section 652, 653 and 654, so not that they're approved, right? But just they're on their own separate track. So, I was raising the question does the community detail go any broader than budget, bylaws and strat plan? In other words, are there more issues than the limited issues that the work party working on this is going to come up with?

And if the answer's no, no problem, no problem; but, if the answer's yes then that's a community power that would end up sneaking into this document beyond just the community detailing budget, bylaws and strat plan.

Josh Hofheimer: This is Josh Hofheimer from Sidley, I had my hand up about this issue. I wonder if I could?

Jordan Carter: Yeah. Yeah, go ahead (Josh). And Holly's joined as well and she may have more to add to this, but one of the things that, I mean there's been a lot of back and forth on this issue and the scope of sort of community power over the board. And one of the things that we want to emphasize and remind, you know, the participants on the call, you know, the current sort of organization of ICANN can accomplish, you know, and with the working structure that we do have with the non-profit benefit corporation, it can accomplish. It is sufficient legally to accomplish your goals.

But, some of the things that we're talking about adding into strengthen some of the accountability measures may be more or less disruptive to the existing structure. And we do have to recognize, and you all have to recognize that you've got two goals that you have to balance against; one, being sort of just an operational and functional, the operational requirements.

And Steve alluded to this before, if a community could veto every decision by ICANN's board you really cease to have a functioning entity and organization capable of engaging on a global stage, because the board and the managers and the executives of ICANN are going to much more attune to the details of its operation and its needs than, you know, a larger community that will not have any benefit of day-to-day knowledge and information.

But, more important or and so related to that is the legal issues that your board does have certain fiduciary duties and those are defined by a statute, and as Michael alluded, Michael Clark made the comment that when you have the clause, that becomes in effect a contract that's binding on the board and requiring the board to act in accordance with those bylaws.

What we can do primarily and it will have, you know, substantial power, is to give the community the ability to name those board members who should act in accordance with the bylaws and to replace individual board members through some process or mechanism, whether it be members or designators or the like, but to replace those members if they're not fulfilling those duties.

And we've articulated, and you all have articulated in there, you know, a finite set of board actions that require, that would require approval of the members perhaps some limited set of designators be implemented by the board, and things like changes to the bylaws are perfectly acceptable or fundamental bylaws.

When you get into the details of approving budgets or approving strategic plans, you know, if we want to be able to set up review mechanisms for those, you will have to be quite precise and articulate as to what you are trying to do because just having a general ability to approve or reject a board action isn't something that you, is not a functional result, and it legally would potentially run a fowl of the fiduciary duties of the board.

So, we do have to be careful, and I know that because in particular there's a reference in 6.52 in the comment about rejecting budget and strategy. If we're going to give approval rights over the annual budget or a change in strategy, we do have to make sure that one, we have the right member structure in place to better provide that approval, to say yeah or nay, and then, also of course, to

have it be articulated very carefully what it is that they're approving so we know what the scope of that member review is, or that extra sort of ex-party review is of board action.

Jordan Carter: Thanks (Josh). That's a helpful contribution. And to be honest, it's that desire to at least--we won't be able to hold the ICANN board accountable for anything if we give ourselves as another panel community the power to challenge and reject as frequently as they do.

And for that kind of fundamental capacity of the board to be the general governing body of the company was in this set of powers they're trying to protect by making sure that it is narrow and specific and that that's also why in the jousting this relates to the point that (Unintelligible) made before. I'd couch these as forcing sort of reconsideration that these documents rather than the community (unintelligible) or anything.

But I would like to take the next two people on the speaking list if I could, which should Kavouss and Malcolm. I'd like to come back to you after the call with just a slight outcome to the wait to add other details and jousting comments. It'll probably result in the opening Google docs for comments very soon. I'll probably just open the version that we had. I won't ask anyone who has already offered comments Vanessa and Matthew to read their comments. I will make the suggested changes that they did and I'll input them myself for the next 18 hours or so. So, Kavouss first your hand is up.

Kavouss Arasteh: Yes, Jordan there seems to be inconsistency between the title of 652, 653 and the text below the 653/653 and the text below the 652/653. In the title they're talking about rejection. In the text they are talking of reconsideration. There is no rejection in the text. This is number one. And number two, in 653 we are

talking that if these changes are not implemented, there would be other mechanisms available. What are those?

Are we defining them, or are we reconsidering, or are we thinking of if we change a word other mechanisms should be available if the community wanted to take the matter further? When you say all that means you have it somber in this text where it is if it is available, but the important is the title and the text are not compatible with each other. They're talking of rejection and they're talking of reconsiderations. Thank you.

Jordan Carter: Thanks Kavouss. The second point, first again, the point that I was trying to allude to was that to get them to allude to the other (unintelligible) to look at the other (unintelligible) in this part of the document. So, the response is to get rid of the board members who keep pushing these things or if the whole board is gone (unintelligible) pushing bylaw changes as it wants.

In the end if you vetoed them, sent them back a number of times and they don't accept that, then they need to be removed from office. So it becomes an escalation up the set of the powers that are listed. It looks it but all of the powers are listed. On your first point, maybe this is just a language thing, but if by veto we mean we're saying no, you can't do this.

That's generally what a veto means. So, the question that we have to answer and the power that's opposing is what happens next? So in both the budget and the bylaws changes, having vote on it in that the community would have the power to reject changes to the bylaws, or reject the budget. But what happens next? And what happens next is it has to go back to the organization that prepared it. It has to go back to the board.

And they have to consider that rejection and they have to propose something else, or they have to drop the proposal. So for a bylaws change they might go okay, the community is rejecting it if we're not going to try that again. But they can't do that for the budget. They have to propose a budget. They have to propose an operating plan. So, I don't mind if we change the headings to say for it's reconsideration of proposed bylaws changes, for it's reconsideration of proposed strategic plan, because the headings should line up with the substance.

But, I don't understand how to do a veto in any way other than a way that forces the reconsideration by the board and then either of the middle or dropping the proposal in any way that is it. I just don't see how it's possible to do this any other way, and that my lead to further assumptions, if it does just put your hand back up, and in the meantime, (unintelligible).

Kavouss Arasteh: Yes. There is so much in the agreement that there seems to be a need to something to align the text and the title and also I am not clear how this other mechanisms are, are the mechanisms the removal of the whole board? I'm not asking that what are those, where these mechanisms are mentioned?

You have to at least cross-reference them. The other mechanisms refer to, in Section X, Y, Zed are available or maybe to you, so we have to cross-reference those other mechanisms for the leaders when we send them hopefully for community, for public comment. You have to be very clear. Another issue is that if you send something back for reconsideration and without being changed came back to you, you need to add more elements to convince that your first comment was valid.

If you send this back for the second time without any additional argument then the board could say that there is no additional argument from the first

one. So they'll send it back again unless you provide a reasonable argument, so you cannot ask for changes without any argument and just change it, I don't like it without any reasons. So these further confrontations you have to be looking to the cooperation and provide reasons and provide more argument enabling them to understand why we send them back for this reconsideration.

But you should avoid any Ping-Pong that we send them back and they send it to us, and we send it back, they send it to us, but then it's okay remove the whole board. I don't think it's a good mechanism, so you have to look at it quite carefully if you send them back for the second time. You need to add more elements, more arguments convincing that the first return was based on that. Perhaps, they did not understand it correctly and you have to re-explain that, so what I'm thinking from this aspect. Thank you.

Jordan Carter: Yep. Kavouss those are good points. We do need to do that cross-reference and we do need (unintelligible) bylaw is fair. In part that depends on what mechanism there is to enable the staff and I think we can get (unintelligible). I'm going to close the speaking list after Malcolm. So Malcolm go ahead.

Malcolm Hutty: Thank you Jordan. I'd like to drag the discussion back to the presentation of this document rather than the substance of the propositions in this document and how are going to present this in a way that's going to solicit the comments that we need. So I have a couple of questions, actually I've got one minor comment first of all, which is that boldening and underlining text is often used to emphasize the importance of a points, but actually you're using it to point out that something has not yet reached consensus.

Maybe, I would suggest square brackets around that item would help emphasize or help make it clear that that was something that was not yet agreed. But that was a really minor thing. More significantly, we have lots of

important things, which being presented are suggestions on which there's not yet consensus for this being raised.

But only one such thing or such proposition in each case is being presented. If there's not yet consensus on the point, should we not be presenting more than one option for comment to the public? That would be my first question. My second question would be if actually we as members of this group would like an alternative option being included in this document?

Are you actually willing to consider that? Are you soliciting that input from us? Can we actually say, I suggest that alongside this point that's being raised, that's being put in the draft that we have now you also put this alternative? Is that something that you're willing to consider? And my third question is about argumentation. Mostly, this document sets what propositions are, and putting it in neutral terms without much supporting arguments.

And mostly speaking I think that's a good idea, but I would also ask would you consider input of the nature of we suggest that these points in favor or these cautionary points against this alternative should be included, or should be noted in the document for the attention of the community reviewing it? So those are my three points. The question should we have alternatives.

Secondly, can we propose alternatives? Will you accept them? And thirdly, would you also accept propositions for people to record points for and against particular items?

Jordan Carter: Thanks Malcolm. Those are all really helpful questions. And we can do the square back easily. My personal view is that at this point we should be noting options, and if we either find we can't as the whole PWG comes to consensus, or that we decide we don't want to. In other words, we want to canvas options, then I think we should do that.

I hadn't had any guidance from the co-chairs that whether that's their preferred approach or not but I think we can make a case that it's a good idea. In terms of if we do offer options, I think we should definitely offer views about the pros and cons of each just to help people think about them not to say our list is definitive or not.

And yes I did deliberately choose quite a bit of neutral style in doing the drafting and that's something that I'm sure will be made consistent across the whole public comment document. So, hopefully we'll have that conversation with the CCWG next week and get some guidance for there may be some follow-up editing to view. And given the time that we're up to now, I think that we would need to have a discussion on the list about where people want to position that, because the other thing that we have to do today is to have our concession (unintelligible) about the mechanisms.

So, thank you for that conversation. It was a bit hunky in places, but I think we've got a good set of shared views out of it. I certainly would note that the note at hand is pretty full as well, so Malcolm that's an old hand. Kavouss is there an old hand from you as well?

Kavouss Arasteh: Yes Jordan, I agree with Malcolm that we could have options provided that the number of various (unintelligible) are limited, not to have several options because the commenting people they may be lost because of similarities between the options and so on. So we should avoid to have options which are very similar to each other unless they are really alternatives. And should the number of alternatives be minimum and absolutely minimum necessary and so on and so forth.

Second, as for the square brackets, I don't suggest at a different stage we even raise the issue that some texts are in square brackets, because the whole thing in a square bracket is still at an earlier stage, so perhaps when you're reporting back to the CCWG who could say that views that they have expressed should be a possibility to having options at a minimum, and are asking people about which option is more preferable, but not just at this stage talking about, you know, putting something in square brackets.

You should let the people express their views freely and without, you know, having them under the chapel of disagreement, because a square bracket indicates some sort of disagreement. Thank you.

Jordan Carter: I think the suggestion was only made in that it would draw the eye more clearly to the points that aren't yet agreed. So, and there certainly won't be any square brackets used in the presentation that we make to the public. This is just how to get people in the CCWG reading the paper to notice the key points we need to talk about.

So, I don't balk at underlining or using square brackets, of course the whole document is in square brackets at this point until we finalize it. So thank you for that. Right. Thanks everyone. We're running a bit later than I thought. Our next agenda item is on the mechanism.

And as is obvious from the discussion we had this keeps coming up. We need to know by what means we can achieve the set of powers that would (unintelligible), and we did some initial work via lawyers. And you can see on the table that's in front of you, and you can see in the template work that we've done in the working party on documents where we got to on those.

And it's entirely obvious to help to you as it is to me that we are stuck and we need, we don't need to come in with a magic solution, but what we do need to do is very quickly come to a workable understanding of which model. So what I've read from both of your initial input Miranda to the CCWGs that is 27, March. And I've already read those documents twice, so I'm sure we can always amend them.

Things seem to be heading towards a member or delegate structure, but what I'd like to do first is basically we've got about 25 minutes, 30 minutes to do this on this conversation. What I'd like to do is invite whichever of you is the right lawyer to start the response to that to do so. I don't know if people from both firms would like to speak. And then I would like us to just have a quick set of discussions in response to what you say.

I have to emphasize that the timeframes were quite mad in a way. I'm not expecting that you'll have a fully featured written report to us tomorrow in time for us to discuss this on Friday. But I am pretty damn sure that we're going to need to see some written views by Monday if we can. If we can't, we'll just need to schedule another meeting of working party one later.

But, which lawyer is going to start? I didn't think this would be worthy for on this call, but anyway who's starting is it (Sip-ree)? Is it you Michael? Is it Holly? Holly, your hand is up. Go ahead.

Holly Gregory: So hello everybody and thank you. Certainly, you know, we are working through the templates that were provided that relate very directly to the issues that are in this outline. And our goal is to have those to you all by the end of the week, Friday. And so we will, you know, you will have something in writing. It won't be specifically in this format but it will relate very directly to this format.

Do you want us to engage in a walkthrough of those issues now? We can certainly do that if you would like?

Jordan Carter: I think that would be valuable Holly. Yes, if we can. How long is that going to take?

Holly Gregory: Well, you know, we can go issue-by-issue. I would like to start though with sort of some overarching thoughts. You know, how the community is organized really is an issue that's intertwined with all of these empowerments or accountability mechanisms if you will. And I just want to put that out there. I know we're sort of jumping right into the accountability mechanisms, but they do, in terms of their viability very much relate back to how the community is organized, whether it's organized as designators, whether it's a member organization, that kind of discussion.

That being said, I do think that, you know, fundamentally from a governance perspective, you know, the primary mechanism to hold an entity accountable is through the selection of directors -- the replacement of directors. In extreme circumstances, to read policy to the entire board. And there are mechanisms to do that that are viable here. And I think as soon as we answer this question about, "How is the community to organize itself so that it can own these powers?"

It will be fairly straightforward to drill down and provide that level of detail. Certainly also the power to approve and disapprove bylaw changes including fundamental issues is also key to accountability because you need a way to prevent the board from changing the rules of the game -- it's stream -- and that's a very sort of clear use of number power and I believe that under California law designators can have that as well.

So, again, very viable, very doable. Incorporating the AOC elements into the bylaws I also think it's straightforward. As we have signaled earlier in this call, I think setting - the issues of setting budgets and strategic direction is a little bit more complicated. But I think, you know, doable in ways. I think you're hearing from the legal team that we're not yet convinced that it's necessarily the wisest choice, but we think it's doable. We do think that those issues tend to be management functions and approval is typically a board kind of function.

And - but, you know, we can certainly find ways to help you do all of that. With - so with that being said, one other point that I would like to make is, you know, I hear that there is concern in the community about the notion that the community has a way to designate directors but those directors then don't do a good job in representing the communities interests.

And I think that it may be because there's a disconnect between how the articles of incorporation set forth the corporate purpose and how the community views what the corporate purpose should be. And if that is the case, we should definitely address that issue because from a legal perspective, the board of ICANN, its legal obligation is to make sure that whatever that corporate purpose set out in the articles is fulfilled.

I'm not saying that this is an answer to the accountability issues, I think it's just another place that we need to think about whether there needs to be a fix - an alignment if you will -- so that we don't have the issue down the road of, you know, "Is the ICANN board - do they have interest that they have to fulfill that are separate and apart from the communities interests?" So just something additional to put on the table for you to consider in this arsenal of potential accountability mechanisms.

With that said, I want to turn to my team and see if somebody wants to volunteer to walk through each of these accountability mechanisms. I think we can do it in probably five or ten minutes.

Jordan Carter: Okay, thanks (Heidi). Just look for you too fast. It's the nature of the comments you've got kind of like overview of the efficacy of that that power? Or is it - are you sort of canvassing - sorry, I just slightly lost track. Are you going to be talking about those mechanisms there on the screen in front of us now? Or are you talking about the powers that have been (unintelligible)?

Holly Gregory: Well we're talking about the documents that was circulated prior to this call as the community empowerment document which we understood you wanted comments on in this call if at all possible.

Jordan Carter: Okay. That - well let's take time to do that then. I think that will be helpful. And - but if we can come back implicit of what you've just said is really a sort of designated membership is the structure that we're going to need to implement these. And I just want to clarify that because after you've gone through the powers, the feedback, if that's the case it makes what we put in that part of our comment (unintelligible) simple. So...

Holly Gregory: There are...

Jordan Carter: If we...

Holly Gregory: ...other things you can consider, but those are the clear - if I were to say sort of, you know, as lawyers we try to - it's like engineering. You try to find "the path of least resistance". Those are the ones that are sort of the clearest, the

best understood, maybe from a legal perspective "the path of least resistance".

There are other...

Jordan Carter: Okay.

Holly Gregory: ...options as well.

Jordan Carter: This is - but what we need to do is we've done as you can see in front of you on that screen in the chat, we've done some work on the mechanisms. And it's - we are now exactly at the point that you suggest. We are at the point where we do need your guidance about which ones are - where things are (unintelligible).

And so it - your able to say that membership designated model which you kind of had in your summary does essentially allow those powers and it's valuable for us to know because then it means we can put aside doing work on these other models that are in the chart that's in front of you at the minute.

So I'll leave that for now and I will ask you and your team to just provide some brief comments on the - I'm going to show you that we've already worked through that you see in their documents.

Josh Hofheimer: So this is (Josh). Looking at the chart which is on the screen for a moment as Holly's made clear or we've talked about, I think you should think of it from a legal perspective. The primary means of getting where you want to go would be through either - well, you got described as "Statutory Delegates" or they really in California it would be called "Statutory Designators", I think, or designators.

But that is the least disruptive approach and it's something what's in the bylaws today although may be perfect. I mean would need some revision and some correction and potentially could - additional rights could be reserved to those designators. And the next sort of layer of complication but one that is readily understood would be to have a membership type structure. The way we look at -- and that's where you've got this column of statutory members -- but when we look at your structure diagram -- this diagram with all of these columns and even the process -- one -- we see that the in some ways the community council -- the second column -- could be shaped to be like the members or it could be shaped to be like the designators.

The permanent CCWG perhaps could reshape to look like the designators. But they are - the supervisory board is the only one that as of sort of gotten further into this doesn't seem to be as effective a structure and we're trending away from that. And we've made it clear there that that's where people are looking not to the board but to either these designators or the members.

The real distinction between the two -- as we've said -- there's the least amount of disruption sort of the current process is to revise and refine the designators but there also is a, you know, potentially a narrower scope of responsibility that would be available to the designators versus the members. One example could be it may not be -- and this would require some further research and it would require some further sort of further investigation with you as to how you're organizing your members or designators -- but one example could be as to whether or not a budget would be something that would be well-defined would be reserved for member approval.

Clearly, that could be if it's articulated properly, but less certain whether perhaps it would be with a designator. (Amana) and (Colvin) can expand on some of this as well. And I know that some of them are on. But at the end of

the day, you know, we've been focusing on the substance of what powers you want to give your community and how expansive those powers should be and when we understand best what those powers are -- obviously within limits of what we tell you is legally permissible -- we can then come back to you and tell you how you can best organize it whether through designators or third - similar third parties or through members.

And then you all can decide how you want to organize that membership structure or the designated structure whether it's some sort of permanent CCWG or through a, you know, community council and various interest groups that would be responsible for selecting members.

Jordan Carter: Thanks. Thanks (Josh), that's helpful. And I understand that we've had to do the work to establish what the powers are that we're trying to give the community before we can get an answer to how to go about doing that. That's why we prioritize getting this - the texts together that we sent the (unintelligible). And I think it's fair to say that we've got a recently complete list there now.

I think it's pretty stable. I don't think any of those powers are going to need to come off the table. I don't expect any (unintelligible) to come onto the table. But what I think we have to do in our public comment documents is give the community a sense of what institutionalization is out will look like. So I agree with those things that you've said pretty much.

But that's where we're at now. And so I don't think what we were doing with the models that are kind of (unintelligible) with those structures and processes are worth playing what we knew and could work out, you know? And - but we need - we do need your expertise to apply to this proposal now. So where does that lead us Holly or (Josh)?

Holly Gregory: Well, so I think maybe we should now walk into a discussion of the powers.
Josh, do you want to lead that?

Josh Hofheimer: Well, I think Holly that we actually went through that before you were able to join the call.

Holly Gregory: Oh, okay.

Josh Hofheimer: And the powers, you know, are enumerated in the comment document. Primarily the - it's 6.5. 1, 2, 3, 4, 5, and 6 that were articulated. The one - the two things - the two areas that occupied some discussion were one -- whether or not we would have other powers that were not yet articulated. And I think emerged on the call was that there were no other rights that were - anybody was seeking to reserve to the community through some sort of a general veto or otherwise.

And the other - the second piece is which is potentially - I don't know. It may prove to be the most controversial or not. But 6.5.2 on the power to reject budget or strategy does have the potential, you know, to interfere with normal operations and so it has to be managed and articulated very clearly what it is that the members or potentially the designators but probably the members if we want to keep 6.52.

Holly, maybe it's worth or from the other folks, maybe it's worth stepping back quickly through the powers that are listed on the comment document and just waiting for the benefit of this working group whether or not that approval right is something that could be reserved to either, you know, the members or designators or potentially would not be a power that could be reserved to a designator or third party but would really need to be vested in the members so

that the - this working group could understand where if something becomes paramount and importance, it may need to be - it may limit the optionality for how to bring that about.

Jordan Carter: Okay. Well, I see that the other team giving us their hands up. So you - I just want to have a go?

Stephanie Petit: Well, hi, this is (Stephanie) and (Stephen). We put our hand up because I thought we heard (Josh) sort of asking for input and, you know, again, we apologize for missing the first half of the call and I hope this doesn't repeat it. In our experience, yes, a member would probably be the more viable structure in terms of having approval power over a budget or very specific decisions.

I think it is a little more - we certainly see it in the membership context particularly in religious organizations which this is not, of course, but it is certainly something that we speak organizations successfully have and implement. We are not as clear and, again, these are things that we're continuing to think and work through. A little less clear that that works with a designator or other structure.

So, wanted to respond to that question. And then echo that, you know, I - we fully agree with everything Holly and (Josh) has said in terms of going over all the various powers and mechanisms. You know, I think corporate purposes something where great care should be taken to get it right. And then once that is set, I'm a little less (unintelligible) up to Holly.

That it is itself an accountability mechanism directly, but, of course, indirectly there's all these things about, "Is the corporation adhering to it? And at what point can you bring in the Attorney General or sue?" and so forth and again emphasizing, you know, fully agreeing with everything said prior. Thank you.

Josh Hofheimer: To add to that Jordan I don't think -- and (Stephanie) can correct me if I'm wrong because you can see this is still a little work in progress -- but I don't think that any of us see if you look at 6.53, 4, 5 and 6 that all of those powers if, you know, stated clearly could be reserved to either designators or members.

Stephanie Petit: Yes, agree. I think if I'm reading 3, I can - basically 3 and 4 are about changing bylaws, 5 is recalling directors and 6 is recalling the whole board. I am of the opinion that works under either members or designators

Josh Hofheimer: Yes, there may be some related contracts that need to be put in place to give that - to bring that about, but...

Stephanie Petit: Correct.

Josh Hofheimer: ...what works under either structure.

Stephanie Petit: Yes.

Josh Hofheimer: I think one difference potentially would be though, "What's the recourse if the board is not acting in a manner that's consistent with the rights that have been reserved to the members of the designators?" We know clearly and there's a good, you know, body of precedent that the members could bring an action effectively on behalf of the company alleging that the board is not adhering to the bylaws which, you know, as (Michael) stated earlier are in effect a contract between the members and the board.

And so that would clearly be a right that could be reserved. It's not reserved. It's clearly a right that the members have to be able to bring an action or enforce...

Josh Hofheimer: Help.

Holly Gregory: Hello?

Josh Hofheimer: Hi there?

Jordan Carter: Hello?

Stephanie Petit: Okay, much better. Sorry.

Josh Hofheimer: I thought I got disconnected.

Jordan Carter: Oh, somebody else got disconnected and we were left with their ghost.

Josh Hofheimer: Oh, as in Adler. So they're calling - going to call back in.

Stephanie Petit: Oh, no, sorry, (Adler)'s been here. We had funny noises but because of those we missed the last part of what Josh was saying.

Josh Hofheimer: I was just saying that -- and Stephanie should jump in but -- that if the board acts in contradiction to the powers that are reserved to the members or designators, we know it's clearly that members can bring an action -- perhaps as a representative action on behalf of the company -- but on behalf of ICANN to enforce against the board for its noncompliance with the bylaw's. Not sure that the designators have quite the same power.

Stephanie Petit: Yes, I think that's absolutely right. I think the designators -- they're standing to sue would be less clear, they might be less in the position of trying to persuade others who more clearly are standing to sue - to do that.

Josh Hofheimer: So, you know, that's a high level description for you all sort of how these, you know, how the structure or what your leanings might be towards the right structure at the end of the day. And again, you know, the community council for the permanency CCWG or the, you know, the SOAC's if we want to reserve any or all of these, you know, enumerated powers to any of those organizations if you had multiple ones or if you'd just set it on one, we can make a decision or we can have work through sort of which ones you would reserve to the others.

And you also need to organize those groups in a way that, you know, makes them capable of, you know, sort of acting either as members or as designators. But those are some details that we don't have to get into on this call. Any questions about things we've just stated there?

Jordan Carter: I just hope - I don't think so. Sorry, it's Jordan here. I've had a comprehensive computers graph and (unintelligible). I think this discussion has been helpful. And I'm also conscious that we're coming up to ten minutes to the hour and we have to finish the call on time.

So what else can we - the sense that I've got from the conversation so far is that we've got a model that we're going to be basically looking at which is either kind of members or designators and I'm still not hearing a critical difference that should lead us to favor one or the other's point. Am I - is that a reasonable point?

Holly Gregory: So this is Holly. I think that is a reasonable point. Can you hear me?

Josh Hofheimer: Yes.

Jordan Carter: Yes, we can hear you.

Holly Gregory: I think it is a reasonable point. I think that there are some subtle differences. So to my mind when I think about the designator path because it's similar to what you have, it is a sort of "path of least resistance" because you're not talking about the big change that's involved in creating ICANN as a member organization, right? So you have sort of the beneficial element of ease because it's not all that different. We're talking about making some change -- the bylaws -- to clarify powers strengthen the designator role.

Put some, you know, (unintelligible) of clarification around that and it's at the designator model. The benefit to the member model that is that it may be clearer and more straightforward to provide some of the kinds of veto rights separate and apart from the issues around direct or selection and removal and bylaw approval. So when we talk about the budget approval -- or as you term it "rejection" but we're really calling it, you know, it's an approval right, if you will -- and strategies, those we're fairly certain you can do in the membership organization.

As Stephanie so rightly said, there's some open issues around how you do that with great clarity in the designator model. So each of these and yet - so each of these have some advantages and some potential challenges, but they're both, I would say, very doable paths and, you know, it - there are some potential tradeoffs regarding clarity and ease.

Jordan Carter: Okay, so it seems to me that is - that nicely sums up the key thing that we need your advice and judgement on. You got some ideas of the pros and cons.

You got a clear take on the rest of the things that we're trying to get done. You know more than we do about the in's and out's of the California law and stuff. And so while it isn't in my power to brief you or to instruct you to give us advice on this, I'm pretty confident that (David) may want to comment that that instruction coming through because that is what we need.

We need to know that so that we can then offer our guidance to the community along with an explanation of why it's the model that we've chosen. And the proposition is to make two other points. First of all, this community overall is pretty suspicious of institutional change and so I think that if we - the least track - the least change option is going to be the easiest one to convince people of. But they can't get the powers that they need to do it. They'll look at the next layers of complexities. So I think that's just worth keeping in mind.

And the second point is that in a lot of corporations and organizations that it's the professional body of the board, the staff and sternum, who do the stuff. I think you're getting a sense that in the ICANN environment, a lot of what ICANN corporate does is almost secretarial like in its approach. There's a big part around the contract that (unintelligible) and so on in the GPL these days.

But for a lot of other things ICANN is a vehicle to the communities to make policy and that's why typical remedy's like sacking the board that might work in a kind of more production focused environment are ones that aren't going to be as useful to us (unintelligible) year -- or at least they're not by themselves going to be. But I think you've got that clear in your mind.

Holly Gregory: Yes. I think that we...

Jordan Carter: And so...

Holly Gregory: ...understand that Jordan and look, I think that you will have some of this by the end of the day Friday in the form of the templates where we're adding sort of a legal analysis. But we are certainly happy to try to give you whatever advice would be helpful. We need to wait for the legal sub team to provide a directive, but I think we've looked at all of these issues now and it's a matter of understanding how you best - how we can best deliver the advice in a way that's most useful to use -- even not really new questions.

Jordan Carter: Yes. Well, what I would definitely say is that adding legal advice to the comments into their historic templates that were used to get to this point definitively would be the way to go because we're now moving forward from that point. And my - I agree with what (Stephanie) said in the chat that the best thing that we can get now is sort of assessment of those two main options and some clear explanations of why not going down the membership or designator option isn't going to be able to deliver those nearly powers and your opinion for us about which ones we should consider.

And if that's the advice that you can get to - for us then by Friday, then I, for one, will be a pretty happy guy. And we can do some parallel drafting that kind of refers to that and then flesh it out once you've got your advice.

Holly Gregory: And so Jordan what we're thinking of is in addition to the template we were always planning to provide a cover note of one or two pages when we can do some of this sort of drawing it together and I think that that's within the reemit that we've already been given by the (unintelligible).

Jordan Carter: Okay, that's - that sounds great. That's really helpful. Look folks, it's four minutes to the hour. So I'm going to draw this item to a close. And thank you Holly, (Josh), and the folks from Ebero for your input. That's been a useful

and helpful discussion. And I'm going to race (Justin) to the next - there was some proposed item 5 agenda item for us to look at on the 10th or the 13th of April. And I just was given the time.

I will put those - I'll have a little look at the master of this call and I've absorbed this and put out another proposal for (Jack)'s agenda for both meetings. This afternoon if you feel time to sometime in the next six hours and we can just really make sure we've got the right points there. Then if people have to do that, I would just ask if there are any other business items that we need to deal with today and if there any items now.

And I'm not seeing any hands up. I will thank you all for your participation and presence in this call. It's been a good discussion. Plenty of notes. Plenty of stuff to think about. I'll be in touch with you on the rest with our next call and with the link to the color document to give you a vehicle to easily add your thoughts and specific the language changes and so on. But thank you to (unintelligible). Thank you to all of you, and I'll be talking with you again on Friday. Cheers.

END