

ICANN

Moderator: Brenda Brewer
April 29, 2015
6:00 am CT

Cheryl Langdon-Orr: ..and the magic suddenly happens that the meeting session is now being recorded. And we'll have a leanly-represented as yet but hopefully still useful run through of basically what was outlined in Steve DelBianco's email several hours ago now to the list. We'll use that as a rough agenda.

You have in front of you on the screens, if you're in the Adobe Connect room, the current which is version 10.2 of our CCWG Accountability stress test documentation. And before we dive into the body of the text and some of the edits between the last version, which you will have seen in both the last circulated version 10.1 which was contributed into the frozen document that we all worked with recently, and in the main body text of our draft for public comment.

There are a couple of other issues which Steve outlined in his email and we'll cover those off as well. So, Steve, I think it might be best if I ask you to just briefly recap the stress test working party email which I believe did go to the committee as a whole. I'm just checking that, yes it did. It went out about eight hours ago but just in case everyone hasn't committed it to memory as of yet if you'd like a few - the high points and holidays of that.

And then we'll get through our more normal work in today's call, that would be great. And obviously I should ask if there's anybody from attendance point of view, my error, who is on the audio bridge but not in the Adobe Connect room. Waiting briefly to see if anyone wants to identify themselves. Not hearing anybody. Brenda has confirmed that, none.

Okay, Steve, we are who we are. Over to you.

Steve DelBianco: Thank you, Cheryl. Can you hear me all right?

Cheryl Langdon-Orr: Absolutely perfect, thank you.

Steve DelBianco: Great, thank you. Everyone, the email that circulated last night has four to-do items for us. Maybe we get this call done quickly then. The first one is to take a look at some red text I flagged on two pages, 11 and 16, the drafts need to come out. The second is that our co-chair, Mathieu Weil, sent some suggested edits, which are in blue underline on many pages. I think they're generally pretty good edits but let's think of them as a group.

The third item is that Mathieu is asking us to consider adding a paragraph, a management summary. And then finally Adam Peak with ICANN staff I thought had a really neat idea to help manage the public comment process a little better because people that read the stress test may say, oh I've got one you didn't think of, an earthquake.

And before they put that into the public comment and force us to add dozens more stress tests, Adam's idea is let's do a do it yourself guide. Give people two or three sentences of explanation or guide as to how to do your own application of your contingency to the existing and proposed accountability

mechanisms. And hopefully that might discourage some of the comments requesting us to add yet more stress tests in the public comments.

So those are the four items on the email I sent last night that Cheryl that I think went via decent agenda. Cheryl, does this sound okay to you and everyone else?

Cheryl Langdon-Orr: Absolutely, let's just go for it.

Steve DelBianco: Great. So if go to Page 11 you'll see a Page 11 and Page 16 of the document I put in red some text that has been there for goodness I guess two or three months which is a proposed measure - and this first emerged in Frankfurt - a proposed measure that would be prescriptive. It would stop ICANN from exceeding its mission statement in the amended bylaws.

If you remember it was Malcolm Hutto who had wanted something that was very strong and would indicate that ICANN could not and should not. I know that we allow a reconsideration and an IRP and the IRP uses the standard of review, the mission statement and core values.

And that kind of a review is different than a flat out prescriptive measure against exceeding limited technical mission. But I didn't want to just take out this red text because some might interpret that what we've done in the bylaws with the core values, maybe it amounts to that, a prescription.

So let's take a queue on that and see whether we should take out the red text or leave it in. It's on two pages, 11 and 16.

Cheryl Langdon-Orr: Don't be shy, people.

Steve DelBianco: If you remember from the last version of the big document, full draft proposal version 4, on Page 29 of that document, it says, quote, this is in Mission Statement for ICANN. It says, "ICANN shall not undertake - ICANN shall not undertake any other mission not specifically authorized in these bylaws."

So I would call that proscription. And it is in the bylaws. But what is it that would trigger that limited mission statement to come forward? I guess it would take a reconsideration or an IRP to challenge them. Jonathan, go ahead.

Jonathan Zuck: Hi, Jonathan Zuck for the record. I guess my inclination is that the review process is (unintelligible) here rather than our attempt to predict the future and what it is that ICANN needs to be doing. I mean, you know, I mean, silly examples like (time) zone database and things like that that come up suggest that we don't need this level of proscription and that the community review and review processes are really that we're after more so than tying our own hands in the future.

Steve DelBianco: Thank you, Jonathan. Would it - in the two sections where this red text appears would it be - I'll propose an alternative. I could actually quote the line from the proposed mission statement that ICANN shall not undertake any other mission not specifically authorized in these bylaws. And I could quote that as the standard of review that would be particularly instructive to the IRP or reconsideration. What do people think about that?

Cheryl Langdon-Orr: Jonathan, your hand is still up. Cheryl here. Is this a follow or a response?

Jonathan Zuck: Sorry, old hand. I think that makes sense, Steve.

Steve DelBianco: That way we don't make it seem as if it's another mechanism or power, it's simply clarifying that the two king powers we've talked about can rely on

specific language in the mission statement as their standard of review. Cheryl and others, no objection?

Cheryl Langdon-Orr: So Steve, just to make sure everyone is clear what they're not objecting to, they're not objecting to the removal of the red text, which is currently shown on Pages 11 and 16. And that new text is added quoting the standard of review as per the bylaws.

Steve DelBianco: Exactly. And it would be a new sentence right at the end of the one that quotes the standard of review and the amended mission and core values. It's really just giving an example of the kind of a statement we'll use to limit mission creep.

Cheryl Langdon-Orr: Terrific. So I'm personally very happy with that and I'm giving you a great big green checkmark. If anyone objects speak now or I would suggest holding your piece will be equivalent to the green checkmarks that I'm seeing from (Par) and Jonathan and myself. Steve, I'm assuming you're happy with your own proposal. So okay, sounds like we have if not unanimity a good indication that that's the way to go. Okay, next, Steve.

Steve DelBianco: Great. Thanks, everyone. Why don't we move to the second item in the agenda. And here we want to whip through our stress test document looking at Mathieu Weil's suggested edits in blue. And take a queue on each one to see whether we want to accept the edits.

The first one appears on the bottom of Page 3, if you're following along in the Adobe with respect to the stress test on corruption.

Cheryl Langdon-Orr: That's Stress Test Number 9, everybody.

((Crosstalk))

Cheryl Langdon-Orr: Probably best you read it to the record, Steve.

Steve DelBianco: Sure.

Cheryl Langdon-Orr: Jonathan is just agreeing, really, so that's an easy sell.

Steve DelBianco: Yeah, right at the bottom of the column under Proposed Measures in the incident of major corruption or fraud. Mathieu had wrote, "Finally if the board was involved," which I think it should be were involved, "where if the board did not act decisively in preventing corruption or fraud, for instance, by reinforcing internal controls or policies, a proposed measure empowers the community to remove individual directors or recall the entire board."

So on most of these stress tests spilling the board, the nuclear option, is certainly a potential accountability mechanisms. We've never regarded it as a very usable one, it's sort of a last resort nuclear option. So I don't believe that we as a team wrote it in to every single one of the 26 stress tests.

That was a stylistic choice. I guess we could have done so. Mathieu is trying to bring it up specifically here. Perhaps he felt that we needed more mitigation on Stress Test Number 9 on Page 3, I don't know for sure. I have no objection personally to adding a statement. Does anyone - maybe we should do it this way, Cheryl, does anyone have an objection to the statement or a correction?

Cheryl Langdon-Orr: So first of all, Cheryl for the record, if you just want to - anyone who has any proposed modifications to the text that you see added in blue on the bottom of Page 3 with Stress Test 9 now is the time to propose that. I've got typing coming in from Avri, she may have new text.

You can just speak up, Avri, if you're not having problems with audio. Avri says, "If we're going to include spilling the board we might as well include the long arm of the law."

Steve DelBianco: It's true, true, Avri.

Cheryl Langdon-Orr: That is very true. Jonathan is counter-typing. Oh dear, I'm going to spend this - in the middle - his response to that is that's the middle column. All right so the proposal as she is writ at the moment in Column 3, bottom of Page 3, as Steve has just outlined, what you're being currently asked is if you have no other additional text then indicate if you have an objection. You could put up a green tick if you want to, I'm certainly going to to be very affirmative.

But if you need to note your objection to that text do so now, if not that text will become accepted. That's the blue text, bottom of Page 3, Stress Test 9. I see Rudi not objecting. And Jonathan are typing. Just like to see what they say. Jonathan is agreeing. And (Par) is agreeing in text that that's fine. Looks like that one is also sold. I think we move to the bottom of Page 5 next, don't we, Steve?

Steve DelBianco: Yeah, we have five of these to get through so let's move briskly. Bottom of Page 5, on the Conclusion line and this is the Stress Test Number 11 regarding compromise of credentials. The bottom of that column Mathieu believes that we should say - what we had already written was the words "proposed measures" in combination it would be helpful to mitigate the scenario but not prevent it. You can never prevent being hacked.

So he proposes adding the word Work Stream 1 - proposed Work Stream 1 measures in combination would be helpful to mitigate but not prevent. And

then he goes on to say Work Stream 2 suggestions might provide preventative mitigation measures. And I don't think that makes sense. You might say preventive measures but not preventative mitigation, right?

Cheryl Langdon-Orr: One or other I guess, yeah.

Steve DelBianco: Yeah, okay. And he means preventive, because as you know, in the column just above here we had used Mathieu's suggestions of annual external security audits for Work Stream 2. You see the text that says suggestions for Work Stream 2? I believe that's what Mathieu is referring to and those were suggestions he had offered us many weeks ago.

Cheryl Langdon-Orr: Yeah, we're talking about risk minimization...

((Crosstalk))

Cheryl Langdon-Orr: ...here as a exercise. So let's first of all...

((Crosstalk))

Steve DelBianco: And the clarification is the distinction between things that are provided in Work Stream 1 versus Work Stream 2. And we don't do that very often on many of our stress tests so I think it's probably productive to do it here.

Cheryl Langdon-Orr: I certainly agree with it in principle, Steve. Cheryl for the record. But let's first of all ask if there's anyone who would propose any particular changes to that text. And I certainly think getting rid of either the word "preventive" or "mitigation" needs to happen. So not particularly clear which goes.

Steve DelBianco: Yeah, I think we have to take "mitigation" out because the two items he's referring to in the text above are preventive.

Cheryl Langdon-Orr: Yeah, okay then. So we've already got a minor edit there so what we're going to call for - Jonathan, you're suggesting...

Steve DelBianco: Any objections?

((Crosstalk))

Cheryl Langdon-Orr: ...we use the term "risk mitigation" is that what you're saying or Avri has also proposed "further mitigation."

Steve DelBianco: Folks, I mean, but mitigation is something you do after the fact.

Jonathan Zuck: Well risk mitigation isn't after the fact. Preventative is - might - it just might be too strongly worded. I mean, we could be completely splitting hairs here and I apologize but the Work Stream 2 measures I think - the technical term for them when in fact the mitigation of risks, not - it's not mitigation of outcome but mitigation of risk and whereas preventing isn't...

Cheryl Langdon-Orr: Much grander.

((Crosstalk))

Jonathan Zuck: That's all. But either one is fine.

Steve DelBianco: I'm happy to go with risk mitigation measures.

Cheryl Langdon-Orr: Yeah, and Rudi is saying, "Remove preventative does not make sense to me."

Steve DelBianco: That's right.

Cheryl Langdon-Orr: We're suggesting, Rudi, that we can't actually prevent, all we can do is minimize the likelihood of. And a currently-proposed sentence would read, "Work Stream 2 suggestions might provide some risk mitigation measures."

To see what Avri is contributing in typing. She's okay with - sorry, Rudi is okay with risk mitigation, that's great. All right looks like we've got some modified text. Is there anyone who objects to that modified text? Avri is checking the dictionary. And she agrees with Jonathan and certainly my language that mitigation can be anticipatory so we even have the blessings of an authoritative dictionary, I don't know whether we need to reference which one Avri is using but I'm sure it's an authoritative term.

((Crosstalk))

Cheryl Langdon-Orr: Great, okay. Jonathan....

Steve DelBianco: Page...

Cheryl Langdon-Orr: Jonathan, anyone who leaves their green checkmark up probably can't be believed to just automatically so next page. Thanks.

Steve DelBianco: Go to Page 7, it's risk - it's Stress Test Number 21. And Mathieu is aware of the reality here is that neither CWG or CCWG are doing anything to help the ccTLD manager fight a redelegation or revocation or reassignment. And we are acknowledging it in plain text. I put that - I put text in this Page 7

indicating that the CWG recommends not including, and that is a quote from the CWG paper, I guess I should put the second set of quote marks, he moved them.

What Mathieu inserted was another sentence from the CWG. And as such I have no objection there. It's really meant to show that it's not the last word on this topic, is an expectation that an appeal mechanism developed by the ccTLD community through the appropriate processes might be what provides relief in this case.

So it may be foreshadows that there could be more to come. And then Mathieu picks up on that in the very last line of this column under the Conclusions where he adds, comma, "Until the appropriate processes develop the appropriate mechanisms" - an appropriate mechanism.

So I'll fix a couple of his grammatical glitches but are there any objections to these additions?

Cheryl Langdon-Orr: Steve, Cheryl here. I'd actually leave it "the appropriate mechanisms" rather than "an" it may be a suite or a set of mechanisms but so let's not limit ourselves to the singular or the plural in the last part.

Steve DelBianco: I'll just say "develop appropriate mechanisms," how about that?

Cheryl Langdon-Orr: Yeah, that's better.

Steve DelBianco: Okay.

Cheryl Langdon-Orr: So with that minor tweak ladies and gentlemen, I'd like to ask for anyone else who wants to make any suggestions to that text. That's our text on Page 7,

there's two sections of text both in blue in your document on the Adobe Connect room. Certainly I'm very comfortable with that now to quote the Framework of Interpretation conversations it gives then color to it. Did I hear your voice, Avri?

Avri Doria: Nope.

Cheryl Langdon-Orr: Nope.

Steve DelBianco: Okay, everyone, let's move to Page 12, one more edit here from Mathieu, Page 12, Stress Test 13. This is the idea that one or more stakeholders are given the ability to paralyze ICANN through repetitive, vexatious IRP and reconsideration requests, they may even document disclosure requests.

We had noted in our conclusion the proposed measures may need to distinguish community powers from those available to individuals. And I would suggest we did not do that. We didn't make a distinction. I brought this up on yesterday's broad CCWG call that wasn't entirely clear in the document that standing is available to the community.

The lawyers chimed in on the chat to say that it is but I believe they'll be making a bit more explicit that the community of members would itself have standing to file an IRP or reconsideration. But by making IRP and reconsideration so much easier and accessible having ICANN spending its money on a standing panel, we're going to do reduce the cost and reduce the barriers to filing IRPs and reconsiderations. Does that lead to a situation where we get somebody who doesn't like a change being able to paralyze things?

So Mathieu is adding a sentence saying, "It should be noted that the proposed recommendations include the ability for the panels to dismiss frivolous claims in attempt to limit the duration of appeals or reconsiderations." And that's part of what Becky Burr's group had put forth on the reconsideration and IRP.

Maybe the word "appeal" or "reconsideration" is that technically true or should it say "reconsiderations and IRPs"? Is the word "appeal" really belong there? Do we have an appeal someplace in our document?

Cheryl Langdon-Orr: I note Sam Eisner is typing and I'm sure she'll clear us up on that.

Reconsideration and IRPs is the text she's proposing. That's good. Thanks.

((Crosstalk))

Steve DelBianco: Yeah, I think so too.

Cheryl Langdon-Orr: Yeah. Okay so we now have some modified text to consider in that top box under Stress Test 13 on the third column. Do you want to deal with that before you go to the Conclusion section, Steve? And I note Sam's got her hand up.

Steve DelBianco: Go ahead, Sam.

Samantha Eisner: Hi, this is Sam. And it's not directly about the edit that we just made but it's - I think that the concern I was raising on yesterday's call but I don't yet have language for goes to this one too because it - you can paralyze ICANN in any way. And so it's the issue of I was specifically referring to yesterday that the individual member rights versus the collective rights that are being associated so I was hoping to see some information from the attorneys just to harden some language.

I'll be on the legal sub team call later to see if I can get a little bit more specific information from them about a couple of areas that I had some concern. And then once that's completed I might be providing - that's for the additional language come from, I think we should consider it in this one as well as in the general capture.

Cheryl Langdon-Orr: Cheryl here...

Steve DelBianco: Sam, thank you for that. And we had the concern yesterday on this particular one. Do you believe that it's even conceivable that we'll end up restricting an aggrieved individual's rights for reconsideration or IRP versus the collective?

Samantha Eisner: No, if there is an individual that believes that they're impacted in a way that they can bring an IRP or reconsideration request I don't think that you can constrict it beyond the words that Mathieu pointed out, you know, your - the internal building of requirements for checking for frivolous or vexatious uses of the system.

Steve DelBianco: There was one other suggestion in the text just above the blue which we wrote two months ago. I'll give you folks a minute to read that. It says, "The standard of review may need to be adjusted based on whether the community or an individual sought the review/redress." I don't think that ever happens. Is that a candidate for removal as well? This is the black text just above Mathieu's blue.

Cheryl Langdon-Orr: Avri's got a green checkmark there. I'm more hesitant to remove that until Sam is in a position to introduce some of the language that she's hoping to get out of the legal counsel.

Samantha Eisner: So my sense, Cheryl, is that specific issues about the paragraph that Steve pointed out won't be - won't be there. That anything I get from the attorneys won't address that concern because I think Steve's right that we have not identified different standards of review for if it's an individual exercising - an individual coming or something that it or he or she believes to be a specific infringement or a material effect on them versus the community's coming together to identify a material effect on the community.

We don't have the (unintelligible) and so I don't know if we - if that's something we want to build in as a future text because we did that a little bit with Mathieu's edits on the previous one. But it's not something that exists today or would change in the next four hours.

Cheryl Langdon-Orr: Avri.

Avri Doria: Yeah, hi. Avri speaking. Yeah, I'm - I obviously did not speak on this earlier but I'm a late arrival to this whole group. I would have a problem with us creating a different standard or restricting one versus the other. If anything, you know, we may want to say that Work Stream 2 wants to review this as time goes on and see if there are needs. But I certainly would not recommend putting in any in the Work Stream 1 type of work. Thanks.

Cheryl Langdon-Orr: Okay. So, Steve, what I'm hearing here is at least two separate things. First of all I'm not hearing any rejection of the text in blue, the editorial text we started with in Column 3 Page 12 for Stress Test 13 which is noting that the proposed recommendation of the CCWG include the ability for panelists to dismiss frivolous claims, etcetera noting that that language has changed now to say "reconsideration and IRPs."

But I am hearing that there may very well be an argument to remove that sentence immediately before that which was previously accepted text based on what Avri has just said and that Sam has outlined. So if we remove that and let me know if you don't think we should remove that, that a Work Stream 2 sentence would be beneficial to add in that column. That's my current take on where we are now, Steve.

And I see Avri, your hand is still up; did you want to respond to...

Avri Doria: Yes, I put it up again. Thanks. This is Avri. You may just want to change that sentence to the standards of review may need to be, you know, reexamined in Work Stream 2 based on usage, you know, and just leave it at that as opposed to trying to do it - so you don't have to actually remove, you could just modify. Thanks.

Cheryl Langdon-Orr: Thanks for that, Avri. We would however need to reposition I would think to keep in the context that we'd had previously.

Avri Doria: Okay.

Cheryl Langdon-Orr: So we would then reposition it talking about Work Stream 2 as the last thing. Steve, back to you.

Steve DelBianco: Yeah, at some point weeks ago we would construct our stress tests and if they indicated that we needed to add or improve the measures we would quickly inform our colleagues. And if you recall there are at least two items that are in the recommendations because the stress tests suggested that we needed them, Stress Test 18 and Stress Test 17.

In this case, it's probably better to remove the sentence that says the standards of review may need to be adjusted. We were referring to the adjustment of the text that would show up in Work Stream 1. We weren't referring to sort of downstream adjustments, which downstream adjustments are true for all of the mechanisms that are being proposed, the IRP, the reconsideration, spilling the board, blocking the bylaws, blocking the budget, blocking a strat plan. It goes almost without saying that after they're implemented, yes they could be changed.

We're not - it's probably not necessary to have that sentence anymore because our colleagues over in the IRP reconsideration team are not, in the next four hours as Sam said, are not going to create two different standards of review.

So I would go with Avri's original suggestion to take that sentence out and let it flow from where we have raised a concern that starts with, "however" and ends with, "their ability to block implementation of policies and decisions" and then flow right away to Mathieu's sentence that if in fact it's a frivolous claim that we do have IRP and reconsideration powers to dump a claim if it's frivolous.

But, I mean, I don't think we should start heading down the path of anticipating flaws in what we've done with an eye towards Work Stream 2 adjustment, it wouldn't just be Work Stream 2 adjustment. It literally would be forever that if something is not working the community has the ability to provoke changes.

How does everyone feel about that? We drop the standards of review sentence and just bring Mathieu's point right up against where we raise the concerns. So we raise the concern, we mitigate it to some extent.

Cheryl Langdon-Orr: Jonathan is a green as (Par). Rudi has agreed.

Steve DelBianco: All right.

Cheryl Langdon-Orr: Steve, unsurprisingly, has agreed with himself. And I'm a little ambivalent as to whether or not I should push for a mention of Work Stream 2 or not. This, I think, the absence of being mentioned here doesn't mean that it won't happen so I'm probably okay to let that slip and not have a future work reference there.

((Crosstalk))

Steve DelBianco: If you look at the end of the...

((Crosstalk))

Cheryl Langdon-Orr: Go on.

Steve DelBianco: Cheryl, at the very end of the document we reviewed last night where Work Stream 2 is described, the items in Work Stream 2 are not dotting the Is and crossing the Ts on Work Stream 1 measures, instead they are...

((Crosstalk))

Steve DelBianco: ...new measures that we have acquired the powers to do, the transparency and disclosure requests, enhancing the ombudsman's role.

Cheryl Langdon-Orr: Yes. But in terms of our stress tests with the removal of the standard of review commentary a balancing point may have been mentioning that we

could have future work done under Work Stream 2. But I will begrudgingly go along with not having it there, that's fine.

What I did want to ask, however, is I note Sam and others use language frequently which has frivolous and vexatious as terms that are coupled. And I note that we only have frivolous mentioned in the material edits. So I just wanted to before we finalize that text and the removal of the sentence above ask, and I suppose specifically ask Sam, should we be adding vexatious into that sentence or not?

Steve DelBianco: Let's look at the actual proposal that we reviewed last night in version 4 and see what words they used because at this point we're being descriptive of things that we're proposing as opposed to normative about what they should do.

Cheryl Langdon-Orr: I assume you have that in front of you somewhere, do you Steve?

Steve DelBianco: Somewhere in this 98-page document.

Cheryl Langdon-Orr: Because I've got to tell you, I don't.

~~(Sam)~~: Samantha Eisner: I agree with Steve, that we take it to the language that's within the proposal.

Cheryl Langdon-Orr: Whatever it actually says.

(Sam Eisner): (Unintelligible) Yes. I just like to say the word vexatious so I just use it or whatever purpose.

Cheryl Langdon-Orr: Oh okay. So it's a favorite word of ~~(Sam)~~Samantha's. But I can say you're not the only one who tends who - yes, and as Avri points out, frivolous and vexatious are very different things. And I often hear them coupled together in this sort of sentence. So let's agree to say exactly whatever it says in version four of the master document but perhaps note for our future identification that there may be the wonderful opportunity to use the term vexatious again in some future point in time.

Avri's just typing. We'll wait to see what she's - no, she stopped typing. Yes we are. The dictionary - she's got the dictionary to hand here. Is it - the dictionary says that vexatious is a trending word for definition searches. Well that's interesting. I'm not sure that's helped me one little bit at all. Avri, thanks for that -- not.

Right. We're not going to specifically add the term vexatious in. We will make sure that the language matches exactly what it says in version four. And with that, seeing no objections and you've managed to twist my arm on the Work Stream 2 commentary, I think we need to then move to the conclusion part C, column 3 on that same page, Steve.

Steve DelBianco: Yes and before we move to that, I've been running through the discussion of IRP, and I'm not seeing it. So if we go through document and it isn't in there at all, we need to take that out. In other words, Mathieu's text won't even survive if we can't find it in the document. I need some help with this. You all have the document. It begins on pages 40 through 44. The way this is organized, it's nearly impossible to find what you're looking at.

Cheryl Langdon-Orr: It sure is. And I'm using - I've been also doing a word find is even more complicated.

~~(Sam)~~:Samantha Eisner: So ~~(Alice)~~Alice has some identified syntax that includes - it says, "Panel may provide the (unintelligible) v-shifting in the event it identifies the challenge or defends as frivolous or abusive."

Steve DelBianco: Fantastic. What page? ~~(Alice)~~Alice, what page is that on?

~~(Alice)~~:Alice Jansen: I'm actually using one of my clean versions. It's in the IRP under accessibility and cost.

Cheryl Langdon-Orr: Okay. The main thing is that's the language that's there. That's the language we should ensure is reflecting in modifying Mathieu's edits.

Steve DelBianco: Right. So we'll only use the words they use, regardless of how trendy it is to say vexatious. I got a chance to say that again.

Cheryl Langdon-Orr: We could put this to BINGO card for future ICANN meetings and see if we get vexatious into the BINGO.

Steve DelBianco: ~~(Alice)~~Alice, is it also reconsideration?

~~(Alice)~~:Alice Jansen: Let me check. Yes it is in the end of the review paragraph.

Cheryl Langdon-Orr: Perfect.

~~(Alice)~~:Alice Jansen: I think it's - yes it is. It is.

Cheryl Langdon-Orr: All right, Steve. It looks like we're sold with that part. And we can move onto conclusion.

Steve DelBianco: All right. So frivolous and abusive will be the words and we'll quote from both. Now at the very - this is the last in line edit from Mathieu. From the conclusion of this column, we're being remit by saying proposed measures, and by that we mean Work Stream 1 may need to distinguish community from those available to individuals. And I agree with ~~(Sam)~~Samantha, the likelihood of that happening in the next several hours with the legal team is zero.

So we need another way to conclude whether or not the proposed measures are, you know, adequate to give the community the accountability we need as well as, you know, a significant improvement over existing measures. So Mathieu notes in a comment -- it's not in the text in from of me because he did it as a comment -- where he said - he suggested changing our conclusion to this: proposed measures have both positive as well as negative impacts on the mitigation of the scenario.

I don't love that. I don't love that. It would be better if we could state a conclusion here as to whether we believe the proposed measures improve the community accountability and whether they leave open a concern that hasn't been addressed. So what - let's open a queue to take on board what should we have in the conclusion, bottom right-hand cell. ~~(Sam)~~Samantha, I see your hand up.

~~(Sam)~~Samantha Eisner: So I think - I'm supportive of maybe tweaking Mathieu's language a bit. Capture's a really important concept, but then there's also a - there might also be the need to put in there that it's not fully in support of accountability if you take too many measures to limit individuals' ability to access.

So do I think that we took every opportunity in order to discourage people from using the accountability measures this way? Probably not. We don't have

in there issues of some sort of penalty or sanction, whether that be a penalty in monetary notes or otherwise. We could - there may be other ways that we could help address this but also use to balance any of those against the goal, right? If your goal is to create accountability mechanisms, if you at the same time limit them, you might not be achieving your goals.

So I don't know if we'd want to have some sort of language like that as well tied into Mathieu's language that while there are places where this is trying to be addressed, this concern is trying to be addressed through the recommendations, this was one where placing a lot of restrictions over it would have actually been counter to the work of the CCWG.

One of the things that we've seen throughout all the stress test is we've never agreed to full mitigation or we've all agreed that in most cases, full mitigation is not possible. And this is one where the lack of possibility of it is probably a good thing for the fact that we're not disempowering all the powers that we're trying to create.

Cheryl-Langdon-Orr: Okay, ~~(Sam)~~Samantha. So Cheryl here. So if we were to take the comment text whereby Mathieu said proposed measures have -- and it should probably be limited by may have -- both positive as well as negative impacts on the mitigation of this scenario.

Steve DelBianco: Cheryl, I proposed new text in the chat. What do you think of that?

Cheryl Langdon-Orr: Okay. So Steve's text in the chat is as follows. "Proposed measures would reduce risk by supermajority requirements and by dismissal of frivolous or abusive recommendations requests in IRPs."

Steve DelBianco: It's simply a factual statement on what we believe Work Stream 1 has in it to reduce the risks. It's not particularly conclusive. It's not a conclusory statement to suggest that they are adequate. We don't know.

Cheryl Langdon-Orr: And if it's positive or negative as such, but simply stating that it is what it is. ~~(Sam)~~Samantha, what are you going to say? Are you just going to keep us wondering what you're going to type? You could just speak up.

Steve DelBianco: Yes it's like 4 o'clock in the morning for ~~(Sam)~~Samantha.

~~(Sam)~~Samantha Eisner: Yes, the brain's quite fine where it should be normally. We - should we add in a sentence possibly that individual usage of the accountability mechanism should be - are expected to be tempered by those acting in accountability to the community as a whole?

Steve DelBianco: I don't know what that means though. I mean an individual can't do anything with a supermajority, but the individual is going to have standing.

~~(Sam)~~Samantha Eisner: An individual will have standing but people's invocation of their standing - we expect people to use them in a way that's accountable to the community.

Steve DelBianco: I know but how do you enforce that, that expectation?

~~(Sam)~~Samantha Eisner: Yes, there's no enforceability of that other than getting into the frivolous or abusive.

Steve DelBianco: Which is why I have it in there.

~~(Sam)~~:Samantha Eisner: Yes, I like the language that you proposed, Steve, but I also support the sent from Mathieu that we need to forecast that there's a bit of this that's unsolvable. Theirs is the positive and the negative.

Cheryl Langdon-Orr: Well could we in fact -- Cheryl here -- could we in fact use some of that suggested language from Mathieu as a follow on to your far more clear and explanatory sentence, Steve? I don't know. Steve's typing so he's undoubtedly doing exactly that.

So what I was suggesting is where your proposed language finishes abusive recommendation requests and IRPs have a follow on, so comma, and as such may have positive as well as negative impacts on this specific scenario or on this scenario, something along those lines. Now I've got ~~(Sam)~~:Samantha and Steve typing. Guys, there's not that many that you can't just speak up.

~~(Sam)~~:Samantha Eisner: So I don't think that the positive and negative impacts come from the proposed measures. I think there's a period after Steve's sentence. And then the continuation of Mathieu's thought.

Cheryl Langdon-Orr: Okay. Well I'm fine with that because as Steve knows, having worked me a bit recently, I don't use the full stop at - even when it clearly supposed to be there. It's almost as if it's, you know, a grammatical anathema to me, so.

((Crosstalk))

Steve DelBianco: ...a new proposal in the chat. And I took out supermajority. (Rudy), to your point, supermajority is about the community invoking its standing as supermajority is required for the community to block a budget, block a bylaw or veto a strat plan. That's in the first paragraph in this column. I'll leave that

out because I know really what we're really talking about is the review and redress mechanisms.

So what if we capture the fact that the proposed measures could increase the risk of individuals paralyzing ICANN processes which is mitigated by dismissal of frivolous or abusive reconsiderations in IRPs. So that's a statement of fact.

Cheryl Langdon-Orr: (Unintelligible) But Avri has her hand up. So maybe deal with Avri's clarifier first.

Avri Doria: Yes this is Avri. Thanks. I guess I wanted to quibble about the word paralyzing. It could overload them. It could interfere with them, but paralyzing seems strong.

Steve DelBianco: Paralyzing is in - it's in the stress test, Avri. It's in column one that we use the word proposed by whoever it was that proposed the stress test. That's the only reason I used it.

Avri Doria: Okay. I understand that, and in general one may worry about paralyzing but I guess I'm slightly stressed at the use of if we let the individuals do too much then they are going to paralyze the system notion. And so, and what we put in the response I would recommend that we use something a little less extreme like, you know. There's a possibility that they are going to overload it without being frivolous and vexatious, and we'll find out about that later. And it won't paralyze it, it'll just move slow.

Cheryl Langdon-Orr: Avri, can we replace, in Steve's most recent language, the term paralyzing, which if we were to use anyway should be in quotes because that's how it is

even in the stress test, remove paralyzing in that language and simply put in the term like affect? So affect ICANN's processes.

Avri Doria: Affect is even is softer than overloading. I'm fine with that.

Cheryl Langdon-Orr: Steve, would you take that as a friendly amendment?

Steve DelBianco: The word effectively paralyze or affect?

Cheryl Langdon-Orr: Just affect. Take paralyze out of the conclusion language. So I find myself then...

~~(Sam)~~: Samantha Eisner: So I think that affect is too broad, because the purpose of it is - the purpose of any accountability mechanism is to have an effect on ICANN processes. So there's a risk that people will...

((Crosstalk))

Cheryl Langdon-Orr: ...come up with a word that isn't as negatively laden as paralysis.

Steve DelBianco: What about block?

Avri Doria: That's why I was suggesting overload.

Cheryl Langdon-Orr: Exactly how I'm feeling right now as I'm trying to get into my second call.

Steve DelBianco: I tried the work block in the text in the chat. What does that one look like?

Cheryl Langdon-Orr: Again that's pretty negatively - I mean.

((Crosstalk))

Avri Doria: ...I keep going back to a word like overload, and pardon me for keep jumping in but I'm the only one with my hand up. Is that what we're worried about in the processes. We're not, you know, and so what happens with the process is it gets overloaded or it gets - and then gets bogged down. But you're looking at processes and that's why a neutral term, you know, it's not bad or good to be overloaded, it's just an issue that has to be solved.

Cheryl Langdon-Orr: ~~(Sam)~~Samantha, do you object to overload?

~~(Sam)~~Samantha Eisner: So I've never seen us limited only to the issue of overload. There is the ability - Avri's right that there is the ability to overload the processes and just to turn back to the pejorative term to quote, unquote, paralyze ICANN because there is so many uses of the processes going on.

But there is a separate issue, which is there are ways to today and there will be ways still to use the accountability measures to actually keep ICANN from doing work, not just to keep them so busy on the accountability work but to use them in a way that you stop ICANN from moving forward on something.

So we see some of the - well if we just take it a level of example. Within the new gTLD program there are some applicants within the new gTLD program who say that other applicants within the new gTLD program are using the exiting accountability measures today solely to delay an inevitable resolution of a contention. That is a paralyzation of an ICANN process, when you have to stop action on something in order to allow the process to take place, right?

And we're not arguing that it's inappropriate in an accountability mechanism to stop action on the thing that is the basis of it, but continued usage or, you

know, coming back in - after there's a resolution or warning and coming back on another, there is way to actually paralyze the business and not just overload the business.

Cheryl Langdon-Orr: So that being said, okay I see Avri's hand back up in response. How about we to and fro between you just briefly, but ~~(Sam)~~Samantha I'm going to ask whether you can come up with a word that is perhaps less laden and in fact less limiting and specific as the term paralyze and one that is more in keeping with what you just outline in terms of overload and go back to Avri. Avri?

Avri Doria: Yes, I have a problem with that because normally those expressions, "Oh they're just stopping it from going forward" are made by the opponents of somebody that wants something else to happen. And so to accuse those people who are fighting their own battles, both side are litigants in this process even if only one of them is in the process against ICANN, to call that an ill that is trying to paralyze ICANN and its processes is still problematic for me.

Perhaps you want a word like interfere, and interfere can, you know, interfere in (unintelligible) sense is also neither positive nor negative, it just interferes. I don't know. But I'm really resistant of capturing the mania of the money boys in the gTLD process if things aren't going fast enough for them to reap their riches. To include that in this, just bugs me.

Cheryl Langdon-Orr: Understood, Avri. And I note then that ~~(Sam)~~Samantha has suggested improperly impede, and I'm predicting that you'll have a problem with the word improperly. But would you have a (unintelligible)?

Avri Doria: I think the word interfere is fine. I think even impede or interfere is fine. Improperly is a judgment to be made at the end of the day, and for us to

presuppose that something might be improper just gives people a weapon to beat other people on top of the head with.

Cheryl Langdon-Orr: So back to you then, ~~(Sam)~~Samantha. Can we live with just impede?

~~(Sam)~~Samantha Eisner: Yes I'm fine with that.

Cheryl Langdon-Orr: Steve, I think we have a resolution. We take out overload and we put in impeded.

Steve DelBianco: So what I've got in the chat, everybody good with this?

Cheryl Langdon-Orr: Yes. I'll even add a green tick as well. Well that's an excellent conversation. That's exactly the sort of rigor and to and fro and fine-tuning that we need to do to get this right. And I want to thank you all for the time you've taken in this exercise to do that. But we do have a little more work to do on this call, and, Steve, some of the participants weren't here at the beginning of the call when we agreed to basically go through your e-mail some eight or nine hours ago now as the agenda.

So they'll need to be brought up to speed on the intro language that's been suggested, as well as the second point which was the DIY stress test exercise. And, Steve, I'm having to join another call so I'm going to - I'm not leaving this one -- I'm in two calls at once -- but I'm going to particularly rely on you now, Steve, to manage the queue as well. But that's not going to stop me jumping in of course. So primarily, Steve, over to you for the rest of it.

Steve DelBianco: This call was scheduled for only one hour, and we are at the hour right now.

Cheryl Langdon-Orr: I thought it was 90 minutes.

Steve DelBianco: The two items...

Cheryl Langdon-Orr: Sorry it's both -- actually looking at my calendar -- it's both 60 and 90 minutes, so happy to stop here, but we do, as you say, have two more items to deal with. See how you go.

Steve DelBianco: Yes the next two items will be very difficult to do without draft text in front of us. The next two items were that our co-chair -- this is in the e-mail I sent last night -- would love us to write a little bit of a management summary for the conclusion we reached with stress tests. That's not something we have tried to do before. We really set things up well. We do good details. We do conclusions on each and every stress test, but we don't have an overall conclusion as to what our stress tests have determined.

Mathieu's read of our work is that the stress test demonstrate that Work Stream 1 recommendation increase ICANN's accountability significantly and they do provide adequate mitigation measures relative to what was the case without Work Stream 1 recommendations. He wants - he would love us to confirm that some of the CWG proposals do provide a useful complement to CCWG measures, and we do not transform ICANN into a body that would be above the law, although I don't where he got that, and I don't feel as if we've ever discussed that term before. I'm less comfortable embracing that.

And then he notes that there is one stress test that we do not adequately address, and of course it's number 21, and that's just pointing out that it's one that isn't really covered. So without text in front of us, it would be highly unproductive for this group to try to wordsmith it. So I can take it on to draft a paragraph that picks up three of the four points that Mathieu is asking for.

And I suppose it would go at the beginning of the stress test table before you dive into the details. And I can circulate it by e-mail to this group for you to react to, on e-mail rather than wait for next Wednesday's call. I'll take a queue on whether that makes sense.

Cheryl Langdon-Orr: Well I'm going to jump in and say I think that makes perfect sense, especially if the rest of calendars say it's a 60-minute, not a 90-minute call. Would you like to indicate if you don't think that's a good idea by putting up a red check? If not, that's how we'll proceed I think, Steve. And then if you wanted just in a moment or two, because did start the call a couple of minutes late, indicate what is meant by this DIY and we'll need text put together for that as well.

Steve DelBianco: Thanks, everyone. And the final option on here is another one that requires some text, but I wanted to get a temperature for this group as to whether we think it's a decent idea. So Adam Peake, who's anticipating - he's a particular fan of our stress tests. He thinks they're really neat. And every time he explains to them to outsiders, he gets a great reaction. People really like the way we've done it.

However, people can't resist the idea of saying, "I think I've got another contingency you didn't think of." And when they do that, if the public comment period that ends in Buenos Aires finds the stress test team looking at 20 or 30 new scenarios and stress tests, I would predict that nearly all of them are addressed by the measures we have in the same way that what we've already covered. There's only so many ways you can cripple the organization with an external shock: financial, lawsuit, earthquake, whatever it is.

And it's Adam's belief that we could potentially give people a do-it-yourself guide, a few sentences, a few paragraphs that describe that as you can see the

new risks and contingencies, internal and external, here's a guide to examine the existing and proposed measures to determine whether the community accountability is adequate under the proposed measures.

And that would require us to put some prose in there that describes how one analyzes the proposed measures in the actual document to determine whether the community could right a wrong, the community could challenge a board decision, the community could block an expansion of scope, but making it clear that the community powers we're designing are incapable of preventing an external threat like a hacker, an earthquake, a financial crisis. These are external exogenous shocks that cannot be prevented.

And most of our stress tests try to determine whether the community can hold management accountable for the way in which it react to it. So I guess I'm practicing on you the kind of draft text that would go into a DIY and asking whether there are feelings one way or the other about whether we should add such a section at the beginning of the stress tests. Take a queue on that.

Cheryl Langdon-Orr: Steve, Cheryl's going to jump in. I see ~~(Sam)~~Samantha, but I see Avri's hand up earlier as well. Just check that Avri's - and her hand is back up again. There you go. Go ahead, one of you, Avri or ~~(Sam)~~Samantha.

~~(Sam)~~Samantha Eisner: Okay this is ~~(Sam)~~Samantha. I'm really supportive of doing a section like this. I think that one of the questions that we'll find is that there are many in the community and many people came to this process with specific concerns in mind, and, you know, we went through a lot of work with the entire CCWG and among this group to generalize the concerns and create the bigger buckets.

And people still come to the process with well this is a concern that I have. If this were to happen, how does this solve it. And so I really encourage giving people some tools of how to critically think that through. Because in the end likely you're right, Steve, that it falls right back into one of the buckets that we've created.

I think that, you know, if someone comes up with a stress test that we haven't identified, that's important to know too. Who knows? But I think empowering the community in a way that they can actually have some tools to take a specific concern that they have and bring into the process that we've used would be really helpful.

And one way to do that might be even to give an example of some of the - a specific concern that someone came to the table with, how that got translated into one of the buckets that we have and then how we've analyzed it again. Because we have a lot of really general stuff here, but from the work we've done we know where the specific issues came from.

Steve DelBianco: Thank you, ~~(Sam)~~Samantha. Avri?

Avri Doria: Yes this is Avri. In general I too am supportive of putting such a DIY. However, there's two things. Just like the - any wall we build, any measure we put in, creates new opportunities for abuse, it's just in the nature of walls, walls include the invitation to know them down or go around them, so to this kind of thing would be double-edged sword.

It would not only help those of us who innocently saw a new risk and wanted to say can this be handled, it would also assist those who wanted to find a way around the current litigations and barriers to figure out how to walk around it. So it's a good thing to do, but it, you know, opens up as many possibilities on

both sides of the coin. Perhaps that shows something more about deep set cynicism than anything. You know, just be aware anything we put in is a two-edged sword. Thanks.

Cheryl Langdon-Orr: The glass is full of those, Avri. Steve...

((Crosstalk))

Steve DelBianco: I owe the group two paragraphs. One is the management summary for stress tests, which is about the conclusions, and the other is the DIY. And what I'll probably do then is today I'll update to go to version 10.3 with all the in line edits that we did earlier in the hour. Then in the e-mail itself and in the document, I'll add these two paragraphs. And then, Cheryl, would it be okay for the stress test to have a - to be able to reply by Thursday's call or do we want to give more time? Thursday's call of the CCWG.

Cheryl Langdon-Orr: Yes. Look, let's try for the Thursday call of the CCWG, but that would still only be allowing us to bring the rest of the committee as a whole up to speed on this addition - those two additional pieces, which I think is fine. And I would still do a final signoff on that language at next week's stress test call.

Steve DelBianco: All right. Cheryl, let me ask, if the co-chairs are thinking that Thursday's big call takes us to the point of having something to published...

Cheryl Langdon-Orr: Well I tell you what, how about we get to where Work Party - with that once we ask them, and if we wrap up this call now, then we get into our coordination call and answer that question.

Steve DelBianco: All right, all right. So we'll talk to everybody in another several hours, because the Thursday call is going to be at middle of the night for those of

here in the U.S. So I'll to you all again in several hours, and thanks for all the great feedback and the great ideas.

Cheryl Langdon-Orr: Thank you, everyone.

Avri Doria: Thank you.

Cheryl Langdon-Orr: Bye.

Avri Doria: Bye.

Cheryl Langdon-Orr: The call can now be concluded.

END