

ICANN

**Moderator: Brenda Brewer
April 15, 2015
4:00 pm CT**

Coordinator: Recording started, you may begin.

Jordan Carter: Thank you and welcome everyone to this meeting of the accountability CCWG. I am Jordan Carter for the records. Welcome to the call. I think we have a couple of council with us for the first part of the call, considerably and hopefully from (Unintelligible). Now, I just want to start off straight away by explaining what the agenda is.

As you all know, we had a large legal document presented to us last week, which had all of our templates with a bit of legal advice about those powers under each of them. And on Tuesday we had a presentation from the lawyers on our powers in the CCWG forum. Now, because of the reality of that meeting while this Q&A discussion could go on for quite a long time.

First of all there were questions that I think people didn't get the chance to ask or hence to raise. And secondly it was clear in that call and that CCWG is far from agreement about the right mechanism to choose, and that's fine. And the implication of that is there is no way for us here in working party one to come to a consensus in recommending a mechanism to the community by Friday.

We just can't do it. We don't have the input. We haven't had the time to have the discussion and debate.

So, that's the reality we face and that's fine. And so in discussions with the co-chairs and the coordination that we had representative of co-chairs yesterday, very relaxed about that. They said okay, no it isn't realistic. Don't try to do it. We clearly have to have the ongoing debate and discussion in the CCWG, and so we will.

There's a CCWG call on Tuesday of next week, and then there is our intensive series of meetings on Thursday and Friday next week. All of that happens before we finalize the public comment report, the first public comment report. And so the purpose of today's devoting time to these Q&A items is to give more time for this group to ask questions about the legal advice and to make suggestions to the lawyers about what they think about that advice.

And what I expect is the council co-defense will take those questions onboard. I think that the written questions are going to be forwarded to council as well by the legal sub team. And let's be really clear on what we're trying to achieve with that. It means that there will be more feedback and more consideration given to the lawyers so that when we have the full CCWG meeting coming up next week, either on the Tuesday or on the Thursday, Friday intensive periods, they and we will all be in a better position to sign the discussion down to the really critical points, the really critical mechanism.

So, to recap the purpose of this Q&A section, items two and three on the agenda, is to be able to ask further questions of the lawyers, make further points to the lawyers, based on the document that you've already seen, that we already discussed on the CCWG or this call, and that is the purpose of them.

So we're not trying to make decisions. We're not trying to review text. None of that is on the table for this discussion. It is us being helpful to the lawyers, us having the chance to talk about issues.

And the debate on them will be in the full CCWG with everyone next week. And so that's what we're trying to do. I hope that's clear. We need to keep that to 40 minutes because I want to make sure that we've got time to look at the third draft of the public comment report. And as we go through that report we will, I'm going to try and take note to shepherd the discussion.

And after this call while we circulate the documents with sort of comment bubbles or chat exchanges that arise from the conversation, where in the end by the end of tomorrow's call we will hopefully have options where we disagree or least a clear understanding of where we disagree on the powers. So that is the agenda.

That is why we're trying to do a quick Q&A, so just to help the lawyers, give a chance to ask questions and from about ten minutes to the top of hour, in about 40 minutes, due to the end of the call and we'll focus our work on the public comment document that was taken about ten or 11 hours ago. So that is the agenda. All of the documents have been circulated and linked. They are linked in the agenda.

The documents are in front of us on the call, so I rely on you as participants to follow the reasonably straightforward instructions that I gave about where documents are, what you'll need to have read and so on. And I know that none of the material that we're looking at today is a big block of totally new content, so I hope that's okay. And now with that explanation Kavouss your hand is up, go ahead.

Kavouss? I don't know if you're speaking or not, but we cannot hear you.

Now we can hear you. Now we can hear you. Yes please talk.

Kavouss Arasteh: If I can talk please allow me to talk. If I cannot talk, please. Can I talk?

Jordan Carter: Please talk, yes. I hope you can hear me. Please go ahead.

Kavouss Arasteh: In every meeting that I have ever seen for any agenda item must associated documents, so relating with the question/answer, which document related to that? Is it the enhancing ICANN accountability, outside council review and recommendation, the document - is it that document? Which document related to that question/answer? Could you kindly answer that?

Jordan Carter: Kavouss? The agenda links directly to the document. The document was specified absolutely clearly in the agenda. For the first part of this conversation the discussion with council on the mechanism, the relevant document is the one that is the PowerPoint slide that they presented on the CCWG call on the fourteenth. That is what was meant on the agenda. The question you're asking has been perfectly clear in everything that I've presented.

And staff can you please put up the PowerPoint presentation that the lawyers spoke to on the CCWG call on Tuesday? That is the subject of the first Q&A. Be very clear the document that's on now is not the document we're discussing. If I've made a mistake, by the way in the links that I've circulated, I humbly and totally apologize. But I'm pretty sure that what I've presented is sensible. I've also just lost access to Adobe because my entire browser has crashed.

Man: Jordan we're not ahead of you because we're waiting some to be shared. The current Adobe is blank.

Jordan Carter: Josh you've got your hand up, could you make a comment?

Josh Hofheimer: Thank you Jordan. This is Josh. Just a quick question, is council taking questions now from the April 10 memo or from the April 14 presentation?

Jordan Carter: On the mechanism material, the most up-to-date insult in the legal was the presentation given on the fourteenth. That's what's now on the screen, and please staff you've got the right document up, can you please give store control over to the people who are participating? Thank you. So we can run these two together. I'm not too worried about the order, but please folks queue up with questions or comments about the mechanism first, preferably.

The specific powers that we're dealing with, we will go back to the long memo as links in the agenda for that. So please let's start speaking. Let's get it going. Rosemary has to leave at half past the hour. The sooner we get into the substance in this the better. If there aren't questions that you want to ask on the phone, that's fine we can move onto another agenda item.

But I've got a speaking list here and it'll ask you question, little insights you've got for the lawyers, but preferably at this point in the agenda it is the mechanism stuff. So I'll take Josh you should take your hand down. Robin? Go ahead.

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

Jordan Carter: We can hear you.

Robin Gross: Great. Okay. So, I have a question, as we've been discussing one of the things that I've really been struggling to understand are the different advantages and the different disadvantages to the two models that we're looking at right now, the empowered designator model and the membership model.

So I'm wondering if council could just give me their conclusion as to what would be the strongest reason to select each model, and what's the biggest problem that you would foresee with selecting each model? And I think that might help us in some of our evaluations going forward. Thank you.

Rosemary Fei: Would you like us to respond? This is Rosemary.

Jordan Carter: Yes, I would like a reasonably free flowing and back and forth with you guys on this. Cheryl says this is on Page 16, but go ahead and further things Rosemary.

Rosemary Fei: Yes. So I would say that the biggest, looking just at a designator model or a membership model, the biggest advantage in my mind of the membership model is also in some ways its weakness. This is not going to surprise you, which is that there is an extensive statutory framework of rights and protections of members in the corporation's code.

The advantage to that is that the corporate law gives members a lot of rights or can easily be given rights under bylaws if not under statute that cannot be given to designators as easily, or at all in some cases. It's absolutely prohibited in some cases, so there's a whole set of them and some of them are important to you in terms of what you want the community to be able to do.

And so that the biggest advantage of membership is that those rights are built into the corporate law and easy to give you, and we can point to a statute that

says you have them, so that if we ever do have to get to an enforceability issue, it's pretty clear that the statute provides you these laws. We don't have to turn to a contract.

The downside of the membership model is this extensive framework of statutory rights and protections, which will have to be built into your bylaws or should be because these are rights that members have and they should. They're going to have them under law whether you put them in your bylaws or not.

We always think it's a good idea that everyone's on a level playing field, so we would advise putting all of these kinds of protections and rights directly into the bylaws where everyone has access to them, rather than keeping them hidden in the corporation's code for only those who know to go and look.

So to me those are probably the biggest advantage is you get a lot, it's designed to be a structure where the community has power even over the board. Whereas, the weakness is because of all of that there's a lot of procedure and there's a lot of detail that would have to go into your bylaws.

The biggest advantage of the designator structure is probably avoiding all of that. And the biggest disadvantage of the designator structure is that because corporate law does not give third parties that kind of right that are provided for members in the statute, then we have to look to some other way of getting at those rights to make them enforceable, which looks to contract at that point.

Now, I want to make one other what I think is a very important point, which is that, and I said this the other day. I'm not sure who was on the call where I said it, so it bears repeating in case some of you haven't heard it, which is that the California corporation's code allows you to put in your bylaws any

provision for the management of the corporation that you want internally unless it is in one of these areas where it's just flat out prohibited by the law.

So, if the question is, is it legally viable to put in some procedure that you want the corporation to follow and the various components of the corporation to follow, in terms of reconsideration or whatever it is that you want. Unless we tell you it is illegal in California and a non-profit benefit corporation to put that in, you can put it in. Then the next question is, if people refuse to follow the bylaws, what recourse would the people who want the bylaws followed have?

And that's when we get to the question of enforceability, and I don't want you to think you can't have the procedure that you want or the process or the mechanism, when maybe you can have it. It's just that is someone decides not to follow it within the system, you may have a more difficult time forcing it to be followed in a designator structure than in a membership structure.

So I think I tried to answer Robin's question.

Jordan Carter: Thanks Rosemary. I think that was a good explanation. To get these questions and answers flowing, I'm not proposing that we will debate all of the answers but we will have a chance to debate these topics on the full CCWG. Just a reminder this is Q&A, we'll carry on with the speaking list. Avri? You're next. Thank you.

Avri Doria: Thank you. This is Avri speaking. My question has to do with something that I've never understood, and it's the whole processes that we go through in this country. Now, and I'm not sure I even understood correctly, if the (unintelligible) become associations I understood that there was some kind of

liability associated with that. I didn't quite understand to what degree that was, so I want to give an example to see if that fell within and without.

And forgive me for this to be of my example. But let's say the GNSO designed a GTOB policy that everybody hated and that various people believed was responsible for them losing millions of dollars. Could they be sued for this? The second part of the question is do both of the models require creating these associations, or can the designator model work with just what we've got now? Or would there also need to be this formalization? Thank you.

Rosemary Fei: May I answer that second question first, and then I think I would defer maybe to Holly's team on the suing, although we could give you our views of it?

Jordan Carter: Go ahead.

Rosemary Fei: I'm sorry now I've forgotten the question.

Woman: Unincorporated association.

Rosemary Fei: Yeah. Do you mean unincorporated association?...

((Crosstalk))

Rosemary Fei: So, the California corporate law requires that members be legal persons. So for the membership model we need legal persons. That's a full stop. For the designator model, it is our strong advice that you have the designators be legal persons. We would not advise creating a structure with designators that were not legal persons simply because then you have no legal entity that could ever enforce anything under the bylaws or under a related contract.

So right now you have bylaws that have designators that are not legal persons. Let me point out that that's worked for you for a really long time. So maybe you don't care about the enforceability that you get with having legal persons, especially because having legal persons will bring with it other issues and complications, but we think that those issues and complications are outweighed as we understand your needs anyway by the benefits of having unincorporated associations be it the members or the designators.

Woman: There's a question in the chat about what is the risk?

Rosemary Fei: The risk of not having a legal person, first of all in the membership model you simply can't do it. The law says members are persons, so you'd be throwing out the membership model. You'd look at the designator model. The risk of having them not be legal persons is simply they can't act as outside. They only exist as internal units of organizations inside ICANN.

They have no other existence and therefore, if somehow the bylaws were amended to eliminate a designator for example, right now with the way the bylaws are now, the group eliminated would have no recourse, or any other group that felt that the elimination had been done in a bad way because there is no person there with any legal rights. So that's the risk I think was the question?

The other downside of unincorporated association is you are creating people. You're creating legal persons. And that means, what we want out of that is that they have the right to contract, and they have the right to sue. But they will also the burden of being sued. They could be sued. As we currently envision it, these unincorporated associations would have no assets. And therefore, they're not so much a target for a suit because you can't get blood from a turnip, as we say.

There's no money there. But they could be sued, but what would be sued is the unincorporated association itself and not the individuals participating in it. In California there is what you call a corporate shield in the corporate form exists also in the unincorporated association form, that the individual warm-blooded people who participate in an unincorporated association are not liable by virtue of being its participants for its debts or its liabilities or its contracts for example.

I don't know, does (Sid Lee) want to speak to the issue of suing? I think that was the other question Avri asked?

Holly Gregory: Yeah. This is Holly Gregory. I'm sitting here with Sharon Flanagan. That's why you're not seeing me on the chat with a hand up. So if I recall, I mean I agree absolutely with what Rosemary has said. The issue I would like to understand more is the great concern that we hear about lawsuits. We think that forming, as unincorporated associations should not pose great legal liability here at all.

And there are devices that we can use to, you know, protect. We can have indemnification and, you know, provision that ICANN will hold all the persons harmful. But as Rosemary said, these incorporated associations, unincorporated associations don't have legal assets so there's very little to go after them. And the individual people who serve on them should not have legal liability.

That being said, you know, crazy people can bring crazy lawsuits, so the risk of getting sued isn't really the risk that you want to focus on. It's the risk that in getting sued you would somehow be held for liability. I mean suits get filed all of the time that have to get dismissed because they don't have, you know,

the basic requisites to stand, so yes crazy people might file lawsuits but we think that they would get thrown out pretty quickly. So this add-on for the question, I hope that I got it all.

Jordan Carter: I think it does. Avri? You have the (unintelligible) to move on?

Rosemary Fei: If I may? We don't think that this is a significant concern.

Jordan Carter: Okay. Thank you. My Adobe room has just temporarily vanished. I can't quite recall who's next on the speaking list. I think it might be Steve DelBianco, but could the person whose next hand is up please go?

Steve DelBianco: Thank Jordan. It's Steve DelBianco with the Commercial Stakeholders Group or CSG, which is part of the GNSO. A question for the attorneys, it has to do with implications between members and designators about one particular peculiarity that we may have within ICANN. It turns out that one of the ACSOs, the GNSO generic names supporting organization has within it four incredibly distinct stakeholder groups.

You talked about warm-blooded individuals; well we're full-throated and sometimes even hot blooded. And for that reason the GNSO would have great difficulty if not impossibility of coalescing into a single vote on many issues. And again voting is not (unintelligible). It ends up being the way in which we figure out if the members or delegates have a suit (unintelligible), to reject a budget, to reject the bylaws, to change, to revoke an IRP and (unintelligible).

So in that (unintelligible), we discussed the idea of the GNSO, since it has four stakeholder's groups needs a way to have four distinct votes even if they're weighted in such a way that the GNSO is no more or less voice than

the other ACs and SOs. So it might just be a mass problem, but I'm hoping it's also not a legal problem.

That's why I'm asking you now if there are any (unintelligible) designators, impediments to having to formulate voting so that there could be four entities within GNSO who cast a quarter of the vote each. And the opposite way is the weight that the other ASCOs have four votes so that (unintelligible) but the voices are distinct. So I don't know whether you've even heard this, of this issue before, but it's paramount in the eyes of those of us in the GNSO. Thank you.

Rosemary Fei: Can I speak to that?

Jordan Carter: Go ahead.

Rosemary Fei: In a membership structure members of different classes could be given different votes. You could allow, if you choose to allow a member, if for some reason the member only has one vote, if you wanted to allow them to vote it in quarters, you could do that. If it made sense to increase the total number of votes so that that member class got four votes you could do that.

And on the designator structure again, we're not contemplating, the designators would each appoint their own directors as the SOs and ACs and, you know, I know that's not exactly perfectly mapped, but under the existing structure that you have, certain internal organizational units appoint directors.

It's those internal organizational units with the same number of directors that they currently appoint that we would envision being either the designators, appointing those same number of directors each, or the members each a class of member appointing the same number or electing, however that member

wants to do it internally, that same number of members, same number of directors, sorry.

((Crosstalk))

Holly Gregory: Yeah, so this is Holly Gregory. I agree that Rosemary has given you one pathway. Another pathway is you're making decisions now about how to put a director, how to designate a director in your GNSO group. You could do all of the voting in that same mechanism. So for example, you could take a vote within your group and the majority vote that wins within your group is how you vote as a designator or as a member. So there are a variety of pathways, all of which we can - all of which offer a solution.

Jordan Carter: Okay thank you. Thanks for that question. Look we have (still two) people on the receiving list. And I'd also invite you if you want to ask questions about the Powers Memo the April 10 memo with (unintelligible) the radio pages so you're welcome to that as well.

We've got about 20 minutes of the session to run, 25 minutes maybe. And Olivier you are the next speaker. Please go ahead.

Olivier we'll - we at the moment can't hear you so if you are muting please go ahead.

Okay Olivier is having some audio trouble evidently. Jonathan, could you please go ahead with your question while we work out what the issue is with Olivier?

Jonathan Zuck: I sure can. Thank you.

I guess I wanted to rephrase or give some clarification to the question I asked the legal folks on a previous call which is about designing a mechanism to induce the board to - and maybe (Stephanie) you may refer to it as induce the board to consider or something like that and what such a mechanism might look like and what we would need to build and to create that power because most of what we're building right now is the ability to review a board decision.

But if the - but there's no decision then none of those things come into play. So it's about looking at advice from SSAC or ATRT, et cetera, and inducing the board to make a determination that would then be subject to review if that makes sense.

Jordan Carter: Thanks Jonathan are there council who would respond to that?

Holly Gregory: So this is Holly.

Jonathan Zuck: I'm sorry.

Holly Gregory: Unless Jonathan...

Jordan Carter: Oh, I'm sorry Jonathan were you still asking a question because we lost your audio for a bit.

Jonathan Zuck: I didn't hear what you said. No go ahead please. Go ahead and answer thank you.

Holly Gregory: So I understand the question to be what kinds of mechanisms would you use to force a reconsideration by the board? I think either in...

Jonathan Zuck: Well, not a reconsideration a consideration.

Holly Gregory: Okay. A consideration by the board, fine.

Jonathan Zuck: Right.

Holly Gregory: I think in either of the member structure or a designated structure we could develop a process that provides when that when either the designators or the members petition the board for a hearing they get a hearing.

Now we can do that by a supermajority vote or a regular vote or we can simply have a mechanism that says if the group formally asks the board for meeting to consider an issue they shall have such a meeting.

In other words you give a convening power to the group to the community to call a session that's jointly held with the board. And we think that should be pretty straightforward.

Jonathan Zuck: As a way to initiate something. Okay and you think that there I guess the question is if we get that hearing from the board would that mechanism include the board meeting to have some resolution or make a decision that would then be subjects to the review mechanisms that we're already working on, the IRP and things like that.

In other words can we through the process you're describing petition not just for a meeting with the board or hearing from the board but a decision by the board one way or another, not a particular decision but a decision that would then subject the board to review?

Holly Gregory: But...

Jonathan Zuck: Does that make sense?

Holly Gregory: ...so and in the review of the board then meaning a potential to recall the board or to get rid of some of...

((Crosstalk))

Jonathan Zuck: No, no, no I mean that's a big one. Yes I just mean the other things that we're developing like the Independent Review Process that are sort of softer accountability measures than board removal things they need to be triggered by they all involve reconsideration of a decision made by the board.

So part of this process would need to be to generate a decision that would then be subject to review.

Holly Gregory: Certainly. Okay so I don't see why the decision of the board, you know, the meeting of the board look at a meeting - at the meeting that you called there are three potential decisions.

Do the thing the folks want, not do the thing or not take a decision. And you could have the not take a decision be a trigger as well.

Jonathan Zuck: For an IRP for example?

Holly Gregory: I don't see why not. I mean you get to define what the triggers for an IRP are going to be.

So one trigger could be we have formally requested action and the board has not taken action. And therefore because we've made the formal request and

the board has not granted our request and taken the action we trigger a review. Now the question is what are you reviewing? At that point you're kind of stuck reviewing a process. But I think...

Jonathan Zuck: Well, that's right. And I...

Jordan Carter: I'm going to call time on this one folks. I think the issue is raised and needs to be further tease out. But the point of this session is to get the questions on the table. So with your permission Jonathan and counsel can we move on to the next?

Holly Gregory: Yes.

Jonathan Zuck: And there's no distinction between the two mechanisms as far as the ability to do this. One would make it easier or harder. I guess that's the only other question.

Holly Gregory: I think in all cases it's a little is easier with the membership but I think this is something we could probably work around in the designator.

You know, we haven't the devil's always in the details and we haven't tried to put pen to paper to make it happen.

But I'm not - as I sit here I am not aware of a reason why we couldn't come up with something creative.

Jonathan Zuck: Okay thanks. And I'm sorry Jordan for hogging the microphone.

Jordan Carter: No that's all right. We're making good progress and I think this is airing lots of questions that are useful and (unintelligible) the counsel.

Jonathan thank you and (Dan). And Olivier (unintelligible) can you please try again? Can we hear you this time? Is the audio working?

Olivier Crepin-LeBlond: Can you hear me?

Jordan Carter: Yes we can.

Olivier Crepin-LeBlond: Can you hear me? Okay thank you. Yes I have a question about the Nominating Committee following the conversation we had about during the last meeting with the whole group.

I understand that the Nominating Committee will have to be a legal entity member I'd say. And I also understand that the removal of board member that had been nominated by the Nominating Committee could only be done by the Nominating Committee member itself. Did I understand it right?

Jordan Carter: Holly are you able to respond to that?

Holly Gregory: Josh are you on the phone?

Josh Hofheimer: I am. But I couldn't hear the question very well.

Woman: I had difficulty as well. Would it be possible for someone to restate the question please?

Holly Gregory: Thank you.

Jordan Carter: Olivier can you restate the question for us?

Olivier Crepin-LeBlond: Sure. At the meeting we discussed - you discussed about the Nominating Committee. You said that the Nominating Committee had to be a laggard entity, a member also.

And the question is how do we do the removal of a single board member that has been nominated by the Nominating Committee? I understand it cannot only be done by Nominating Committee. Did I understand it right from last meeting?

Josh Hofheimer: Okay.

Holly Gregory: Yes.

Olivier Crepin-LeBlond: Did you understand?

Holly Gregory: Thank you.

Josh Hofheimer: Yes.

Holly Gregory: So that is correct. Under the designator system...

Josh Hofheimer: Oh wait.

Holly Gregory: ...the only one who can remove a director that's been designated by an entity is that entity.

And that is why if you go with a designator system we would need to think about how to take the Nominating Committee and make it into a more formal entity such that it could be a designator officially and have...

Olivier Crepin-LeBlond: But with the member system there is no problem.

Josh Hofheimer: Well the point Olivier I think even if you went with a member system it doesn't mean that you can't have a mix if you will of members and designators.

So you could still have the nominating committee be organized and be a designator. So it's not it doesn't have voting rights in the same with the members do, because it really just exist to nominate certain directors and withdraw those directors if the Nominating Committee is not pleased with them.

So I think that was the point that was being made before that even with a member organized ICANN you could still organize the non-naming committee as a designator.

Jordan Carter: Okay thanks then Josh. That's...

Josh Hofheimer: Thank you.

Jordan Carter: Thanks Olivier. Jonathan...

Olivier Crepin-LeBlond: Thank you.

Jordan Carter: ...(unintelligible) old hand I assume. And we had a little change in the order in the room but Kavouss was next before Greg. So Kavouss could you please ask your question?

Kavouss Arasteh: My question is the following. On Page 3 of the legal assessment of kind of apron it is mentioned that in the designator model if we add additional

measures such as contractual arrangement or board within the board we could resolve the issue of legal entity. Is that right?

My question is that with all advantages of the membership it is very complex, time-consuming, radical changes and a lot of details which may take months if not years.

Would it be possible that we take the designator and add some additional measure in order to reply or respond to all if possible if not to major requirement that we have?

The major requirement is removal of one board member, removal of entire board member, change of the bylaw and the two issues that you told on the 14th of April that we cannot do with a designation is budget and a strategic plan. This you told we cannot do.

Whether today you add the change of bylaw to that I don't know. But what we can do with the most workable method which does not require major changes taking existing structure, adding new measures in order to satisfy almost all of our requirements is it possible or not? This is the first question.

Second question, if we do not add any additional measure the designator which of the five actions that we have asked, removal of one board, removal of the entire board, change of the bylaw, budget and the strategic plan which one we cannot do and which one we can do?

This is a simple question and I would appreciate if the answer should be given. Thank you.

Jordan Carter: Thanks Kavouss. Counsel do you have some responses to those two questions?

Holly Gregory: Certainly. So this is Holly Gregory. Under the designator system the problem is that designators cannot be given the ability to veto or approve certain board decisions around budget and strategy and certain other things that may come up for example if you wanted to have the ability to veto or approve certain decisions by a review process.

Everything else we believe can be done, the appointing and removing directors through a use of contractual means added in, the ability to recall the entire board as well as the ability to approve and amend the bylaws and reject efforts by the board to do so.

Jordan Carter: Thanks Holly. Is that both questions responded to?

Holly Gregory: I think it was both questions.

Jordan Carter: Okay, great. Thank you.

Josh Hofheimer: Well one thing to add to the question or the answer was, you know, what is the minimal amount of work that would be required?

I want to remind you Kavouss to take you back to what Rosemary said in the beginning which is advice that Sidley agrees with too that even if you decided to maintain just a designators structure both of them strongly advised that you all organize your designators if they aren't already unincorporated associations that you organize them into unincorporated associations or some other legal entity so that they can get the protections against liability. Those entities can become a shield to protect individuals against liability.

And those entities could if there were a need to in the future because the board ignored the designator rights those entities would have standing to because they would be recognized entities they would have standing to enforce their rights.

So to be clear there's work to be done even if the designator model is the model that's retained.

Jordan Carter: Thanks Josh. Good adjusting the questions. Greg you're next on the speaking list.

Greg Shatan: Thank you Jordan, Greg Shatan for the record. Not sure, I guess one there was just kind of a second part or second aspect to Kavouss's question which was or maybe it was an assumption that putting the membership into place would be a much more involved and complex and lengthy process than putting the designator structure properly into place.

Rather than giving my own opinion as a lawyer but not counsel I'd like to ask yours. Thanks.

Michael Clark: This is Michael Clark if I could respond because I think I did that slide.

((Crosstalk))

Michael Clark: I don't think that it actually would be considerably more complex than a designator structure at all. I think the way that you currently are organized involves groups that behave in many ways like members.

And I fully agree with what Josh said they, you know, there will be some work to do either way. And I think, you know, the one advantage in particular the member structure is that it relies on much more familiar and somewhat settled areas of law. And I really don't see it as being much more complicated to implement or much of a really radical change from the other option, the designator structure.

Jordan Carter: Okay. Thanks.

Ingrid Mittermaier: This is Adler Colvin pending in on that on the member versus designator structure. And just to add the other - this is Ingrid Mittermaier with Adler Colvin.

I think and some of - well you can look at any discrete member right and say it's not - it doesn't add a huge level of complexity.

I do think it's important to appreciate that in California there is this very important statutory sort of elaborate member structure that does include all these sort of protections, you know, notice requirements, record inspection rights.

So there is a sort of fairly elaborate set of member rights that I do think make it, you know, more complicated to implement.

I think it's probably not quite right to say that it's the same level complexity as designator. With designator you have more flexibility.

But because of sort of the statutory framework for members who are dealing with all the various requirements which has its pluses and minuses, but it is something just needs to get worked through.

Jordan Carter: Yes thank you. And look people, I certainly if I was a voice I would be quite grateful for this session because it's teased out a number of more issues. It's kind of alluded to another set of issues that need to be looked at in more detail. And it's helping to convey to the legal teams the nuances, the flavors of the ICANN community.

The only thing I would like to add at this point aside from thanking you counsel from Adler and Sidley to participation and answers and is that the ICANN community I think is pretty proud of the model that it's built. And a lot of it is does look a bit novel from a legal point of view at first glance.

I know that you're pretty new to this engagement. So I just want to say that as we go through the work of the next few weeks and months a lot more of this nuance will be coming out.

Some of these debates have been had and resolved. For instance the comments that (Cheryl) just made. So I think we're making good progress and just acknowledging the fact that we are, you know, at the start of an ongoing process.

And so thank you again for your participation in this call so far. And I'm going to move us on to our next agenda item and if I could. And counsel are welcome to leave or stay as they see fit. Oh, hang on before we do that I have a question which I'm hoping that Greg can answer.

Greg as a member of the legal sub team we invited people to raise questions in writing on the email list about these documents to also help inform counsel for people that couldn't be on this call or couldn't be on the call in order to register them.

Can you give us a one or two minute snapshot about what happens with those questions assuming they aren't going into a black hole and being ignored? Is it okay for people just to put them on the list? Do they need to take other steps? Are they filtering through to the council?

Greg Shatan: Thank you Jordan. It's Greg Shatan. Yes these questions are getting through to counsel. They are not going to a black hole. They are reviewed by the Legal Sub Team so not every question necessarily goes to counsel since there are some questions that are just either not germane or already answered. And we do want to keep our counsel alive and not exhaust them completely.

But by and large the questions do go through. They are taken off the list and either sent through or in the most recent instance Leon collated several of the questions into a single document or there were collated for Leon.

And we had our Legal Sub Team meeting earlier today and we went through several of those collated questions and, you know, with regard to whether they required - we went through them first by ourselves and then with counsel.

And, you know, not in every case will they result in kind of a formal complete response because again it may determine that they've, you know, been answered or that they're off topic. But by and large, you know, you'd be looking to kind of work those through and get responses back.

And in some cases those responses may end up in larger documents but, you know, it's up to counsel in each case and us to try to find the best and most efficient way to answer those questions. They are of course very helpful. And using the general email list is just fine as long as they're clearly labeled as a question for counsel.

And depending upon what email system you use if you're answering a - if you're in a long thread if you've decided to on Email Number 17 to call out a question for counsel that might get buried.

So it's better to break it out and turn it into a new email with a was in the subject as well as a question for legal counsel in the subject. That's just, you know, a logistical suggestion.

You know, each of us in the Legal Sub Team I think are, you know, a greater or lesser extent as well as staff keeping an eye on the list and looking for anything that says, you know, referral or question for legal counsel. So just, you know, keep those cards and letters coming. Thanks.

Jordan Carter: Thank you Greg. And okay so hopefully that's clear with people. My point is not that everyone is going to expect individual responses. It's just that it kind of ads to the Q&A.

And as long as counsel are getting them and to have the context to have the pictured that's being raised I think that's helpful as it feeds through into other documents.

And okay, thank you. I would like to turn our attention now to agenda Item Number 4 which is the next draft of our public comments document. And if the staff could put Version 3 of that document, not track changes but just the plain text of the document.

As we did last time we - as we did last time we had this kind of conversation in the document the meeting and we had a chance to look through each section

and to just see the new content. I've tried to pick out new content or a drafting note too in yellow highlights italicized.

And the mailing area is where there's uncertainty are - or disagreement are as they used to be in black bold underlined. And I think they're also italicized. So I've been trying for the record to distinguish things in ways that people who are color blind will be able to understand.

And to remind we've got about 50 minutes left, 55 minutes or so on this call to work through this. I will be trying to take and some track changes notes in the documents as we go.

I'm assuming that we won't finish our work through of this content today but I will circulate after the call the version of it that I take notes on. And we will pick it up again tomorrow and make any final decisions on the content in this public comment document content.

And then after that it will go into the pre - it will be collated along with all of the other input across the CCWG into the first draft of our public comment report which we will then have our couple of days next week to re-reflect on this (unintelligible).

So that's the track that we're on at the moment. And the document is in front of you. And I'll kind of lead you through it and we'll take questions whenever they come up. I'll ask for input on each section as we go through. The first thing though is to take any questions about what I've just stepped you through. And I see that Kavouss's hand is up. Kavouss please go ahead.

Kavouss Arasteh: Yes. Jordan is it possible that if you want to review this document you take it at least paragraph by paragraph allowing us to concentrate on particular issue

but not going from one side of the document to the other side? Is it possible that you can do that? Does it have some question? I organize it in that manner and mark it up and I wish to raise it if you allow. Thank you.

Jordan Carter: Kavouss yes that's I thought what I just explained that we are going to do. We are going to do it part by part. So we'll start that process now. And...

Kavouss Arasteh: Now I comment on 652.

Jordan Carter: No since we're not up to that yet. We'll do it as you said in order. And so the first thing to draw your attention to ladies and gentleman is the first part of the document.

If you've got scroll control of this version and in 6.5.1 we had some holding text. We had nothing written and about the mechanism that we might choose to employ.

And there was of course a good reason for that which was that we didn't know what our mechanism was going to be. We still don't. And that's in discussion with the co-chairs. Please also everyone should have their own scroll control on this.

And the - I've have prepared some initial text and to just be a holding text for this part of the report. I don't know if it will make it through but it's trying to represent the fact that we haven't made (unintelligible) on the next system but we can't do so yet.

And but we might need to say something in our document. So you can see that I think pretty clearly right in front of you at the moment.

And so the specifics it says will come as (unintelligible) from the comment reports and identifies the point that we want to be conservative and minimalist in the structure of any changes that we would do to allow the powers to be exercised.

And that we're not trying to invent an entirely new way but (unintelligible) we're not going to (unintelligible) indulge. We're not going to create some weird and collection of SOs. We're not going to say that the GNSO is allowed to have a support group.

And the third bullet point reflects where we got to in Istanbul as that and (unintelligible) on the supporting organization.

Now I'm just going to add in my version there's a suggestion from Robin on the email list today that instead of that equality of votes which we or representation or influence between the three reporting organizations. That it should be based on the same proportion of influence as it would from the ICANN board.

I'm just flagging that at the moment and I would ask for (speaking) on this part 6.5.1 and that content. Are there any who would like to speak to this part?

Kavouss you hand is up I don't know if you've got a comment on this part or not? If you do have a comment on this part please go ahead.

Kavouss Arasteh: Yes 6.5.2 yes I have...

Jordan Carter: Six five one Kavouss we're talking about six five one not six five two.

Kavouss Arasteh: ...okay no comment sorry.

Jordan Carter: Okay please take you hand down.

Kavouss Arasteh: I lowered my hand I'm sorry I lowered my hand.

Jordan Carter: Yes that's okay no problem. And are there any comments that people would like to make on this one? Okay and I've written in the version (unintelligible) which have comments that arise from this call. I've done an alternative (unintelligible) the decisional imprint that should be the same as the representation of the ICANN board.

And so I think that that tables that for further discussion. And if there is anything more to discuss on this (unintelligible) 6.5.2. And I see no hands up so the next one is 6.5.2 and the power to project budget and strategy operating plans.

Now we had quite a long discussion about this last time and the discussion was about what do we mean do we, are we asking for essentially the right (attention) in the board and to send back the budget (unintelligible) and then that the board be required to have higher thresholds to pass it the next time or are we looking for the rights to do that more than once.

So I've tried to clarify the language - this is on page 2 and page 3 of the document, to just clarify that. It's just an evolution of the language and we didn't come to a consensus about removing the bold underline and I just remembered I haven't assembled my format but the bold underline is still what isn't agreed.

We haven't necessarily got consensus but you have to write all the issues in the first cut and I don't remember that opposed that and the voting strength for sending it back and whatever (mechanism) we've got.

So I think taking this and Robin I'll take Kavouss first on this because he did have his hand up before. Now Kavouss please go ahead.

Kavouss Arasteh: Yes this is a point that I have raised several times but unfortunately it was not taken. If you look into the page 3 of this issue under the 6.5.2 in paragraph one, two, three, four you are talking of adjustment and passing amendment.

If you take that turn it means that the first issues is not rejection it is reconsideration and then followed by rejection if no action is taken. Therefore the title at least should be reconsideration and/or rejection.

And so onto four you do not start immediately with rejection. It doesn't seem logical that without giving any opportunity to the world you just reject. You should first give them the opportunity to reconsider, make amendment and so on so forth and then send it if after one or two whatever time you decide there is no action then you reject that.

And then you need the measurement or measures not measurement, the measures to how to reject that by voting and the threshold that's on the vote. So I suggest that the title here should be reconsideration slash rejection.

And then in the document we start with reconsideration first and asking them to amend or make some (agendas) and then if still the community is not satisfied then we reject that.

This is the question I raised several times and throughout this document you have these inconsistencies in the text with the title with respect to the rejection of budget strategy and operating plans, thank you.

Jordan Carter: Thanks Kavouss. I now understand what I meant by a note I couldn't remember the meaning of which was specificity. And I think in all cases in dealing with the budget or strategy planning in all cases what we are honestly talking about is the reconsideration requirements that comes with a block on execution while reconsideration is going on. Because in each case if the community organized through whatever way it'd going to send back the budget it has to explain what its concerns are.

And hopefully we are agreed that it's going to, it has to it can't just table new ones each time. That to raise a set of concerns probably once it has been (translated) during the budget or strategic planning purpose and say to the board essentially but we can't go ahead with this because you haven't taken the feedback into account.

And then the board would reconsider that matter and would propose a revised budget or plan back to the community. Then what happens? If it goes in favor we don't have one reconsideration and veto because in the end the corporation does have to have a budget or a strategic plan and so on that's what the companies do.

And no one I think wants to have anyone other than the board signing it off. If the community isn't happy it does the same thing it blocks it again and sends it back.

Now I agree we need to get the titles right because I've heard your title suggestion which is reconsideration/rejection. So I put that in a comment note

on the thing and we will end up with something that is consistent once we've finally got agreement around the (unintelligible) about exactly what is the word part of it.

So thank you...

Kavouss Arasteh: On the same paragraph if you allow me.

Jordan Carter: ...okay a quick followup.

Kavouss Arasteh: Second comment is on page 3, paragraph 2. Starting with headline generally based on perceived inconsistencies the purpose mission and role of the ICANN as is stated in bylaw and (article).

That is quite clear we can do that but when we come to the global public interest what are the criteria that the community could say that the global interest public interest has not been met?

What are the criteria for that, what is the criteria of needs of the ICANN stakeholders? Do we have already specified what are the ICANNs stakeholders then we could say that this number two or three or each of this defined or predetermined ICANN stakeholder has not been met.

So this is very subjective and is difficult. And the last one is financial stability and other matters of concerns of the community. Financial stability may be possible but there's two I have mentioned below with public interest and needs of ICANN stakeholders is difficult to judge and it is too subjective.

And there is no criteria unless we predetermine or define them somewhere that these are the public interests which we have failed to define that in the

previous meeting of the CCWG and delivered as (unintelligible) that don't discuss the public interests.

And the (unintelligible) that ICANN sorry, sorry the needs of ICANN and stakeholders I don't know. Who could define that, what is ICANN stakeholders that we could say that is met or is not met? How we could justify that?

Josh Hofheimer: Thanks Kavouss but you might remember that in earlier drafts we didn't give any because the consensus (unintelligible) out of Istanbul at a meeting was that this (part) should not be constrained by objective criteria.

That in the end it was a political decision for the community to decide whether it couldn't deal with things proposed in the budget or strategic plan. So that is why the text looks like the criteria is subjective they are entirely subjective.

They are designed because the flavor of the (unintelligible) agreements why the community might choose to go back and say please look at this budget again and that's because that's a deliberate design decision.

So what I've got down as the comment and question noting it from you is should we be more objective with these criteria. And I think that's a good question to ask, a good one for us to debate and we should have that noted so I've got that noted but it isn't accidental it isn't an omission it's (unintelligible).

And my Adobe has passed yet again so I can't see who is next but from memory it was Robin. Robin could you please (unintelligible)?

Robin Gross: Thank you this is Robin can you hear me?

Jordan Carter: I can.

Robin Gross: Great okay so I just had a couple comments on this section and one is just a little bit of a wording quibble I think. We want to change on page three the second full paragraph that Kavouss was just referring to.

It says, this new power would give the community the ability to consider strategic and operating plans and budgets after they are adopted by the board but before they come into effect et cetera.

I think we want to change the word adopted there to approved and I noticed the same language is in several places in the document so I think we want to make that change in the other places as well because I think we can say it's not quite adopted yet until it's gone through this process where the community calls for a reconsideration of it.

So I think it's just more exact if we just, if we say approved so as to not give the impression that it has come into effect, which is sort of the opposite of what we are just saying after that. So that's just one...

((Crosstalk))

Jordan Carter: Makes perfect sense Robin thanks yes.

Robin Gross: Okay and the other point is the ratio or the percentage that we've described here 50% to - would be required to reject the first time, 60% for subsequent rejections.

I'm thinking these would be higher. I think it would be pretty easy to whip up 50% of the community to vote against just about anything. So I think, you know, these are somewhat extreme measures that we're taking or that we're trying to create and so I would suggest we raise these by 10, 15% or so.

Jordan Carter: Can I ask you a followup question Robin...

Robin Gross: Yes.

Jordan Carter: ...which is do you, we at some point we need to look at the relativity between all these powers and the relativity of the different (unintelligible) in writing them.

And I think in discussion we've said that this should be easier to do than things like removing ICANN directors. So my practical question is and are you happy if I note with a comment (unintelligible) that Robin says these should be higher thresholds perhaps and 15% higher in each case?

Robin Gross: Okay.

Jordan Carter: And then we will go from there is that okay at this point?

Robin Gross: Yes, yes, yes because I just think that, you know, if we make it too low that we're just going to have to do, it's just going to be a regular course of every year we're going to have to deal with the budget rejection process.

And I don't...

((Crosstalk))

Jordan Carter: And I don't think we want to get there absolutely not we're not trying to paint that at all. And I think it's worth noting as well for work stream two I think some concrete improvements to their planning process will be on the agenda (unintelligible).

So I noted those and that comment there and are there any other sort of speakers in respect to the 6.5.2? Thanks Robin and if you could put your hand down that would be great. Kavouss I see your hand up again please go ahead.

Kavouss Arasteh: Yes sorry, you will excuse me for raising hand again. I agree with Robin that this threshold is (unintelligible) I mark it up here and I don't know where this 60% comes from.

Usually we have 50 plus one, 66%, 2/3, 75% 3/4 and 80% for 4/5. So I suggest that we raise this first one to 67% or (unintelligible) percent and 75% to give some sense of stability but not so quickly changing the situation because of the work involved. So I suggest, I support the idea launched by Robin thank you.

Jordan Carter: Thanks Kavouss I noted that as well. And Greg I see your hand up.

Greg Shatan: Thank you Jordan, Greg Shatan. I think I would add myself to the list of those who think the threshold should be higher to reject or override the board on budget or on strategic plan.

I think that in terms of the way this is phrased, you know, I think maybe this will change once we identify a mechanism or structure. The way I think about the right of a member of the members of an organization to deal with a budget is more in terms of approval than rejection but that I think is maybe typical but not required.

So I don't know if there is, should be considered to be an approval process post board by the members or is this invoked and it's not clear whether this would be invoked every time a board passed the budget or a strategic plan that it would make a stop at the members or would it only be that, would it merely be that the members would have the right during a particular period of time to raise an issue with the budget or it would be then finally considered approved.

So maybe these are more mechanical questions than they are fundamental questions but, you know, as I look at this I kind of start worrying about those things and maybe that's a level of detail we're not going to get to in this draft but in any case that's my thoughts thanks.

Jordan Carter: Thanks Greg that's helpful and I (unintelligible) in the middle of your comment which I apologize for. And does your comment, what we've talked about in the text that there would be room in the process for it to happen before the final approval.

At some point the board does do final approvals of these documents and is there a particular thing you want me to note for the next for the future (unintelligible) to consider in here?

Greg Shatan: Well I think, you know, one question is whether this is a positive right to approve or a negative right to reject and whether that would - I don't know if that makes a difference and maybe if counsel wants to weigh in on that I'd be interested to hear it or this may just be a detour for which I apologize.

Jordan Carter: This is not a positive right of approval this definitely isn't seeking to make a co-decision process to the budget between the ICANN boards and whatever the community (investment) as a mechanism and that isn't happening.

Greg Shatan: Robin is saying yes in the chat but...

Jordan Carter: Well she's - I'm sorry that interpretation just isn't right. This is saying that after (unintelligible) has been approved whatever the language change we just agreed to by the board and there's a process a time in the process where the community can stop it and send it back.

If it was an approval process a positive affirmation of agreement would be required. Nobody has proposed that and I would...

((Crosstalk))

Robin Gross: Okay then we are in agreement I just, then we are in agreement I just was thinking the opposite of the meeting of a positive right to approve. So I appreciate you going through what you mean by that we have to approve.

Jordan Carter: So we're not saying hey ICANN board you need for us to come and take this. We're saying hey if there is a fundamental problem and enough of think that we get to the thresholds you're going to have to reconsider it.

Here's the problem and if we don't like the way that you've reconsidered it with ourselves imposing ourselves be at a higher threshold (unintelligible) we can send it back to you again. So that's what we're talking about.

Robin Gross: Okay that's right.

Jordan Carter: And that's important because we have to leave the board generally in control of these things for the reason that they - if we want to hold them generally to account for these things they've got to be making decisions on them.

That's why these powers are (framed) to send back reconsider not you have to change this to say this and we are going to approve it or not. And look I'm going to move on if I may to the 6.5.3.

And I will just say that in the next version I think it would be helpful if I just put little numbers on each of the paragraphs. And I won't be able to make them like 6.5.3.1 et cetera et cetera but I will try to just make it easier to follow and by adding a number.

So 6.5.3 is the power to reject changes to the ICANN bylaws. And the only, the changes I made for this if you're reading the track change (admission) you'll see it.

It just named mainly making it a little bit clearer but I think fundamentals have changed in fact from the last version we increased the threshold that would be required to reject.

And I would ask for speaking on comments on rejecting changes for the ICANN bylaws. And noting the same points already let's consider as on (unintelligible) and the fact that the title does need to more clearly match the content. Title to match content as noted with 6.5.2. And so speaking on this one Kavouss I see your hand up.

Kavouss Arasteh: Yes the same comment as 5, 6.5.2 the title should be consistent with the text. In the text we are talking about reconsideration in the title we're just talking about rejection.

So perhaps we should introduce the same thing reconsideration and rejection if when (unintelligible) support this, this is the first thing. I have a general comment maybe you have dealt with I was not with you.

How you distinguished within the bylaw and fundamental bylaw. Are there something you mark up in the bylaw that these items are fundamental and the other items are non-fundamental because you have different approaches for that and different threshold?

So is it possible that if I missed this discussion if possible if it doesn't take your time you could verify how you could distinguish between the bylaw changes and changes to the fundamental bylaws, which are the bylaws, which are fundamental?

So this is general question and particular question is about the timelines that you have mentioned about the threshold. Still I have problem with the timeline is it two weeks is too short in (unintelligible) paragraph? In particular when coincidentally some holidays and so on so forth and the community could not act in two weeks.

And the third one is the threshold I think the threshold is low and I don't know where the 70% comes. As I mentioned we have 3/4 or 4/5, 3/4 is 75% and 4/5 is 80%. And I said just if we increase the threshold but not making so too low. So these are the questions that I have thank you.

Jordan Carter: Thanks Kavouss, good questions all. On the general point about the title matching I already accepted yes noted that. On the point about the timeframe it's important to remember that with the bylaws process a bylaw is changed that works its way through the ICANN system.

There is already an extensive public comment required and I think it's a 40 day period for public comments on the bylaw text. So in this process in this final last gasp last reserve no you can't go ahead with that power.

We do not need to provide the same amount of time that has already been presented. I am very certain that if the community is moving towards rejecting a proposed change to the bylaws it will have been subject to debate very early on and it's processed possibly even before the board even decides to propose a bylaw change and that would be before the public comment.

So literally months and months of public debate consideration, discussion would already have happened before we got anywhere near this process. That is why I think the two week one though is reasonable.

That said I have noted a comment and a question from you Kavouss for the next version of it that does raise exactly that question. The third point that I had down you raising was the higher thresholds and I really want just as a personal comment I wish you wouldn't keep saying I don't know where these come from.

I could say the same back to you I don't know where your ratio's come from. These numbers come from the suggestions that people have made and there is no problem suggesting they be higher.

I (unintelligible) that you mentioned that 3/4 or a 4/5 threshold would be preferable. That's noted in the comment period and so thank you. I don't think I missed any of the points that you raised there. You'll see your comments reflected.

And are there any other speakers on this bylaw rejection power? And (unintelligible) and then we can move on to 6.5.4. And Avri your hand is up please go ahead.

Avri Doria: Yes I had a question it was one of Kavouss' questions. He had asked how do we distinguish between the (unintelligible) fundamental bylaws and the things that aren't. I actually wondered about that myself.

Is our, are they in a special section, do they have a big star beside them? How do we know which is which?

Jordan Carter: I apologize for missing that question Kavouss and thank you Avri for bringing it back and that is my understanding is that we would be proposing what the fundamental bylaws are.

And that is coming from working party two. It mainly centers around the core mission and value and that kind of community charter that we discussed earlier.

So working party two is going to propose what should be so-called fundamental and they will be identified in the bylaws. And what makes them fundamental is a different process to amend those compared to the current process.

It's a process that is A, it takes longer and B, it does require a positive co-decision process between the board and the community and the (unintelligible) which is our proposal for approving the bylaws.

So that's a very important point to have raised I apologize for missing it before. So they will be visible they will be clear what the fundamental bylaws

are and we will be making recommendations to the community through working party two work about what they are and the rationale for making them more entrenched.

Our part of this process is just noting the different process that would be required to change it to them which will also be reflected in more detail in the working party two comment report content.

All of that said and we, it is worth noting and I had a comment in the start and of saying where are these represented and which bylaws are fundamental noting that it's a working party two issue.

(Unintelligible) which one fundamental (WPT). So thank you for that and Greg I see your hand is up and then Kavouss. So Greg please go ahead.

Greg Shatan: Thanks, Greg Shatan again. I'll just add and somewhat putting my lawyer hat on that the fundamental bylaws tend to be those that go to the essence or fundamental nature of the corporation, which is the other reason they're called fundamental bylaws.

And it does sound like the ones that are being proposed, you know, are fundamental it's not a bylaws to serve hamburgers on Tuesday or something, you know, insignificant.

So and I, you know, just in terms of the bylaws themselves when they're ultimately revised there would be a section of the bylaws that would state that, you know, bylaws XYZ, you know, must be changed according or can only be changed according to the following provision.

So it would be clearly set out in the bylaws, you know, that, you know, particular bylaws had different mechanisms and thresholds for change. So they're not, other than that they're not printed in red or set out with a star but they are, you know, explicitly called out, thank you.

Jordan Carter: Perfect thanks Greg. And Kavouss, your hand is up.

Kavouss Arasteh: Yes. I have no difficulty with that approach. The only thing, how we distinguish, and you explained that we would distinguish by putting the particular section or so on and so forth. But now my question is that why for this title we have approved changes? We don't have reconsideration. We don't have suggestions. We have only approved.

It means that we don't send them for reconsideration? Or we have no power to reject them? We just - why we have different language and different term used here for this 6.5.4 approved changes? Why we don't have reconsideration and approve, or reconsideration and reject? Why the title is different - just a curiosity.

Jordan Carter: No, it's a fair question Kavouss. And the reason for that is it doubts the nature of the process. So a general bylaw change is what we're asking for. The board proposes the natural conversation with the community. And the power that is being proposed is to say no, can't do it - sorry.

With fundamental bylaw changes, the onus is reversed. A relatively high threshold of our approval is needed for them to happen. So we aren't actually asking for a reconsideration of this. And we are saying, because we achieve the same results by just not approving them.

So the idea is that fundamental ones are - require more agreement, more ascent. I personally am assuming that there will be a longer time period, or even that the decision will need to be considered, for example at two ICANN meetings. And the reason the title is different is to draw attention to the fact that it is a different process. It's a positive co-decision required in the sense of approving fundamental bylaw changes. It isn't just sending them back to the board and saying no. That's the outcome.

If we fail to approve the change to the fundamental ones, then we would have to have a vote to do it. Every single change that came up to a fundamental bylaw proposal would come to a vote. If a positive vote at the high threshold we set out wasn't (unintelligible), then the bylaw wouldn't happen. So that's why the language is different, because the nature of the power and the process is different. And that does segue us really nicely into 6.5.4 - the power to approve changes to fundamental bylaws.

And aside from noting the point that was already raised about which ones have fundamental (unintelligible), finding which one - what else is here people? What else would you like to raise in suggesting consider that 6.5.4 to approve changes to the fundamental bylaws?

Kavouss Arasteh: Listen Jordan, I am not convinced. Who initiate the changes to the fundamental bylaws - ICANN board or community? Who initiate that? In the normal or traditional bylaw, the issue is here that ICANN is start to change and the community has the right to reject or reconsider. But here, who initiate the changes to the fundamental bylaw?

Jordan Carter: Well in the first instance, to decide which ones are going to be fundamental, the answer - to create them in the first place - the answer is that a community will be proposing it through the CCWG process. So when we come to our

final proposal, I'm very sure that we'll be saying these are the fundamental - these are the bylaws that we recommend be made fundamental. This is the process for changing them that is set out.

So I would imagine - I'm not a person who's okay with the bylaw change process in ICANN. So Kavouss, I would actually like to defer your question to someone who is. And I don't know whether Avri or Greg have got their hands up, are familiar with that.

Can someone who could answer the question - so in other words, I assume that any SO or AC can propose changes to the bylaws, and that that wouldn't change. But the question is still an ascent one. And the reason behind the ascent logic here is that it's a higher threshold. It's harder to get everyone to vote in favor of the change. And also it avoids the problem of missing it. It avoids the problem of oh no, we did have concerns, but we didn't challenge it in time because the positive agreement would be required.

So Avri, you're next on the speaking list.

Avri Doria: Yes.

Jordan Carter: And Kavouss, we'll come back to you if your question isn't answered.

Avri Doria: I was just going to...

Jordan Carter: Sorry Avri.

Avri Doria: ...give you a quick answer to that. Yes, Avri speaking. And certainly ATRT for example and other review teams have suggested bylaws changes. So that's

certainly some way that it happened in the past. And I do believe that an ATS still could suggest them.

But as I say, if a mechanism that is a board mechanism - so it would be a recommendation made to the board to change a bylaw. And then there would be a board mechanism for doing it for review and for their decision.

Jordan Carter: Thank you Avri. Greg, you've got a hand up as well.

Greg Shatan: Thanks Jordan. This is Greg Shatan. I don't have too much to add to what Avri says. I think that's right. Also the board can, on its own initiative, decide to amend a bylaw which would, you know, then be handled by a motion to change the - to amend the bylaw. I note that the board can only amend the bylaws - any of the bylaws - by a two thirds vote.

At this point I would assume, you know, the fundamental bylaws would probably require a higher threshold at the board level as well as the, you know, as the approval of the members or designators or whatever it may be. So it would be harder at both levels to change a fundamental bylaw.

You know ICANN has interesting processes, you know, with various recommendations and reviews, you know, that will suggest or recommend bylaws. And there may be ways that the - a bylaw consideration, you know, could be forced. But I think, you know, here the issue is once we identify those fundamental bylaws and they are in place and deemed fundamental, you know, amending them would, you know, could be proposed by an SO or AC. But I think it would then have to get traction on the board first.

And it would be a rather interesting issue if the change of a fundamental bylaw was desired by a majority - a super majority of the community, but not

by a super majority or even majority of the board. I'm not sure if I'm imagining, you know, a worst case scenario that might not exist. At that point it's hard to imagine the board being that far removed from the community, given the number of board members that, you know, should be reflective of the community.

But of course sometimes the community, you know, looks at - the board needs to look at the greater good for the longer term. And sometimes that's not where the community's head may be at. But typically I don't think that's the case either. Thanks.

Jordan Carter: Thanks Greg. I think this - I think one of the things that - so it is a point. I've added another question in the next version of the - the version that I'll post after this, which is it's in that second sentence that this power - approved changes to fundamental bylaws (unintelligible) as fundamental.

Now those are comments that two can propose these fundamental bylaws, and proposed changes to existing ones. And then in the back it's the board can (unintelligible) reviews have done (unintelligible) going to propose the (unintelligible) process with which to changes being considered. So it's getting the same question on the table.

Now I've got a question. Are there any other - yes, I see some hands. Greg, is yours the old hand? Thank you. Kavouss, go ahead.

Kavouss Arasteh: Yes. I understand all that you said and Greg said. But my question is why we have different language here? Approved changes instead of reconsideration and rejection? That was my question.

((Crosstalk))

Kavouss Arasteh: I said why different language is used? Thank you.

Jordan Carter: Because it's a different power - because we're not rejecting. This is a positive power for the community to be a full party to making the decision in favor of going ahead. And the decision to go ahead in changing these fundamental, special, entrenched, vital, protective bylaws - the whole argument that's been raised since this power would actually be a very special one.

And it isn't just up to the board to make that decision on their own. It's up to the board and the community together. The board is one of the version of the community elected by it. Whatever mechanism we propose or to do the other side of that decision, to broaden out the (unintelligible) making it - to set a very high threshold for the approval of it.

So the reason for the language difference is that it is a highly different process.

Kavouss Arasteh: No. I am disconnected.

((Crosstalk))

Man: You're still there Kavouss. Stay on - everybody stay on.

Jordan Carter: Hi everyone. I've tried to connect now using the Adobe Room. It seems like my telephone call connection has died. Are you able to hear me again?

((Crosstalk))

Avri Doria: Much clearer than it was before.

Kavouss Arasteh: Yes, we hear you.

Man: Yes Jordan, it seems as if you've awakened from a sleep - sounds great.

Jordan Carter: I have to say I find the dial out power really quite useful because it always drops at least once in a call. And so if you're on voicemail - so they're calling me again. Hello, Jordan speaking.

Avri Doria: With Adobe it's much clearer.

Jordan Carter: You hear me again? I've been redialed by the conference call type. Please let me know if you can hear me. I won't continue...

((Crosstalk))

Avri Doria: Yes, Jordan, we can hear you again.

Jordan Carter: Okay.

Kavouss Arasteh: We can hear you.

Jordan Carter: I was explaining why I thought it was important to have the status quo. I don't want to try and remember what I said. The question published - it's just useful to understand. If you understand that logic and disagree with it, or whether you don't understand - otherwise I'd like to move on to 6.5.5.

This covers maybe having the same old issues or not. But in the meantime we will move on to 6.5.5. By the way everyone, I would like to just thank you for

the way that we're getting through this call. I think we're making quite a lot of progress.

Robin, I see your hand up, and Olivier, I see your hand up. Robin, go ahead.

Robin Gross: Hi, this is Robin. Can you hear me?

Jordan Carter: Yes.

Robin Gross: Okay, great. So on this 6.5.5 section, I had a couple of points. One has to do with the underlying text about the removal for the NomCom. It would be removal by the community mechanism. And I think it was Avri proposed something like the Nom - the IETF NomCom removal process. And so I thought that we were going to consider exploring that a little bit more as a possible removal process for Nominating Committee board members. So that was one point.

And then another point was the threshold that it's currently set at, and it says 40%. So I want to raise the same concern that I had before about that being considerably too low. I think that we want it to not be something that's going to be triggered every year. And so I think it should be a considerably higher threshold.

And I'm also still very supportive of providing for flexibility within the different SOs and ACs about what level of support they want to require within their own stakeholder group to recall. So those were the only points that I had on 6.5.5. Thanks.

Jordan Carter: Thanks Robin. And on the point about the NomCom - the ICF NomCom removal process, I'm not familiar with that. But I think Avri's been speaking so might be able to explain it briefly for us again.

In respect of the threshold, at the end of the last call I'm deciding we could say that we'd take 40% while moving the range. If the view here is that we should just say that like majority - so half plus one - as a threshold, and just remove the reference to the debate, I'd be relaxed with that personally.

And I have noticed the issue in the yellow text at the bottom of this item in respect of whether we should impose common requirements on it for their thresholds. There was talk of like setting floors and/or ceilings for these, and leaving some flexibility in that. There's the view that nothing should be decided. There's a view that should be totally ascribed. My view is that we should be able to have that discussion before the CCWG personally, unless there's a clear consensus here.

How do people want to play that? I've got the comments there and some lengthy responses. We'll move on if we could to Olivier.

Olivier Crepin-LeBlond: Yes. I have the same comment as Robin as about the NomCom appointees. But the point is that I don't think it's very clear to understand that in bold - in bold letters - that (unintelligible). I just don't understand it. And I don't know if it's the same for the other people.

Jordan Carter: Okay. So what it's trying to communicate is that we are not suggesting that the Nominating Committee would be the body that would decide to remove a director. So the normal process that we would do is that the directors that are appointed by SOs and ACs, it is their appointing body that would remove them.

The suggestion has been that (unintelligible) that shouldn't be the Nominating Committee. So there would be a way to remove them through the community mechanism. I can see how the language isn't very clear about that, and could definitely be improved. But is there - so as far as undertaking to rewrite it so it's clear as I've just said, is there another point or a question arising?

Olivier Crepin-LeBlond: No. I see it's more than a comment of language. I just don't understand what's the meaning of that mechanism. That's the only point too. Thank you.

Jordan Carter: So did my explanation help to clarify it or not?

Olivier Crepin-LeBlond: Not completely I would say.

Jordan Carter: Let me try a different angle. If the question is first of all everyone seems clear that SOs and ACs should be able to remove their directors.

Olivier Crepin-LeBlond: Yes.

Jordan Carter: I don't think they're...

((Crosstalk))

Jordan Carter: So then the second question is should it possible to remove directors who were appointed by the NomCom?

Olivier Crepin-LeBlond: Yes.

Jordan Carter: So the - my assumption is yes. No one has said no. The third question then is how should that be done? Should it be done by the NomCom or something else?

Olivier Crepin-LeBlond: I'm ready to hear any mechanism. But I don't understand the mechanism that this quite (unintelligible) here.

Jordan Carter: Oh, I see. So the problem is that we don't know what our mechanism is yet. We don't know whether it's the membership model...

Olivier Crepin-LeBlond: Okay.

Jordan Carter: ...or the designator model...

Olivier Crepin-LeBlond: Okay, then it's fine.

Jordan Carter: Yes, that's what I was trying to connect to. Sorry.

Olivier Crepin-LeBlond: Okay, it's fine then.

((Crosstalk))

Olivier Crepin-LeBlond: Maybe we should - okay, thank you.

Jordan Carter: Yes, thank you. That's a good point - explain more clearly.

((Crosstalk))

Jordan Carter: Mechanism referred to in 6.5.1 about the - so we get this referenced straight back. Thank you. The next person with their hand up is Kavouss. Please go ahead.

Kavouss Arasteh: Yes. On the previous question, my understanding is as yours. The removal of a director nominated by Nominating Committee would not be possible by Nominating Committee - would be by community. To a mechanism, what mechanism is? I don't know yet. So I have no problem. My problem is the thresholds. I agree with Robin that the threshold is too low. I think we should increase it - we should increase it.

And in the area that we are not sure, perhaps this is a practice using other places. You put two values with (unintelligible) between the two -a slash. Fifty percent, 67% delivered to the selection, but 40% is too low. And the 80% and the percent, we should have some ideas, because otherwise we have the same problem. I put the idea for the 80% would be 50%, and the idea of the (unintelligible) would be 75% in a square box, just to give an idea. Otherwise it could be any value. So my problem is the threshold. Thank you.

Jordan Carter: Okay. I would like to suggest as a way through this one that with the thresholds to trigger, we just - we have a sentence there that says that it should be set at around 40% back of the range to discussed. I suggest we just delete that, and just say should be set at a majority of votes would make the decision. That would essentially mean 50% plus 1 as a point for the discussion to flow with.

Can I ask you to use your green voting buttons if you're happy to have that much higher threshold just be the only one that's mentioned, but noting it will be discussed on the full CCWG? Are people happy with that? Could you use a

green agree button if you're happy with that as a kind of working hypothesis?
Not to exclude it going higher later, but just to get that new text there.

There are a few greens there. Okay, let's do that. So you'll see that in the next draft out - so for the double (unintelligible). We'll carry on with our speaking list. Avri, you're next up.

Avri Doria: Okay. Thanks. Yes, Avri speaking. I kind of, by the way on that issue tend to be into a higher threshold.

I just wanted to quickly talk about the IATF model. It's defined in best kind of practice 10 or RFC 7437. Basically what they do is in the IATF thing there's a petition. And if 20 people sign the petition, a special NomCom - a recall NomCom - is assembled. That NomCom reviews just one issue. And it basically works on the same rules as a regular NomCom. And members are picked in the same way as a regular NomCom, which is very different than the way ICANN does it, but that's beside the point.

That NomCom works on only one issue, is look at case for the recall of the particular - or it could even be several - but the particular appointees. NomCom appointees in the IATF - they are all NomCom appointees. So it's the way they remove anyone. And they decide on a three quarters basis to either remove them or not.

So it is very much - now I understood from the lawyers, and I have a slightly different understanding than Kavouss does, that if we're using either the member or some form of designator model, it is the member or designator that has to remove their board members, unless there's some sort of complicated contract between the other members that says they can do it. But by and large, if you appoint them, you remove them.

So the idea if we were to follow that kind of model, it would require us writing a recall nomination procedure. And in fact when you look at the IATF RFC - and I'll send you guys the URL to the RFC so you can all check it. You know I'd say four fifths of the document is about how to - the NomCom appoints, and then a short section on how it recalls. And they use the term recall, not spill, not fire - but recall.

So I can certainly send that. And if anybody wants, I can also volunteer to, you know, craft some sort of analogous possible processes if people would want me to me. Thanks.

I spent - by the way, I spent four years as chair of the IATF NomCom. And I chaired the group that wrote one version of its procedures. So I've done way too much NomCom in my life.

Jordan Carter: Thank you Avri for that offer. I see no reason to not - to ask you to do that if you're prepared to. Just write - just one paragraph would be the length that we're after. And I've written a little comment bubble with some comments explaining this. So I would like to circulate that after this call.

We've got about five minutes to go. And so Kavouss, I'd ask if you've got a really quick point. And then I'm going to explain what will happen between now and our next call. Kavouss, go ahead.

Kavouss Arasteh: Yes. I think if I take the path described by Avri, the removal of individual board by the people they nominating them, they didn't designate them SO and AC is okay. But when it comes to the Nominating Committee, we need a threshold. So the threshold here may be say from the removal of the board member nominated by Nominating Committee.

So perhaps we need to rewrite this paragraph that starts with the removal of the board - individual board member. Is to say that this removal designed by the entity who have nominated them - who have designated them according to their internal provisions. Once we come to the Nominating Committee board member, then we should have a procedure, because that is the committee where they're involved. And they should have a threshold. That is - so we need to perhaps revisit this paragraph entirely in lieu of the individual board member. Thank you.

Jordan Carter: Thanks Kavouss. I disagree that we need to. And the reason, it's not that we don't have to do the work you've suggested - we do. But in this first public comment report, I think we're just trying to get some guidance from the community. The question will be do you want the community mechanism to do this? Do you want the NomCom to do this? Do you want another body to do this? Or do you want nobody to do this? So we do have to get out to the level of detail you suggest, but we don't have to do it now. So thank you for that.

Ladies and gentlemen, we've reached the end of our call. Here's my proposal for our next steps. We've got another call in God knows what is it - 19, 21, 22 hours - something like that. What I'm going to do straight after we finish is pdf my Word document with the comment bubbles that have come up already here in this conversation. And I'll email it around to you just to have a look at.

When we start our next call, first of all we will pick up where we've just gotten to, which is (unintelligible) just to the end of 6.5.5. And we will work through the rest of the comments.

If I have time, I will be - I will circulate before the call - so 12 hours before it - a cut down version of the document that goes to - they have some recommendations about the remaining contentious issues. But I'm not promising that one. We might just have to do it on the call. So if you've read this paper, this will be the sole subject of our next call, because the point of it will be to come to agreement while we're going to propose who's with the CCWG.

So with that said, that's all. Thank you very much for all of your work and contributions. This has been a good meeting as far as I'm concerned. And we'll talk to you again at our next call, which is I believe at 1900 hours on Thursday the 16th of April UTC.

Have a great day and night - morning, evening - wherever you are.

Avri Doria: Thanks Jonathan

END