

**ICANN**

**Moderator: Brenda Brewer  
April 21, 2015  
2:00 pm CT**

Coordinator: You recording has started. Speakers you may begin.

Leon Sanchez: Excellent. Thank you very much. So welcome to the Cross Community Working Group on accounting the ICANN's accountability meeting Number 23 on April the 21st, 2015. This call is being recorded as you may be aware.

May I kindly remind you to state your names for the record, when speaking. And of course mute your lines when you are not using them. And for effects of the roll call may I call for anyone that is not in the Adobe Connect room but is on the phone bridge to state their name, just in case the - so someone can add their name for the roll call properly.

Holly Gregory: Hi Leon. It's Holly Gregory here. I'll be on the Adobe Connect in just a minute. But right now I'm just on the phone.

Sanchez Leon: Thank you very much Holly. You're an expert now.

So Holly's attendance is noted for the record, and she will be joining us shortly in the Adobe Connect room.

So anyone else on the phone bridge that is not at the Adobe Connect room at this point?

Okay, so having no one else on the phone bridge that is not in the Adobe Connect of course the regular reminder for filling in your SOI. So if you haven't done so by call 23 that would be worrisome.

So please do fill in your SOIs. And if you need help, of course, feel free to approach anyone from staff so you can get help on doing so.

We'll be having an update from the CWG co-chairs. And I think that Jonathan and Lise will be joining us shortly. And well for the time being I'd like to turn to Thomas to continue on our next agenda point.

Thomas Rickert: Yes, this is Thomas Rickert speaking. Hello again. Actually since Jonathan and Lise are still on another call which is running late and I can't really predict how long it will take.

Sanchez Leon: Okay.

Thomas Rickert: Since we need both of them to have this discussion can I suggest that we do the third agenda item on stress test first and move to the second agenda item on CWG collaboration afterwards?

Sanchez Leon: Sounds good to me Thomas. So with this we all agree then we can go to Mathieu for agenda Item Number 3.

Mathieu Weill: Thanks Leon. This is Mathieu Weill speaking. We're - hello everyone. Welcome to this first of a series of calls this week.

I do hope that we will manage to meet our agenda and timeline this week at least.

So the next agenda item was addressing the stress test. And the point of this agenda item is to update on a short number of stress tests which are particularly relevant to the recommendations we may have to look at during the later eventual days we have this week.

And for an update on this I am not sure whether Cheryl has been able to join us yet. I see Cheryl in the AC room. And Cheryl are you able to provide us with a short introduction on this?

I see you're in. If Cheryl is not able then we have Steve DelBianco, who could probably chime in. The goal of this is to look at Stress Test Number 18 first, then Number 14 and 15 and if time allows, then go into 17. But at least we should certainly look at 19 - at 18, which was regarding the GAC consensus and operating principles.

So I am turning to Steve DelBianco if you're here because Cheryl has - is experiencing difficult role call situation in at home where I think her access to connectivity is a bit restricted.

Steve I see you in the AC room. I don't know if you can.

Oh, you're here.

Steve, can you introduce Stress Test 18, please?

Steve DelBianco: Thank you Mathieu. Steve DelBianco GNSO and CSG and stress test work team. We have three stress tests that made their way into recommendations in the draft documents that's in the Adobe Connect. There are 26 stress tests in all. And they relied upon recommendations that are already here, especially for independent review of locking bylaws and budgets in order to show that we have adequately provided a community accountability.

But three of them required some rather small changes to the bylaws. And those are in our document at the tail end of the AOC section. So you wanted to cover 18 first.

And Stress Test 18 is actually on Page 73 of the document that's in the Adobe. That's Page 73. And it has to do with GAC advice. This is Stress Test Number 18.

So the concept here was that the GAC could change any time it wishes the method that it uses to arrive at the advice that it sends to ICANN. And of course it can do - it can use consensus. It can use majority. It might even have varied forms of advice.

But the ICANN bylaws today in Section 11 require ICANN to enter consultations to try to find a mutually acceptable solution. And that's required for any GAC advice.

It doesn't qualify for that by suggesting that only GAC consensus advice or other forms of threshold would be necessary.

So Stress Test 18 suggested that we should modify the ICANN bylaws such that when the GAC has arrived at advice to consensus, then that would be

triggering the bylaws provision to require trying to work out a mutually acceptable solution.

Other forms of GAC advice that didn't quite come to consensus were perfectly acceptable. We'd be giving quite a bit of consideration by ICANN.

The new doc required the bylaws provision of working on a mutually acceptable solution.

All right, and the way that works its way into the document is what did you put in the chat? You put Page 13 in the document, but I'm not sure it's on Page 13, though. I'm looking at the agenda to the right. I don't believe that's actually where it is.

Jordan Carter: Steve, it's Jordan here. Does the - part of the Working Party 1 stuff that makes a recommendation about to how to deal with Stress Test 18 so that's on Page 54 of the PDF.

Steve DelBianco: Thanks Jordan. So folks, if you're scrolling to Page 54 you'll see where Stress Test 18 made its way into our recommendations as part (unintelligible).

So on Page 54 is the requirement that the GAC use consensus if it wants to trigger the bylaws provision.

So the change is right at the bottom of Page 55 on the top of Page 56. We showed you both provisions, J and K from the ICANN bylaws. And the sentence that is being added is in bold and underline.

And it says with respect to governmental advisory advice that is supported by consensus.

And I did want to note that several weeks ago when we were reacting to Stress Test 18 we had gone so far as to say that the bylaws should enshrine the current method that the GAC uses to arrive at advice. And that's in that GAC policies and procedures. And it says that consensus is the absence of any formal objection.

We had discussions with several GAC members, the co-chairs and rapporteur and actually figured that one way we could diffuse some of that concern was to simply refer to consensus allowing the GAC to define what it means by consensus so that if it felt that the absence of a single objection was too high a bar the GAC can come up with a definition of consensus in much the same way that the GNSO and CNSO, ccNSO define our own definition of consensus. But we will rely upon that in sending it to the board.

So on Page 56 I made out four particular points about that that I wanted to reiterate before we take questions.

The first is this does not interfere with the GAC's method of decision-making. The GAC can do whatever it wishes and it cannot adopt advice by whatever voting method it wishes.

All this suggests is a carrot, an incentive to say that if consensus were used by the GAC -- and that's what the GAC is today -- then that advice has to be taken into account in the sense - in the extent of having to have a mutually acceptable solution or at least to try. Okay?

And even if the case the GAC was producing advice simple - by simple majority or some other way ICANN still has to explain if it chooses not to

follow that GAC advice it has to explain no matter what, whether it's consensus or not.

So the only effect of this change is to sort of raise the bar to the kind of advice were ICANN is obligated to try in good faith in a timely, efficient manner to find a mutually acceptable solution.

Now NTIA, US Commerce Department gave specific requirements for a general concept of the transition of not to have ICANN become controlled by a governmental or intergovernmental body.

And that is a broad context that contributed to the development of the stress tests. But it wasn't a direct cause and effect.

However, I did want to note that right after we introduced this concept of adding that bylaws change a handful of GAC members exchanged open emails on the list. And one did come at the official position of NTIA who considered that this particular bylaws change was necessary to fulfill NTIA's condition with respect to avoiding governmental or intergovernmental capture of ICANN.

And that while that's - while that connection is one that some might feel is a stretch this work party and the CCWG is considering this bylaws change on the basis of being sure that ICANN is accountable to the full community and not in just one special case where a simple majority of GAC members could trigger a bylaws obligation to work out a mutually acceptable solution. That doesn't exist for any other body in ICANN.

And in situations where the board has deference to this decision it it's only where there's consensus behind the decision becomes from an AC or an SO.

So this is an attempt to bring that on to par. But in addition it satisfies an explicit requirement that's been articulated by NTIA.

So I'll stop there Mathieu and Thomas and however you want to handle it. Do you want to take questions?

Mathieu Weill: This is Mathieu speaking. Yes, I think we're going to take questions before turning to Kavouss, who was first in line. I'd really like to really commend the stress tests and the various work party groups for the significant amount of work that's being done on this particular stress test and listening and taking into account the various inputs we've received from a number of stakeholders, including some of the GAC members in the CCWG.

And I hope our discussion will enable us to move forward in terms of what we put into a public comment bearing in mind that obviously this is in no way binding to any party at this point.

So I'm turning to Kavouss for the first question.

Kavouss Arasteh: Thank you Mathieu. I discussed this issue. Unfortunately two persons they (unintelligible) with me and that pushed me not to further have any debate.

Rule or principle focus of them is quite clear. GAC by consensus and where the consensus it's not possible provide full range of views expressed by members.

If and only if we wish to also provide the flexibility to GAC to have other procedures then consensus and in the absence of consensus a full range of the views we could do it differently.



Maybe we could say GAC may also amend rules or Principle 47 to decide on certain cases by majority full stop, nothing more and nothing less.

That means GAC remains with the consensus if consensus is not the wide range of different views.

However, for certain cases, depending on the GAC decision it could be a majority decisions. This is point one.

Point two, reference to the issue that transition should not end up that any government or group of government have control is a general principles or conditions of NTIA and is not limited to GAC, is covered in (unintelligible) transitions. There are five conditions, and this is one of the conditions.

I suggest that we do not go that far and asking the GAC may change its principle 47 and have majority voting to say it may also consider to amend its Principle 47 to have voting by majority on certain cases. That is my view.

And I say that this is an issue needs to be discussed in GAC. Unfortunately, GAC has not had the opportunity to do that. The reference was made that we have received comment chair of the GAC I have led several times.

The GAC chair is (letter) today CCWG. And exactly it said Rule 47 or 20 or 47. And it says that it is the view of certain GAC members, but not entire gap. So I think that we should be very cautious and we should not go too far.

Once again NTIA conditions covers everything in transition and not limited to GAC advice. And second GAC should still have the possibility to do whatever wishes consensus majority or range of possibilities.

So we made a very small changes to the bylaw thing as I mentioned. GAC may also consider to have majority views on certain cases. And this is leave it to the GAC to decide. Thank you.

Mathieu Weill: Thank you Kavouss. I observe that there remains significant amount of time available for the GAC to consider this in sessions because obviously no final recommendation would be made by our group before Buenos Aires. And so that leaves a significant amount of time.

And I'm turning to Becky now.

Becky Burr: Hi. I just wanted to provide some historical perspective.

Steve mentioned that on the ICANN bylaws these provisions were put into place in 2003 as part of the evolution and reform don't require ICANN or GAC advice to be by consensus.

That is because at the time GAC advice was consensus. And there was no discussion or conception that GAC advice could be anything other than consensus-based.

So the absence of that language from the current bylaws simply reflects the state of affairs and the expectations at the time the current bylaws were written.

The second thing I'd like to say is that it seems to me I, you know, I take Kavouss's point that maybe there could be, you know, advice from the GAC that comes out that it's based on a majority vote. And nothing that is proposed in the stress test would preclude any kind of advice at all, whether it's, you know, majority vote or supermajority vote or consensus.

I think it's only about the situation that in which ICANN must sit down and reach an agreeable compromise with the GAC. And I think we need to keep that in mind.

We are not talking about the ability of the GAC to give advice in any form or manner that it wants.

And second, given the extraordinary authority that the GAC advice has when it is providing advice I think it is that a reasonable thing to say that the community should expect GAC advice that it has - it's close very close to being a veto that when that kind of deference is given to the GAC advice it should be with the consensus of the GAC.

Mathieu Weill: Thank you Becky. That's a very good point. And I'm trusting that follow-on speakers are mindful of time and try and make their points concisely. And I know Roelof is quite good at that. So I'm turning to Roelof now.

Roelof Meijer: Thank you Mathieu, Roelof Meijer for the record. Can you hear me?

Mathieu Weill: Yes, perfect.

Roelof Meijer: Okay. Well, I've made this point before and I object to this point in the bylaws not because our content is really very important and will have a lot of impact but for two reasons one being other principle.

I think my opinion we are selecting one particular advisory committee and are trying to influence the way, not the way they make decisions as to like you point out, but the way they give their advice to the ICANN board.

On the second reason is that the most important one to me this thing has the potentially to really slow us down and I think for the wrong reasons.

Because although we might expect it to get more advice than the GAC it - we gain from consensus advice the majority advice it does not automatically mean that the GAC will have more influence because the ICANN board can still reject the advice and do something else.

And if the board chooses to follow the advice of the GAC, a majority of the advice against the interests of the rest of the community the community will have new powers to block that.

So I don't think it's really important to have the exchange on one hand. And on the other hand I think it has the potential to really become an issue that will slow it down.

Mathieu Weill: Thank you Roelof. I point to (unintelligible) and I will close the queue after Greg so that we can move to another item. And next is Jordan.

Jordan Carter: Thanks Mathieu, Jordan Carter here for the records. I would agree with what Becky said and would only add two things.

One is that we don't give any other advisory committees the same kind of deference in their device that we give GAC in the bylaws so that GAC is a special case so response to your last point.

The other point is we already said in our debate so we can't give individualized SOs and ACs veto acceptance rights over any particular part of this proposal.

So when you come to back to the point that nothing in this would affect the GAC's decision-making it only affects how the ICANN board has to go into a reconciliation negotiation.

And it doesn't entrench the current level of consensus by copying the language out of the GAC operating principles. It simply senses to the flexibility.

This is a proposal that's moved a long way from where it was originally. And I support its conclusion in our public comment doc.

Mathieu Weill: Thank you Jordan. Greg?

Greg Shatan: Thank you. Greg Shatan for the record. Just to follow on GAC advice does get an exceptional amount of deference in the bylaws. But that's not merely because it's advice from the GAC. It's because it's consensus advice.

As Becky pointed out the current language did not contemplate the idea that there could be a change from consensus advice. So essentially, the language is now anachronistic. The suggestion here is really only one that would fix the problem.

The board should not be forced to give the same amount of deference to a majority or range of views type of a document from the GAC as it does currently for consensus advice from the GAC, seems pretty straightforward.

And lastly, this is really aimed only - this is aimed only at the board and its activities in receiving and reacting to GAC advice.

This does not in any way constrain the GAC from taking any decisions it wants to change its level advice.

It just doesn't get to carry along the same amount of deference that it currently gets for giving consensus GAC advice. Thank you.

Mathieu Weill: Thank you very much Greg. (James) the queue was closed? Is that something very new and very important that you have to add?

No. Okay thank you very much, (James). I appreciate it.

What I would do to recap, is I think we're speaking about a range of views within the gap and everything. And we have the range of views in our group right now on this topic. And it's the - it's very valuable.

I'd like to remind you that it was noted in the chat that obviously what we're discussing here at this point is the opportunity to introduce that proposal into a public comment and enter in work product of our group and definitely not - this is not the last step towards a discussion.

So we'll have a second reading of this during the (intense work days). And we have several options including proposing various scenarios.

I would recommend as an action item out of this call that may be Kavouss and Roelof at least put their comments in writing so that we can at least have them as material inputs into the second reading and that everyone just (counselors) this as whether it's appropriate to put this into our interim proposal considering that the GAC will obviously take some time to discuss this.

And that's at least that's what I would expect at its next meeting and that we - before we finalize our proposals we would have some formal feedback on this, including from the public comment necessarily or other formats. And so I think that's something which should be very clear from.

So that's - that would be my conclusion. So I'd like the team to note the suggested action items from - for Kavouss and Roelof to put their comments in writing. And we'll continue this - the conversation with this in mind during the intense work day.

I'm not seeing the action item in the notes so I'm a bit concerned, but that's just a matter of time.

With that I think we'll just stand for stress test item because I'm conscious that we have (Lee) and Jonathan the co-chairs of the CWG on the call.

And I mean they have - they're having very long calls as well as significant call just a few minutes ago. So I'd like to give them the opportunity to be relieved after they present us with their update.

And so I'm turning to Thomas to meet that part of the call and then we'll come back to the Stress Test, 14 and 15. Thomas?

Thomas Rickert: Thank you very much, Mathieu. This is Thomas Rickard speaking. And I'd like to welcome Lise Fuhr and Jonathan Robinson to the call.

As Mathieu said, we know that you're under a lot of time pressure so we're not going to keep you on this call for too long.

But we really appreciate you taking the time to speak to our group. And the whole group does know from regular updates that we get that we are liaising regularly with each other.

We have weekly calls that we have additional meetings whenever we can. And I - we think now we're at a point in time where actually the work conducted by both groups needs to be woven together much more than previously and we've asked or there has been an exchange of correspondence on certain items where the CWG has been requesting input and support from the CCWG.

And I would really like to hand it over to the two of you -- I'm not sure who goes first -- to provide us with a status quo of where you are on the things where you need input from us and maybe a little bit on the overall status of your recommendations.

Jonathan Robinson: Thank you Thomas. It's Jonathan Robinson speaking. And I'll lead and then Lise will pick up on some of detail points.

Yes, right. We've just finished a two hour meeting of the full CWG. And the purpose of that meeting was to review the draft proposal in the current state that it is in now.

And we did a page turn in particular of Section 3 and a couple of key annexes. The way in which we structured that proposal is to be directly comparable insofar as it's possible with those submitted by the other communities.

So we've had the advantage of being able to see that proposals and recognize the formatting. But that's not only done for that reason. It was done recognizing that our proposal was missed the original ICG deadline.



And so in crafting our proposal that way and putting a significant amount of detail into annexes we were able to structure it such that we hope we have assisted at least the reconciliation of our proposal, with that of the other groups.

And clearly that's the job of the ICG. But that was one key objective of structuring it in that way.

That draft proposal is in a version it happens to be 3.4. It's been through various iterations. And we are still on track to attest to publish that for public comment tomorrow.

I expect we'll use every last minute of whatever tomorrow might be defined as if there's a lot of work to be done to synthesize it all into the final version of the proposal.

But having done, so that will then kick off a 28 day public comment period.

Clearly there's a judgment to be made there between making it on the length of the proposal.

But the drivers are in terms of key time frames are really driven by our need and if we are to stick to our timetable of having and the ability to process the public comments to reformat those into a final version of the proposal and to have that proposal prepared sufficiently at the head of the Buenos Aires meeting to give the groups new opportunity to consider it.

So there really are I mean, some pretty tight constraints that are ultimately driven by our objective to publish a final proposal for consideration at the Buenos Aires meeting.

One of the techniques we've employed to assist us with doing it or one of the issues that we had to deal with is to dissuade ourselves as chairs and our group with us that we are able to rely on this group.

And for that we have been very grateful for both the work of this group and the close collaboration with you Thomas and your colleagues in the co-chair roles, Mathieu and Leon.

In creating that dependence we've in effect put work that some might have or wanted us to do in our own group across to you and created what - the - a strong dependence on the work that you are doing and the mechanisms that you propose to create such that we will be able to rely on those.

And it is our expectation that our proposal is likely to be conditional on those mechanisms being implemented.

So whilst we don't to be entirely synchronous in our work with you we are very dependent on your performance as a group to support our performance. We are interlinked.

And I know some in the community would have liked us to have been one big piece of work. Given the way it's panned out I think we've managed very well with the two separate tracks of work in the CWG and the CCWG stewardship and accountability. But we are very dependent on you.

And we will ask the lawyers that are working with us and assisting us to help us to craft and institutionalize or formalize that conditional dependence of our proposal on the critical mechanisms that you are working on.

I think that covers in a nutshell what I would like to say. There is a memo in front of you which is an attachment we sent you recently with some specific points.

And Lise will probably want to highlight a couple of those. But I'm also mindful you have your own work to do, and are under your own time pressures notwithstanding those that we might seek to put on you. Thanks  
Thomas.

Thomas Rickert: Thanks Jonathan and over to Lise.

Lise Fuhr: Thank you Thomas. And yes I would like to echo Jonathan. It's Lise Fuhr for the record, sorry. I'd like to echo Jonathan's words about how interlinked and how important it is that we have some input from you on a couple of issues.

And as you can see in the memo, we have highlighted four issues that we would like you to look at.

Actually, it's been down to three now because one of them has been - we had a survey among the ccTLDs. And that decided that we shouldn't ask you to look at the - what we call an IEP. And I think we call it an Independent Review Panel. But you call it an RFP, I think. I'm not sure about that wording. That's the last issue. That's the appeal mechanism.

Sorry, I started from the end but I think it was a good - some good news that we actually minimized the issues so we didn't have to deal with that.

That appeal mechanism was only regarding the ccTLDs and delegation, re-delegation and the issues to be dealt with within the ccNSO. That was the response from the community.

But the first one that we have is the actual ICANN budget. And while we had a Design Team working with ICANN and IANA staff on this budget and they're very helpful. We still think there needs to be much more details and much more transparency regarding this.

We had an email from Mathieu earlier before or during our intensive working days asking us for details. So we try to specify in our response to you what kind of details it is that we need on this.

And actually we have a lot of itemizations of the cost. But we don't have the actual number of the cost. It's in one big chunk instead of specified per item. And we try to envision this for you.

And the next one is the community empowerment mechanism. And we're working on having reviews and review teams. And those we'd like to have that you're thinking of we're having review teams.

And we need to have something to pass this onto and have a mechanism that treats those reviews and take care of that they build into any system that you have regarding your thinking of maybe having an, a guarantee kind of review whatever.

But we're planning on having a specific review on IANA functions and also on maybe having an ad hoc review if necessary and that needs to be treated in an accountability mechanism.

And I see Steve DeBianco is asking but we're not asking for any ccTLD appeals for delegation and re-delegation. That's right.

And then we have the last one is review and redress mechanism where we would like to have a fundamental bylaw incorporated. And this is also we tried to be specified a little further in this and why we need it.

So we would like to have in order to have a trigger mechanism we need a biologic kind of to have the commitment from the board to act on anything that's right by the review teams.

So this was a big very brief overview review of where we are regarding those four. If you have any questions feel free to ask them.

Thomas Rickert: Thank you very much Lise. This is Thomas. I would very much like to open it up to the group for questions. And I see that Kavouss has raised his hand. Kavouss, the floor is yours.

Kavouss Arasteh: Yes Thomas and Lise I wholeheartedly congratulate you for your hard work and tireless activities, day and night so many meetings putting this very, very complex supplement together. And I am (unintelligible) for public comment.

I have one general question and two small comments. The general question is that the document you propose to go to public comment, but at the same time you send it to ICG, do you expect that ICG could conceded that document before receiving the public comment? Because the public comment in the first drafts was entirely different because the GAC was completely different from what you have now.

So what do you expect that ICG go to this because we have tomorrow waiting? And then when you see public comments you can get and send it again to the ICG? This is of course and you may answer. You may not answer. That's actually I raise the question right now coming to comment.

In your document correspondence, you refer to direct cost and indirect cost. In legal document Number 18 which is now also at tonight they refer to direct cost but not indirect cost. They refer to direct costs and they refer to IANA direct cost for shared resources and support function allocations.

I think there seems to be some sort of (unintelligible) internal language. Perhaps we should - you should correct that whether you talk about direct and indirect costs or you talk about direct and shared costs. I don't know shared whether it's indirect or not. This is one question.

The other question you referred to the ad hoc review whereas in some of the talk of the document referred to a specific review. Again, you have to have a consistency in the language. Either you call them specifically or ad hoc review.

And the last comment is that you're talking about ccTLD yet for delegation and re-delegation.

Did you (unintelligible) the (unintelligible) also or just to you limit yourself to the - with the comments that we should not have anything for delegation and re-delegation but what about revocations? This is something that we'll discuss in GAC.

This is see a comments that I - which is possible (unintelligible). And I thank you very much. Thank you.

Thomas Rickert: Thank you very much Kavouss. This is Thomas. Jonathan I see your hand is up. But I trust that Mathieu has another question for you.

So if I may have would like to take the liberty of hearing Mathieu first and then let you Jonathan and Lise respond to the questions from both Kavouss, as well as from Mathieu. Mathieu?

Mathieu Weill: Thank you very much Thomas. And I would join Kavouss in congratulation - congratulating Lise and Jonathan for their hard work which I hope we're going to be rewarded with a very good feedback in the upcoming public comments but for having observed their work. It's been relentless. It's been difficult but they have been tremendous chairs and we look forward to their experience.

I think the issues that Lise described are very relevant to us and they fit well in our work stream one proposals and we're basically working on all those issues so that's very good confirmation.

We have slightly different time lines in both groups. And I know Jonathan and Lise, you've been working on how to present your proposal in a way that is conditional upon our final approval of recommendations.

And I wondered if Jonathan maybe you could share with us how you see this played out in the adoption of the - in the proposals you set up and their adoptions later on, the conditionality proposals you were referring to a few months ago whether that's still appropriate?

Thomas Rickert: Thank you very much, Mathieu. I think the term conditional accountability have been ceased to be use because that has caused some confusion.

But I think the idea is still to have conditional aspect in the workgroup as with both groups. And with that, I'd like to turn to Jonathan and maybe Lise to answer that questions that were raised.

Jonathan Robinson: So I'll make a pass and I think I may have to defer some Thomas -- it's Jonathan speaking -- to Lise anyway.

First Kavouss raised the point on the ICG. We do not intend to submit this draft proposal to the ICG. Of course members of the ICG are welcome to review it.

I may have caused that confusion referring to the similarity of formatting and style that we have created in order to ultimately facilitate the IC or assist in facilitating that ICG's work. So that's really about the style and structure of the proposal to be as readily as possible cross compared with that from the other communities.

It was a point on direct costs and indirect costs. I accept the point and Philip Buckingham furthered it in the chat that we do need to make sure we're very clear on those.

And that's going to be something, you know, in a sense that's one area of linkage with you it's how we - how clear we are and how clear we can - clearly we can specify and understand and maintain insight into the costs of running (function).

As to ad hoc review I accept the point there has been some change in terminology.



Just to highlight, though, that these proposals have been variants - variations of the proposal have been refined on quite a frequent basis. So it may be that an old term is carrying on but really the key difference here is that the IANA function will be subject in the CWG's view to period review. And that periodic review will take place every five years save for the first one which will take place two years after transition.

And in the addition there is the prospect of a special review on the specific circumstances which for all intents and purposes will be have the same structure as a periodic review that it can be called in - can be initiated under specific circumstances.

I'll defer on the revocation of ccTLDs to Lise and perhaps she can make a comment on that. But before doing so I'll just switch over to Mathieu's question on the conditionality.

And essentially hear the idea is that the proposal we will make will say that it is dependent on the work of your group. And that is what we mean additional.

Our proposal is valid insofar as it's able to rely on keep accountability groups being accountability mechanisms being implemented by this group.

So where that could unravel, I suppose is should this group be sufficiently far behind in its work should your group the CCWG on accountability be sufficiently far behind or insufficiently clear on those mechanisms thus that the CWC will feel that it cannot rely on these?

Now I am not a lawyer and that is why I've asked together with Lise of the lawyers that are assisting us to help us frame that conditionality, that dependence on your work such that they don't need to be having entirely

coincident but we can rely comprehensively and corporately on the outputs of this group to support the output of the (unintelligible) chairing.

Let me hand over to Lise.

Leon Sanchez: Thank you, Jonathan. There was two issues one was the issue regarding share the cost on indirect costs.

And I think it's a very valid point and we will try and make sure that we use the same terminology. And we will refer to it as shared resources because that's the way that ICANN is actually - that's the words that ICANN are using.

Regarding the revocation we chose not to use that terminology in our work because this is a terminology from the framework of interpretation report.

And having this sent out for a lot of ccTLDs that are not have part of the ccNSO and that has not read that report we thought it was more sensible to have the old terminology delegation, re-delegation. Thank you.

Thomas Rickert: Thank you very much, Lise and Jonathan for answering the questions from the group.

Unless there are further questions I would like to take stock of what we have so far. And I would also like to briefly capture some of the ideas that have been suggested in the chat with the respect to the reviews that you and (unintelligible).

So for the regular reviews we can put them in the section of our report where we speak to the periodic reviews that we have foreseen in our, the preliminary findings.

But for the ad hoc reviews that you're asking for it is my understanding that our group would very much like to hear from your group what would trigger such events so that we can suggest or add additional language to that.

And maybe Avri who's also liaising, the liaison between our two groups would like to speak to that in more detail. Avri please?

Avri Doria: Yes, thank you. This is Avri speaking. Hopefully I can be heard. Yes. And I've been working on both teams in the CWG and the CCWG.

So in terms of what I think the review that's being offered for the IANA review which is the one that the placeholder is being held for would be keyed off regular calendar just like the others.

The only other thing was that that review could be initiated by one other process at the moment. And that's the customer service committee, the CSC, you know, handed an issue off to the naming SOs and the naming SOs could request activate one of those reviews out of band.

I see no reason why with what's being done here that particular sentence could not be in the description of the review going in the same section of the AOC like reviews.

So I don't actually think that it would cause that much extra complexity. It's just that in one of those reviews we're adding an extra trigger. That is the action of the naming SOs.

But otherwise it would be the same and it wouldn't be ad hoc. And I think ad hoc is really the wrong impression.

It would be a review done exactly the same way just initiated out of schedule.  
Thanks.

Thomas Rickert: Thank you for elaborating on this. And I guess that your suggested language captured it quite nicely.

We would - we should keep this as an action item for our further work to put that language in the report or into our recommendation for the group to further discuss.

I would suggest that the last intervention from the group is going to be made by Kavouss. After that I'm going to close the queue and then we can move to the next agenda item. Kavouss.

Kavouss Arasteh: Yes, Thomas. I just wanted to - now to your questions your question's answered on Page 22 of the document to be released by CWG when (unintelligible) that as I said the CSC could initiate this (unintelligible).

I suggest it's possible you would not use two different terms. They use a specific review but not ad hoc because ad hoc has a different meaning and so on and so forth. But in fact even this specific review by CSC now is commented but it should not be on the CSC, should be some other team and some comment on Page 2 to (unintelligible) Jonathan and Lee's document (unintelligible).

Thomas Rickert: Thank you very much. Kavouss. So I think that for our group what's important to remember is that I think for all areas that have been brought up by the CWG we have possibility to factor that into our work.

We also take note of the sense of urgency that you've raised with the group and that we're very aware of and that we will keep you updated and you will certainly see the report if and when it's going to be published for public comment. And then you'll see how we have actually made progress on these items.

Now listen, Jonathan would you like to make any further remarks for this section?

There don't seem to be any.

Jordan Carter: Thank you and the - Thomas. Just to - sorry I should have put my hand up just to thank you and the group for A having us now and B, the support and collaboration. It's been very effective and really appreciate knowing that we - it's helped with the efficiency of our work. So thank you.

Thomas Rickert: Thank you very much.

((Crosstalk))

Thomas Rickert: Thank you very much, Lise, Jonathan.

Lise Fuhr: Yes. I'd like to add it was very good to have the comments. And I think it's important that we try and use the same terminology as you do. So we take that point very seriously. Thank you.

Thomas Rickert: And thank the two of you for your availability. You will now be excused for the rest of the call although you're wholeheartedly invited to stay on.

And with that I think we can close this agenda item and turn it back over to Mathieu.

Mathieu Weill: Thank you Thomas. And I'm conscious of time but we'll turn back to the stress test item where we should at least I think cover and should be pretty short I- Stress Test Numbers 14 and 16 which are actually about bringing the information of commitment into the bylaws one way or the other.

So Steve can you quickly intrude introduce those stress tests so we have a fresh discussion on them?

Steve DelBianco: Thank you Mathieu. On Pages 76, 77 of our other document which I believe staff will put back into the Adobe chat Pages 76 and 77 of our draft document we describe Stress 14 and 15.

Stress Test 14 was first discussed when we all gathered in Singapore. It was the first one we went through together. And I don't need to go into too much detail here.

It is simply an acknowledgement that absent the IANA contract the likelihood that ICANN could simply put the affirmation of commitments with 120 days notice if it didn't have the need to maintain the affirmation in order to keep the IANA contract with NTIA.

We pointed out over and over again that the affirmation is a bilateral agreement between the US government and ICANN and it would likely become the very next target for governments and others who feel like no

government should have a special role in its relationship or oversight of ICANN.

All that is valid concern and the response to the stress testing was to say that any commitments that ICANN makes to the community which are embodied in the affirmation of commitments should be moved into ICANN's bylaws. And that ought to be a Workstream 1 requirement with the transition of the IANA contract.

So that's the connection between Stress Test 14 and 15 and how it tracks back to Page 47 of the document you have before you.

Page 47 and that whole section describes affirmation of commitments that need to be brought into the bylaws. It starts on Page 42.

Each of them is articulated there. And Mathieu did you want to go through each of those commitments that map to it or just specifically the affirmation of commitments to Item 18 with respect to the headquarters? What's your pleasure?

Mathieu Weill: Well, I think we should just remind principles of the main principles and probably be a little more specific about A, B.

Steve DelBianco: All right. Avri and Mathieu did lots of great work that began on Page 42 where we walked through how to map the commitments they make in the affirmation, the commitments that ICANN makes to the community and move them over into the bylaws.

And as we did so we have additional text which Work Party 1 is recommending as part of turning those from bilateral commitments into

universal commitments as well as other changes to text that Work Party 1 is recommending.

So Mathieu if you turn - if everyone turns to Page 44 of this document. Do we have control yet, Page 44 please.

In my case, I don't think I have - here we go, 44.

On last week's call we discussed these changes. They're in bold and underlined. I'm looking for guidance in the chairs of whether you want to take a queue on each one of these commitments from the affirmation or simply summarize them and take a queue at the end.

Mathieu Weill: I'd rather summarize them into the queue at the end please Steve please.

Steve DelBianco: Thank you Mathieu.

So words that are already in the affirmation don't require a lot of explanation. The one piece of additional text on Page 44 is to suggest the word global to be repeated in front of the word public interest. So it's global public interest and that we should respect the bottom up multi-stakeholder nature of ICANN, the bottom-up multi-stakeholder nature of ICANN.

Also the last item on Page 44 is that sustain a competitive environment that enhances consumer trust and choice, enhances consumer trust and choice.

That's an example of a commitment that is actually part of the periodic review but ought to be baked into these bylaws as well in the core values.



Page 45 took a look at the affirmation of commitment to Paragraph 4 where ICANN made commitments to perform and publish analysis of positive and negative effects of its decisions on the public.

And that public means all public whether you're financial, non-financial, commercial or noncommercial.

But just the same if we bring it over to the bylaws there's a desire to clarify it to say including any financial or noncommercial impact on the public and positive and negative impact effect on the security, stability and resiliency of the DNS. And that was on Page 45.

Page 46 talked about the commitments and the affirmation in Section 7. And in that respect ICANN committed to transparent and accountable budgeting processes.

We bring that over with the additional text to say providing either reasonable or adequate advance notice to facilitate stakeholder engagement in policy decision-making.

So again Page 46 the idea was to add to this text so that ICANN would provide advance notice so that we stakeholders could properly engage in policy decision-making.

We don't know for sure if the right word is reasonable advance notice or adequate advanced notice. That's not clear.

Page 47 took a look at the affirmation of commitments in Paragraph 8 and it had three parts of it, to maintain, the capacity and ability to coordinate the DNS. That's brought over verbatim.

8D is ICANN's commitment to maintain to remain a non-for-profit corporation headquartered in the US with offices around the world to meet the needs of the global community.

And what we have noted in our work party is that ICANN CEO in February of this year told a Senate committee that the jurisdiction of ICANN shall remain in the US and we stand by this.

A number of us have noted that that created an expectation at least in the minds of US Congress that the absence of 8B being brought over from the affirmation would likely be noted when Congress reviews the transition proposal.

Now I do want to note that since we discussed this last week a number of people have pointed out that Article 18 in ICANN's current bylaws suggests that quote the principal office for the transaction of the business of ICANN shall be in the County of Los Angeles state of California US of A.

ICANN may also have additional office or offices within or outside the USA as it may from time to time establish.

So that's in the bylaws now and it does say shall be in the USA. So I believe that the principal office shall be in the USA is probably already in the bylaws.

And it may not be necessary to put a finer point on 8B in bringing it over in the bylaws. That's certainly a discussion that this group could discuss.

On 8C Mathieu that's being brought over with one additional word, adding the word bottom-up so that it reads operating as a multi-stakeholder bottom-

up private sector in that organization with input from the public whose benefit shall in all events act.

The additional changes to the bylaws have to do with the reviews, the four periodic reviews that are in the affirmation of commitments.

Now that will take a little bit longer perhaps to get through Mathieu so I thought I would stop here.

Mathieu Weill: Perfect.

Steve DelBianco: And see if you wanted to take a queue on the questions with respect to four, three, four, seven and eight. Thank you.

Mathieu Weill: Thank you Steve for taking us through this various items and proposals. I'm checking whether there are any questions.

I think your presentation was very thorough Steve and I noticed been a lot of hard work for by the group on this.

I am seeing Kavouss's and a for a question. Kavouss.

Kavouss Arasteh: Yes, thank you.

Mathieu Weill: You have the floor.

Kavouss Arasteh: Yes first the term affirmation of commitment was used - the (unintelligible) is used as relation between the NTIA and ICANN.

If and only if a relevant part of affirmation of commitment is transferred to (unintelligible) and as I heard and I think it is somewhere in the document the remaining part of the AOC which is not transferred or we shall not transfer to bylaw will be subject to deletions or terminations.

Therefore in the bylaw we should not refer that ICANN commits itself. The term commit itself coming from the affirmation of commitment.

If it goes to the bylaw it is not like they commits today. ICANN shall or should or something but not commit because there's no more commitment.

This commitment is valid when we have this affirmation of commitment. If it goes to bylaw and the remaining part will be terminated the term commitment should not be used. This is one comment.

Second comment in Page 46 there was a lengthy discussion in Working Party 1 about whether we say adequate or reasonable or some people say sufficient.

But this is quite simple. You are talking advanced notice. Put some dates 30 days, 60 days, but not 30, sufficient adequate reasonable.

Advance notice is you notice someone ahead of time but in 30 days or within 15 days. Put some days in - in this (unintelligible) and leave it to the public comment to see whether they want out for 15 days or 40 days or 75 days and so on and so forth but not discussing sufficient reasonable and so on so forth.

So these are the two points that I have. And I request that we try to resolve the issue no longer repeat referred to the commitment in the bylaw because it no longer commitment.

It is an obligation whether you put it in the term shall or should or needed or required that is something that is - but not commit because there's no longer affirmation of commitment. That will be after transition (unintelligible).

Thank you.

Mathieu Weill: Thank you Kavouss. Jordan is next.

Jordan Carter: Thanks Mathieu, Jordan Carter here. The comment we've just heard is why part of me wanted to not show revised bylaw wording because there's no use in us now getting comments now from the public or from ourselves on the exact words used.

The important point is to get the sense of what would it do? And that's what we need community input on. So we need to make sure our wording summons that up.

We've tried to indicate that in Paragraph F on Page 43 just before this table.

The second point I'd like to make is that there is a set of revised core commitments in the Working Party 2 work that's elsewhere in this document that Becky's team worked on.

And there is a need to reconcile these proposals. We can't probably go out into public comment with different wording proposed for core values from different parts of this report. That would look a bit silly.

So I think that's a job we'll need to work through in the course of the workdays at the end of this week. Thanks.

Mathieu Weill: Thanks Jordan. Steve maybe for a last word and then we move to the next agenda item.

Steve DelBianco: Kavouss what you mentioned about the affirmation being sunsetted if in fact all these bylaws are brought over that point is on Page 43 of the document in Item E. We added that after the last week's discussion.

And I know with interest what you said about the word commit being brought over in Paragraphs 3, 4, 7 and 8. And I'll note that it's only there twice on Page 46.

And I'll agree with you you're right the word commit doesn't appear in the entire ICANN bylaws so the word commit should come out if it gets moved over and it might just say the word shall. Thank you.

Mathieu Weill: Thank you Steve. And that's something we'll get back to when we get into the intense workdays. And I'd like to thank Cheryl, Steve and the team on the Stress Test Working Party for their hard work as well as Work Party 1 who has incorporated a number of the proposals.

And I think we have a very consistent approach on this part of the report which will be very useful later on in the way to the public comment even if we still have to fine tune a number of items for consistency which is perfectly normal at this stage.

With that I am moving with Item Number 4 which is about the timeline and agenda for the intensive workdays on Thursday and Friday.

So if we can move to the slides that were shared ahead of the meeting about the workdays.

The whole - the point of this slide is to introduce some of the general principles we may have to work around these work days.

And you have scrolling control. So if you move to Slide Number 2 I'll be quick because I'm conscious of time. I like to remind our goal in these days two days is to prepare for the launch of our public comments.

So what we are preparing in the soliciting of input from the community and we are not going to prevent a consensus position, I think this is very important because that is the question we'll have to ask ourselves.

Do we think this particular item deserves to be put in front of the community for comments which is a very different passion from do we have consensus?

So is not final approvals. They're not written for consensus provisions. We are - we have the option in certain cases although I hope it would be a limited number of cases to put options in front of the community for its consideration and to receive guidance. And I think that's very important.

We will also use our philosophy that has been ours from the start that we should focus on requirements first and with implementation as time permits. And that's simply something as we will be time pressured that we need to use as much as possible when needed.

And the tests we have in terms of testing various options is of course what's enhancing ICANN's accountability, what's fitting with the CWG expectation?

The principle I'm quoting is comply or explain which basically says either we think it or more or we explain why we would not do that.

And of course the simplicity test that has been requested many times especially in the Singapore meeting in ICANN.

Kavouss I've seen your hand. I just go through the slides and move on to your question at the end.

Expectations we have ahead of the call. The draft report has been circulated on April on Saturday. Hopefully you can read - you can all have read before the call the Section 6 at least read Section 6 which is basically where all the proposals are.

We will try with the rapporteur we're currently working on a additional meeting notes that would highlight the various discussion points based on of course the work party inputs for the reported sales highlights a number of open questions.

The CWG expectations is a second input. The legal advice input -- and we will have the legal advices in our minutes on our call - is another input.

And of course any point that's raised on the discussions on the list between last Saturday and the beginning of our calls is we're trying to pick up so that we - everyone's aware of what's been discussed.

And we're fully aware that you will sometimes need to pick calls according to your topics of in greater interest and of your various agendas. And remember we don't take decisions on substance on one call only.



We'll try to move through the structure of the frozen document for reference. The agenda that's been circulated highlights which section is going to be addressed at what point.

The document is going to be shared in the issue room and we are not going to change the version. This is - the version we can now download is going to be our basis for discussion.

And we will be lucky enough to have rapporteur introduce the topics and of course have substantive discussions to make it as inclusive as possible.

We need short comments and substantives comments. And of course if there are objections -- and I think we had a good example early on in this call -- we need to rational all our alternatives being voice so that we can inform the discussion further. I think those are just simple rules.

And between calls we will try to circulate a (unintelligible) sections of the document based on our discussions of course in edit mode so everyone can see what has changed. And no final decision is made on the first reading anyway.

And we have in the agenda a little bit of room -- not much -- to adjust day two discussions based on the day one debate. So we have a little room for flexibility here.

And before turning to Kavouss for a question you we - (Alice) has circulated a draft agenda. It's referencing the sections in the draft report that will be discussed.

And we had to take into account the availability of rapporteur. And we, I must say we have given a high priority of having the rapporteur the relevant rapporteur available for the call. So that's not exactly the structure of the document. We're not taking it section by section but it's still very it's going to be a good logic in the call and we made sure there is consistency across the agenda.

And with that short introduction I will turn to questions is there on the agenda itself or on the general objectives or principles for the meeting because obviously that this is an initial problem by the co-chairs and it's there to be discussed.

So Kavouss you have the floor.

Kavouss Arasteh: Thanks Mathieu. The comment that I would like to make I would wish to say before that I personally as a participant (unintelligible) have already admired. I continue to admire and congratulate you, Thomas, Leon and Jordan and Becky and others for very, very valuable work that you have done.

So the comment that I'm going to make is no way should be considered as underestimating, undermining or anything or (unintelligible) into your work.

I wish that you introduce (unintelligible) paragraph to the report saying that this is the output of the CCWG which for the time being does not reflect the consensus.

You have to make it quite clear because what I understand you don't want any change. You don't accept any change at all. This is what I understood from your introduction.

You want just to use and go ahead as soon as possible for public comment. That is good. That is very good. But we could not be same version that that document reflects the consensus.

You could say in some area they may not reflect the consensus. You may put it in a little bit more latitude way or qualification, not everything. But is that in some area they - it may not reflect the consensus at least leaving the room for future my introduction of something that is what I would like to suggest if you and the other culture accepts. Thank you.

Mathieu Weill: Thank you Kavouss. And I think this is very constructive proposal. So I thank you for that. It's valuable as ever for your comments.

Any other comments on the way we're preparing the intense work days? I am seeing none so obviously these rules will be reminded at the beginning of the first session.

And if there are any comments in-between of course they're welcome. But I do hope we can set that aside so that we can focus our intense work days on the substance. And we have a lot of substance.

And it's very encouraging to see how substantial our report is and how actually consistent it looks like.

I think we can be looking at the way we have been working collectively and especially the rapporteur and the working parties with a certain amount of pride into how efficiently and quickly we have come that we've covered that ground.

So with that I am going to turn to Leon for the legal advice part of our call.

And Leon you have the floor.

Leon Sanchez: Thank you very much Mathieu. This is Leon Sanchez. With regards to the legal advice portion of our agenda first of all we have had two new documents coming in from the lawyers, the first one being the comparative chart with regards to the different models as in designator structure or membership structure on how can the rights that we are trying to provide the community with can be exercised and also a second column in each model on how can the rights be enforced?

This document was circulated previously to our call. And I hope you have had the chance to review it. It has of course laid out some questions for the legal sub team as well as for the larger group. And we will be addressing those questions to the lawyers shortly.

And we are currently in process of addressing the questions raised by the lawyers to the legal sub team. We already have a draft that's pretty much with good progress.

And we will be circulating this draft for the larger group so we can all have a look at the provisional answers that we have drafted for the lawyers.

And of course we will welcome any input as to of course as anything that we as a Legal Sub Team might have missed in addressing the lawyers question so they can of course provide us with further advice on the needs that would be to or that we're looking to put in place.

And with that in mind we also received advice or opinions on the Working Party 2 templates. This document was just received some hours ago. It was my nighttime which was Europe's morning time I believe.

It was also forwarded to the larger list. Of course I don't expect or we don't expect that you have come through the document already but we do encourage reviewing the documents before we have our intense day sessions.

And just to add to the agenda of the - these sessions that Mathieu was discussing and pointed out and that's been also circulated to the larger list.

The Legal Sub Team will be holding a session at the end of day one. This is contemplate (earlier) there's a note to this in the schedule that was sent out to the larger list.

So you can all - you of course are invited to attend this call should this interest you and you are very welcome to join.

And now we would like or I would like to of course give a framework to the lawyers on what we expect from them at this point.

And I think the first thing we expect from the lawyers -- and I will of course go to them in a moment -- is to confirm the feasibility or the legal viability of full - of all the different mechanisms and powers that we have put on the table.

So from reading the documents that have been submitted so far we do feel that there is legal viability. But we do want to have a clear confirmation from the lawyer's side as to whether what we're doing is legally viable.

So we of course don't go into public comment without having this certainty that what we want to do or what we plan to do is legally viable.

Of course we would also want to assess or be aware of annual risks on the various options of the legal aspects with very short and complete answers.

There were some questions raised by Chris Despain on the list yesterday night too, yesterday night I mean my nighttime of course.

And they have already been assigned to the lawyers for answering. But of course Chris if you want to address this question or you want to raise this question of this call of course feel free to do so and the lawyers of course will provide the best reply they can in the time we have.

And finally we have to confirm the final proposal feasibility when we have decided this of course providing the details.

And we need of course as I said to clearly state and confirm that the IRP process is in fact able to be binding the board.

So with this in mind I would like to hand the floor to Holly Gregory so she can take us through the chart, the comparison chart and of course very briefly through the working party templates legal assessment so far and then we'll open the floor for questions.

So Holly could you please take the floor? And I would kindly ask you to of course keep it as short as possible and first try to address the question on confirming the legal viability of what we're doing here. So Holly you have the floor.

Holly Gregory: So thank you very much Leon. And I'm going to in a minute Leon my team a little bit. We want to hear both from Josh and I think Rosemary.

I want to say at the outset that we think the things you want to do are largely possible. And then I want to say that the devil is in the details as we've been saying.

And there is a component that rests on how you decide to organize yourselves as we said at the outset whether you take a member organization route or more formal designator route or you have something that's looser like what you have now very much dictates the kinds of powers that the community can exercise.

And so it's not possible Leon to give you that clear straightforward answer on each of your mechanisms about what - whether they are legally viable.

Liability is going to rest in part on how you address those key decisions which in some measure is why we provided you with a set of questions that we provided the other day to help us better understand what your priorities are and what your - what you might trade-off because there are some trade-offs here. And we've been trying to help you assess what some of those trade-offs are.

For example with membership you can have some greater powers but you may have concerns about whether the community really wants to be organized into a membership organization.

Similarly with the designator model we believe that we can do some of the things that you want to do. We think there's much greater complexity in doing

that. And we think that for some of the things that you may want to do in a designator model it's more difficult to have.

So with that being said Josh or Rosemary do you want to walk through the chart in detail? Josh is that something that you'd like to do?

Josh Hofheimer: Sure. I mean Rosemary and I can go through this together if that's the - what the community wants.

But I'd ask that the staff put the governance memo and the governance chart up as opposed to this memo because that's the one we'd be speaking to.

Yes. That's correct.

Holly Gregory: Yes.

Josh Hofheimer: The first thing we do so this chart actually focuses on as Holly said there are number of questions that we pose to you all to help us understand really what those priorities are.

And we're getting some feedback. We've seen some discussion in the listserv. And Leon I think is trying to pull that together into a sort of hopefully consensus oriented statement.

The chart is a bit hard to read. So perhaps what I can do, I don't expect everybody (unintelligible) on this call but, we can explain the layout briefly at the beginning.

And we were requested as I said it focuses on the I think six powers that have been articulated as sort of principal powers that were core powers that there's



interest in the community having with respect to establishing greater accountability for ICANN and the ICANN board.

And those are, you know, the full board recall, the ability to recall individual directors, the ability to approve, you know, amendments general to the articles or bylaws, the ability to approve changes to the Golden bylaws or fundamental bylaws. They've been called different things but that's just shorthand for the same thing but principal bylaws and more articles provisions and then the ability to approve a strategic plan and the annual budget.

The way that the chart breaks out we articulated under either the designator model or the membership model so in other words an ICANN that's organized with designators selecting the board members or an ICANN that's organized with members selecting the board members.

We articulate how those rights are established. So where can they be created? And then how they can be exercised and how they can be enforced if necessary.

That's the way we've set this up and it's done for both sides. There are a few general comments in the document that you see in italics that are applicable to kind of sort of key decision issues and or key explanations that are important to your general understanding of what we're saying in the chart.

But I can summarize -- I'm just mindful of time and the agenda -- sort of we can summarize going through each of these.

But let me pause for a minute and ask Leon, you know, do you want us to take you through each of them now or do you want to reserve on that because

people may or may not have had a lot of time to asked to think about these or considered questions?

Leon Sanchez: I would reserve on that at this moment so we can of course provide people with more time to have a deeper reflection on this.

But of course if you could provide just with a very brief walk-through that would be okay.

Josh Hofheimer: Okay. Let me - I think the simplest way to do this is because really there are two sort of distinctions or two groupings here.

I think groupings one through four, powers one through four full board recall individual director recall and approving amendments to the articles or bylaws and approving changes to the golden bylaws or articles those four I don't want to say that they're largely the same whether you're under a designator or a member model. But what we believe is that those powers can be exercised.

And there's, you know, sort of precedent and statutory authority for directors exercising each of those, you know, four powers - I mean sorry for either for both designators and for members exercising each of those four powers.

In the corporate law members as Holly said have broader rights. But the designators have been - it has been articulated specifically that the designators have the ability to replace, you know, to designate their board member and to replace their board member and to approve amendments to articles or bylaws.

Usually it's done as specific articles that are set forward, you know, they're set out in what you all have called the golden bylaws and not necessarily for approval.

But that is a little bit of, you know, devil in the details and things that can be worked out. And the important thing is to articulate clearly in the bylaws what kind of - which amendments will be subject to approval of designators or members if it's, you know, if it's a member one and it's going to be less than the whole.

In addition with full board recall it will probably be the case the principle is achievable but it will be the case that there will need to be some contractual imaginations to make this or some triggers that will need to be required or written into the bylaws or into contracts that will enable this to happen.

But the principle is achievable that either designators or members could spill the whole board or recall the whole board excuse me, if necessary.

Let me pause there for a minute and see if Rosemary has anything that she wants to add on the first four powers before we get into a discussion of this approving the strategic plan or approving, you know, the annual budget.

Rosemary Fei: Thanks Josh. This is Rosemary. No I think you're right that the first four while there are differences in the details of how you might implement this or that power some might rely more on contract, others could be done directly in the bylaws without an external contract.

The first four are definitely in a different category from the last two.

Josh Hofheimer: Okay. And so I don't dig the whole discussion. Rosemary do you want to sort of start with an explanation of what makes the last two different and Holly and I can chime in?

Rosemary Fei: Sure, happy to do that. So the last two are approving the strategic plan and approving the budget. And the word approve has already I see created some issues in the chat. And they are ongoing issues that I think your legal counsel have had trying to understand what it is you want to do.

And as a result well let me first say that the approving the strategic plan is really where we've laid out our thinking.

And then under approved the budget we have just basically said it's the exact same. So we're really now only looking at approve the strategic plan which is page, I'm not sure which page it is of the document but someone will type that in for me I hope.

And it's the Annex A-6 but I think it's further on in the document like maybe 12 or something like that.

This is the key of where I think we really see a difference between the designator model and the membership model. And it would apply equally whether we're talking about the ability to approve the strategic plan or approve a budget.

And because we weren't entirely sure what you meant by approve I think we've kind of tried to tease that apart in some of the where can the right be created we've kind of put some different thoughts about depending on what you mean by reconsider, approve, veto all those terms that I think need to be teased out further and there are in our legal counsel questions to the Legal Sub Team.

The big difference in the answers between the designator model and the membership model are that the corporate law contemplates members being

able to second guess the board, to overturn board decisions to reject board decisions, to approve board decisions.

I'm not quite sure exactly what language you want to use there. But the members by statute are granted that authority which is essentially a big exception to the corporate law rule, not just California but I would say more broadly at least throughout the United States, the corporate law rule that directors, the board of directors collectively hold final authority, fiduciary duties over the corporation and over the decisions they make for the corporation and that therefore take - doing things that impinge on those fiduciary duties are problematic.

Except members are given this right in the corporate law essentially even though members have no fiduciary duty.

Now whether it's a good idea for members to exercise it a lot is a different issue. But they are given that right in the corporate law.

They are the only third parties given that right in the corporate law. And designators therefore fall in this other category of people who are not - they aren't the status of members. They have certain rights that are set out in statute that are in the first four powers -- the recall of the board, the recall individual directors and the bylaws and articles changes being able to veto articles and bylaws changes.

But they just in order to give them this authority to redo a board decision it appears to us after a good bit of discussion that there's no way to do it in the bylaws.

If you put it in the bylaws it will violate the corporate law provision that says that the board has to have this ultimate authority.

So then you're left with coming up with a contractual regime on the designator side to try and achieve the same result as you could under the bylaws on the membership side.

That's my high level summary. Ingrid, do you want to add something?

Ingrid Mittermaier: While yes this is Ingrid Mittermaier here with Rosemary in the office. I think my understanding of some of the further discussions I saw about what is meant by the sort of veto concept is that really the interest is in having a process where if the board let's say approves an initial strategic plan or a budget and then there is this process in the community to raise objections to it that after that process occurs it goes back to the board to reconsider.

And so it's a, you know, it is a little bit more of a narrow idea of the board approves if the community raises concerns and then it goes back to the board for further consideration versus the decision being taken completely away from the board.

So when Rosemary's touching on the idea that the members cut even more drastically make their decision themselves, et cetera, we understand that's not really what's on the table here.

Nonetheless the fact that legally the members even would have that right makes it easier to give the stakeholders in the membership structure the more tailored right to do what I think you do really intend here which is to have a process where it then gets, you know, whether it's input from the community and then it goes back to the board for further consideration.

The - that clearly can be done. I think there is a very much a concern about the fiduciary duties of how that interacts with the fiduciary duties of the board which needs to be always honored here.

Josh Hofheimer: This is Josh. Let me just close out. And I know Holly has some actually more - I'll hand it to Holly next.

But I did want to say because Jordan I've seen some discussion and emails from you on the serve about - and in the chat now there was discussion about the right words to describe this whether it's reconsideration, approval or veto.

And I think what's important is the principle because to consider if the community has the ability -- and I use the community is a lowercase community -- but if there are third parties that have the ability to prevent the board from moving forward whether you call it a reconsideration or an unlimited number reconsiderations as I think was one of the things that have been considered, you know, with only a temporary like a temporary spending measure if the board - if there is a third party that has the ability to prevent the board from moving forward with managing the affairs of the corporate - of the company that is going to be viewed or considered effectively a blocking right and a right that potentially could be against public policy in the interest of the board and the statutory responsibility of the board having the ultimate authority and responsibility to direct the affairs of the company.

So when you are trying to impose those kinds of restrictions outside of a member model using as Rosemary articulated using designators or using contracts with designators if your contract itself is - runs contrary to that sort of guiding principle by imbuing too much power in the hands of the designators to prevent the board from carrying out its duties I mean you risk

that obviously there's potential to risk - risk to the stability of the organization.

But you just as a legal matter the validity of those contracts are at risk because it would not be acceptable for the board to enter into that kind of arrangement or enforceable.

So we have been asked - I mean Leon you did ask whether there were some simple and concrete answers. And on - in some instances there are when you choose a member model.

When you choose a - if you were to choose a member model I should say. But if ultimately you choose a designator model for different for other reasons equally valid it may make some of these powers and enforcement mechanisms much more vulnerable in your ability to put them in place or much more suspect I should say.

So with that Holly did you have anything you wanted to add in closing it out?

Holly Gregory: No. I think that's - I think that you've said it well. I think we've got a good high level description of sort of where we find things at the moment and the concerns that led us to pose our questions to you so that we could get a better understanding from your concerns and priorities so that we could help best, you know, advise you if you will.

Josh Hofheimer: And Leon I know you want to open it up for questions. This, I just want to remind...

Leon Sanchez: Yes.



Josh Hofheimer: ...people this so far we're just focusing on the governance chart in the powers.

But the second memo which we haven't discussed at all does get into descriptions or evaluations of, you know, the actual certain process around escalation and internal review mechanisms and the like.

Leon Sanchez: Thanks. Yes. I will open the floor of course for questions. But (Chris) what I'm hearing that so far legal viability of what we're proposing is in fact viable.

But ultimate implementation feasibility and complexity will depend on whether we go with a membership model or a designator model.

And this will of course will need to be addressed at a later stage. But so far I think that with this very high level idea of what we're doing here is in fact to some extent viable or legally viable we can continue to carry on with our work.

I see two hands raised actually three, but somehow two have disappeared. I remember seeing Kavouss hand up but now it's not up. I also saw Thomas Rickert hand up but now it's not up.

And I see Jordan Carter as first in queue so Jordan could you please take the floor?

Jordan Carter: Thank you, Jordan here. Thanks for that discussion guys and Josh in particular.

The thing - the two principles of this power that I think are important are the right to - for the community at the end of the process to send the document back whether it's a budget or a strategic plan.

And that it not be implemented while it's sent back. And the reason that way kind of struggled with the language veto or whatever is because it is a reconsideration process.

The point is that it goes back for reconsideration by the board with information about what the issue is and that it isn't implemented while it's sent back.

So, you know, of the idea behind taking that approach was to be respectful of the fiduciary duties of the board. So I think that's - that needs some more untangling here.

You know, and it's important I think building on that, that the set of powers we have here in terms of the validity of them can't just lead you always back to a board spill as the ultimate enforcement.

So I don't think that's an adequate set of responses to the community if all of our powers are built back to that one ability through designators or members to remove the directors.

I also heard in your comments that the designator model might be tricky in terms of even with a set of contracts due to fiduciary duties.

So for me the important principle is that these issues like bylaws can be sent back and the board keeps bashing its head against a proposal that the community doesn't want that will just remain unable to implement it.

And that choice still as of the board, you know, they're still the decision-maker. They're the people who decide what goes in the budget and what they're proposing to the community.

If the power that we're seeking here is to just fail to implement or fail to complete that if they are not in accord with the communities wishes. Thanks.

Leon Sanchez: Thanks Jordan. Holly do you want to...

Holly Gregory: Leon I - yes I would love to be able to address that. Jordan thank you for that.

Leon Sanchez: Please go ahead.

Holly Gregory: It's a very - it's - Jordan thank you very much for that comment. It's a very clear and crisp comment and direction. And if that is the consensus of the group it helps us greatly.

I think the notion of not thinking of this as a veto but thinking of it as reconsideration where the board still has the ultimate decision but it's been kicked back to them for more work is a very, very helpful construct in a fiduciary duty system.

I would continue to feel much better about it in a member structure. But I think that it makes a lot of good sense.

And I agree with you that to the extent that we are only relying on a spill the board as the ultimate enforcement mechanism that's not satisfying.

That's another reason why you've heard us say that we're more comfortable with a member structure because we think that we can create bylaws that by and large if you needed to go into a court a court would help to enforce.

So and we were talking about creating other kinds of internal mechanisms for enforcement as well. But ultimately if you ever get into a significant dispute between the board and the community organized in some kind of way in which the community has the ability to assert rights then you do need sort of ultimately that kind of court backing.

And we think that that's probably much more available for this kind of circumstance, a reconsideration right in a member model. Thank you.

Leon Sanchez: Thank you very much for this Holly. Next in the queue is Kavouss.

Kavouss Arasteh: Yes first question first of all in this (unintelligible) all key documents totally legal very, very complex. Some of us are lawyers. I'm not. Some of us have legal background. I have some. Some others does not have legal background. But then goes to the community for public situation is much more difficult.

This situation is that we have to have a clear distinction between the two models. When you describe the two models distinguished lawyers you try to say this one has this advantage, the other one has other advantages.

At the end the way you describe that it becomes equal. But I see your tendency for the government, for the member model that you try to inject the idea with member model things going better.

But this does not describe the difficulty of that, the complexity of that, the implementation of that and the time of that.

I don't start from the distinction between the two. I start from objectives. We have two group of objectives. Group one is removal of individual board, removal of entire board and the change of the bylaw.

The second group is budget and the strategy. If we can deal with the budget and strategy in the reconfiguration matter and send them for reconsideration this is not agreed by the board then we recourse to the removal of the board that might resolve the problem rather than going to membership.

I know some people are very, very sensitive to member models and they may totally disagree with me that they want a member model.

But I see that very, very complex unless and until the time we see the considerable amount of changes required for members and required for the designators.

We cannot decide on anything. And that would be very unexpected that we decide so quickly which one is better because you also did not very clearly mention this in which lawyers that what model really has less complexity, has less time for implementation and is less costly and so on and so forth.

You try to counter balance each model at the end saying the designator is simply this but you cannot achieve that one. You need to have the construct.

Having the construct you have this complexity. At the end you become that both of them are complex. So we still do not have a clear idea.

I'm sure that if you organize another five sessions still you come to the same questions saying that devil are in the details.

But when we can have these details unless we have two lines, one line the changes of the bylaw and the construct or article for member and change of bylaw and articles and so on so forth for the designators.

Then we - then implementation time and the cost and complexity then we could decide.

I don't think that it is very easy question that you raise that first we have to decide member or designator and then you provide the details.

Still we are not clear of the advantage and disadvantage. It is very, very difficult. This is one question.

The second question is more important. You have mentioned in one of your document that you need to review the document before going to public comments.

Are you dealing with the document which is prepared by the end of this speech. You want to review that before going to public comments or you are dealing with another document.

So that is a logistic problem. And the co-chairs and others should know that whether they have to send the document to your first for your comment and include your comment is a comment of the lawyers into the document in a separate column or not.

So I think this is a question to ask. But I am not necessarily clear with when the two versions that you have proposed I am in favor of the less complex,

less costly and more easily implementable than a very, very complex (sets).

Thank you.

Leon Sanchez: Thank you very much for this Kavouss. And we'll just do try to address your first concern which I think is a very valid one.

We will be asking the lawyers to provide those with some really simple summary in each of their memos so we can of course help those who are first not lawyers and second non-US lawyers to better understand in very simple lean terms what the memo is about and of course try to have a better understanding on the different issues that are being addressed in each memo.

With regards to your second question I might as well turn to maybe Josh (unintelligible) or Rosemary Fei do you want to comment on this?

Josh Hofheimer: So I think that the second question really actually I turn it back to the Legal Sub Team to ask what you all want from us.

The comment that was made in our documents was referring to, you know, as it does progress that we'd be happy to, you know, get into - and decisions are made as to which structure to deploy, you know, we'd be happy to get into the weeds of course around, you know, the actual governments governance documents and language and particular modalities to make things work.

But I think before you get to that there's a threshold question of what you're looking for from us this week with regard to the actual draft proposal. And are there, you know, and how do you want us to serve and be of assistance to you?

I mean obviously we know we're going to be participating on calls and answering questions but are you expecting, you know, would you want us to be drafting any particular portions initially to help articulate certain ideas?

Would you be asking us to simply be reviewing the documentation that is being generated or the additional drafts or do you just want to take in sort of our views alongside you in consideration and you'll put together, you know, the proposal however you want it and that'll be what you send out?

I need some guidance from you all on, you know, what role you want Sidley & Adler to play over the coming days.

Leon Sanchez: Good.

Josh Hofheimer: I'm going to pause there and not answer the first question from Kavouss which is, you know, a pretty complex question.

And, you know, I respectfully think we've been saying that there is complexity in different ways. And but from our perspective we need - and that's why we asked the five questions.

We need some understanding of what are the critical gating items for this community that will drive certain decisions because I don't think anybody wants to make a decision just because it's cheaper to do it one way without considering what the impact on their goals and priorities would be.

Leon Sanchez: Thank you very much for this Josh. And we'll assist in the Legal Sub Team list. Of course we would welcome to have one member of your team on each and every call for this intense base sessions.



And where asked just state it whether what we're talking about is feasible or not. And we would expect a more active discussion or a more active participation on Section 6 of the document which is the different mechanisms that we will be trying to implement.

And of course we will be going deeper into this discussion tomorrow in our Legal Sub Team group. I'm mindful of the time. We are just hitting top of the hour at this point so Rosemary if you want to add something in a really, really brief fashion...

Rosemary Fei: Yes please. I am concerned at the idea of the endless not limited reconsideration that essentially blocks the board from acting.

I think you can do that in a membership structure and I don't believe you're to be able to do it in a designator structure.

I'm not quite - I'm not trying to disagree with anything Holly said. I think I'm just trying to be clear about that unlimited reconsider, reconsider, reconsider with a block on anything going forward while the reconsideration is going on is going to be problematic in the designator model in a way that it is not problematic in the membership model.

Leon Sanchez: Good. Thank you very much Rosemary. Now I'd like to hand the call back to Thomas for final marks and of course invite all of you are interested in the legal issues to join us tomorrow in our call of the Legal Sub Team so Thomas I'll go back to you.

Thomas Rickert: Thank you very much Leon. And I'm going to keep this very brief. I will not touch upon the first couple of agenda items because I think we are clear on where we stand with the stress test. The conversation is going to continue on

those. The CWG interrelation is going to be clear so we know exactly what to do there.

With respect to legal advice I think we've made good progress in understanding further the pros and cons of the different implementation models.

We got confirmation. I think this is the good news that the requirements that we have are implementable well but that there different levels of complexity depending on the choice that's been made by our group.

And I think that what we will need to think about further is -- and I think this is where we have to closely liaise with the lawyers directly and through the Legal Sub Team is that we need to get all the facts the pros and cons for the various models.

And then it's for our group to make a recommendation to the community would tradeoffs we can make.

And the points that have been raised by various members of this group as well as by the lawyers that we need to take into account that ease of implementation, the risks, the cost and all those sectors.

But I think that we're getting, you know, a clearer and clearer view on what is possible where the limitations are and we're going to continue this discussion in the next couple of days.

With that I would like to close this call, thank all of you for your continued attention to this matter and for your valuable input. And we're looking

forward to continuing working with you in the next couple days intensify and in the weeks to come. Thank you very much. Bye-bye.

Leon Sanchez: Thanks everyone.

Woman: Good bye.

Man: Bye everyone. Thank you.

Man: Bye-bye.

END