

ICANN

**Moderator: Brenda Brewer
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5:00 pm CT**

Leon Sanchez: Hi, I apologize for the delay. I'm reconvening. I was having a little call with my co-chairs just to make sure that I address the different questions that have been posed through our discussions today.

And well I have a list of questions that I would like to pose to our lawyers. And of course since this is something that was built on the fly I will now - I will now send them to staff so they can very quickly display them on our Adobe Connect room.

But before I do that I would like to confirm whether the recording has started? I see that the Adobe Connect room has actually started but I would like to confirm that the audio recording has started.

Coordinator: The recordings are started, sir.

Leon Sanchez: Thank you very much. So welcome to this legal sub team call Number 13 on the 23rd of April, 2015. We are just finishing our high intense sessions for the day. And we need to of course address some questions that have been raised through the discussions today.

I have just pasted some of the questions to Alice on the Skype chat so, Alice, if you could please have those questions put in the screen and also I am going to paste one more set of questions that have to do with some doubts that we need to address to better inform our community the difference between the designator and membership model.

So, Alice, you have all the questions now in your Skype chat so if you could please build a very quick document and have it for display in our screen that would be very helpful so we can go through each of the questions with the lawyers.

And while Alice is doing this I see Kavouss and Alan's hand are up so, Kavouss, could you please take the floor?

Kavouss Arasteh: Yes how long you want to work, one hour, two hours, one and a half hours?

((Crosstalk))

Kavouss Arasteh: ...has some threshold...

((Crosstalk))

Leon Sanchez: I know. I know.

Kavouss Arasteh: ...they become saturated. When we become saturated there is no response. I am not (John Kerry) now Mr. (unintelligible) that can talk eight hours and so on so forth for eight days.

Leon Sanchez: Thank you very much, Kavouss. The call is scheduled for two hours but of course if we could end this in a shorter time we would all appreciate that so I now would be happy to - Alan Greenberg's whose hand is up, Alan, can you please take the floor?

Alan Greenberg: Thank you. Kavouss, I've been working with Leon for a while, his technique is to wear us down so he can end up getting his way so that's his whole plan. Yesterday on the legal call I made a lot of statements about NomComms not having ever been on one. Since we have Cheryl with us today we may want to revisit that issue just a little bit and see if I knew anything about what I was talking about.

Cheryl Langdon-Orr: Happy to help.

Leon Sanchez: Good, excellent so, Cheryl, would you like to comment on the - on what Alan just said?

Cheryl Langdon-Orr: I would if I knew the context of what he was talking about but I will need more information than generally NomComm.

Alan Greenberg: Do you want to do that now, Leon?

Leon Sanchez: Why don't we go through...

((Crosstalk))

Cheryl Langdon-Orr: Later in the agenda I'd have thought.

Alan Greenberg: Yeah, no that's what I thought.

Leon Sanchez: Exactly.

((Crosstalk))

Alan Greenberg: ...I was just asking it to be put on somewhere.

Leon Sanchez: Excellent. So let's go through the questions that we have on our screen. And these are of course questions that are being assigned to the lawyers in this call. And we would very much appreciate very concrete and short answers to each of them so we can of course forward these answers to the larger group so we can have this information to feed our discussion tomorrow.

And the first - the first question is very much - and I apologize for having some questions that might seem duplicate but this was on the fly exercise and I really didn't have much time to filter those duplicate. So Questions 1 and 4 are (unintelligible) question and the question is if we have a possible need for, for example, different organizations like supporting organizations or advisory committees.

In this case the example is between the GNSO and the SSAC to have different number of votes with different weights. So counsel, could you please guide us through this? Could this be possible? And of course which would be the implications of this.

Holly Gregory: So this is Holly. And if you forgive us for not putting the hand up we (unintelligible) sitting together in a room. I'm here with Michael Clark and Josh Hofheimer.

Look, this is an important issue because as soon as you start talking about super majority kinds of voting thresholds, excuse me, you open the door for a

tyranny of the minority where a smaller group can effectively block decisions that may be relatively important.

You know, there are ways - we would have to figure out the math - and I haven't tried to do that. The typical super majority's provision is $2/3$ which is 66 point something percent and - or $3/4$, 75%.

You go up to the 75% if you have a group who, you know, wanted - one or two groups can get together and block a potentially beneficial decision that a large number would like to make, something more than 66%, you start to get into the situations where you're essentially giving individual groups or a group with an alliance of one more group, blocking power.

And there may be some decisions where you want to do that. There could be decisions that are so fundamentally important that you want a really high voting threshold. I think of those sort of constitutional provisions, so for example, here in the US it's very hard to change the Constitution and that's a decided policy choice.

And there may be some very, very, very fundamental matters where you want to do that. But we would have to - to talk about what should the threshold be we would have to do a lot of math. And, yes, you can give weighted voting to different entities in a governance structure. We would have to provide all of this in the articles of incorporation.

And we haven't really focused yet on where the currents of changes that we're talking about should go, when they should be in the articles, when they should be in the bylaws. I think that's a second order level of detail. I think what the community is really focused on figuring out right now is what do you need

and then - and what broad mechanisms are available to provide you with what you need.

There is going to be a level of detail that the lawyers are going to have to figure out to make sure that things, you know, fit in the right places. And this is sort of one of them in terms of does it go in articles or does it go in bylaws. But I just want to raise that so that we keep that in mind as we're talking.

I invite my colleagues to weigh in as well and also to Leon and the group, let me know if we're not addressing directly what's at the heart of your question.

Ingrid Mittermaier: Holly, this is Ingrid. Just - I think California might be quite unique in the fact that those types of member distinctions could be also set forth in the bylaws I think unlike probably Delaware and some other jurisdictions but that's I think a minor point.

Holly Gregory: Yes, I understand that they can be, the question is, is it wise to do so.

Leon Sanchez: Thank you very much for this answers, Holly. So the short answer for this, as I understand it, is for the questions that well of course setting aside the issue of establishing your threshold in order to keep mechanisms safe from becoming block (unintelligible) in any single SO AC and as Avri rightly points that from a certain perspective this could be seen as the tyranny of the minority or rather the minority rights.

So keeping that aside, the short answer for whether is it - if it's possible to have a different number of votes with different weights for the different organizations that would form this body the short answer is yes. And we should of course look into where we would like to put these provisions into

rather - either to the articles of incorporation or the bylaws, depending on what we want to achieve. Would that be a right short answer, Holly?

Holly Gregory: I think that that was a good summary of the answer.

Leon Sanchez: Good. Thank you. So I see Alan Greenberg's hand is up. Alan, could you please take the floor?

Alan Greenberg: Thank you. I'll raise something I raised earlier today. It's not only the threshold that counts, it's also how we treat abstentions. There's a moderately good chance the GAC might choose to abstain. If we treat that as a no then we are probably making it very difficult to do anything.

If we treat it as reducing the denominator in the threshold calculation that may be fine but then we probably need another rule for a quorum or something like that that is you don't want to be in the case where too many people abstain and a decision is made by a very small group of - part of the overall group.

Holly Gregory: I agree.

((Crosstalk))

Alan Greenberg: But because the GAC is very likely to abstain, we know that right now, we really have - we can't ignore the situation and say it's an edge case.

Holly Gregory: But may I - if I may? One solution is that the GAC continues very much as they are now as an advisory committee and not become a member and could be treated very much the way that they currently are with a notion that they provide advice that is certainly listened to and seriously considered but don't have voting rights.

And one of the reasons that we suggest that in addition to it sort of mirrors what you currently have where you have a group who can put people on the board but GAC isn't one of them.

One of the, you know, issues at - that comes up is the extent to which we need to be mindful of the NTIA's directive that there be care taken that a government could not get undue control. If we make GAC into a member of the organization with rights to help make determinations around how (unintelligible) and things, there is some risk.

I'm not saying it's a big risk but there is some risk that someone could come to dominate the GAC and then could influence and dominate in some way in the membership or on the board. So just putting out that for consideration.

Alan Greenberg: Yeah, if I may quickly follow on and then I'll give up the floor. That's almost the same as saying abstentions don't count and we lower the denominator which may give, you know, it's easy for us to say they shouldn't have a vote or they shouldn't be a member or a designator but it's not clear - we're in a position to make that ruling right now.

Holly Gregory: We agree...

((Crosstalk))

Alan Greenberg: ...potential problem.

Holly Gregory: We agree. You've raised a very important issue. It's always important to understand how abstentions, you know, count. Is it, you know, is it a percentage of the entire membership? Is it a percentage of those who show up

at a meeting, you know, how quorums and abstentions work become very important.

But those are matters that law takes care of all the time and we can come back to you at the point at which it's relevant with our best advice about what we think would work and what some of the alternatives are and how they would impact decisions.

To me that's down a level of detail. If you let it - if you come up with a principle of what you want to accomplish and what's important, that's just a matter of the math and figuring it all out.

Leon Sanchez: Thank you very much for this, Holly. I see Kavouss's hand is up. Kavouss, you're next in the queue.

Kavouss Arasteh: Yes, Leon, I'm sorry, I don't remember the name of one of the lady who is speaking. She (unintelligible) telephone or microphone. When Alan speaks quite clear, when you speak quite clear, when she speaks I do not clearly grasp all of the things she says.

But I see here what does it mean that if the GAC made a member of the organization there is some risk that someone may come to dominate the GAC and therefore capture the (unintelligible), what does this mean? Who is that someone who dominate the GAC? Is there something from another word that we don't know? I am a member of the GAC, I know how the GAC work. Never there has been a member could dominating the GAC. In what sense it dominates the GAC and hijacks the other or hostage the others? Well what is this sentence? Thank you.

Leon Sanchez: Thanks, Kavouss. May I just ask all in the room to agree to a working method. Since we are very short on time and we have so many questions I would kindly ask you to focus on the legal viability or the legal short answer to the question rather than digging into the details of - like for example the formula of how can we achieve this balance at this point by weighing in the different SO ACs and the thresholds, etcetera.

I think that's a discussion that we will definitely need to have but I also believe that that's a discussion that needs to happen with the wider group, not only the legal sub group. So I think that for the time being we do have an answer for Questions 1 and 4. I will of course - I am taking notes on the summarized answers and will circulate them right after our call.

And with that in mind I would like to hand the floor to Greg Shatan so we can then move forward to the next question.

Greg Shatan: Thanks, Leon. Before I speak I just wonder whether the question that Kavouss asked should be answered. It was asked a few times in varying phraseologies so thought it might deserve a direct answer.

Leon Sanchez: Yes...

Greg Shatan: ...if there is one.

Leon Sanchez: ...it definitely deserves an answer. So, Holly, would you like to address Kavouss question?

Holly Gregory: I'd be happy to if one of you would state what the question was. I thought there was an awful lot of implications in his statement so if one of you would like to restate the question.

Leon Sanchez: Kavouss, would you like to...

((Crosstalk))

Kavouss Arasteh: The question is that one GAC member dominate the GAC and the rest of the people will be hostage to that dominated view in the entire GAC. And the GAC dominating everybody and everybody becomes hostage of the GAC. That is what I see in the note. It mentions that if GAC made a member of the organization there is some risk that someone may come to dominate the GAC and therefore capture the process. Who is that someone and how the process could be captured?

((Crosstalk))

Holly Gregory: I understand the question now. I don't think it's a legal question. What we were talking about is there's a - the current situation is that GAC is advisory and does not have a right to designate people to the board.

Kavouss Arasteh: Yes.

Holly Gregory: Okay. All we're saying is we are aware of - I don't know all of the cast of horrible things that could happen at some future time under some unknown future conditions. All we're saying is that maintaining the GAC as an advisory body is, in our mind, potentially consistent with the notion of no undue governmental influence within the governance structure of the post-IANA transition entity.

Leon Sanchez: Thank you very much for this Holly. So now, Greg, could you please take the floor?

Greg Shatan: Sure. Holly did say some of the things I wanted to say but I think that we don't necessarily need to get to the point that was, you know, at exact discussion, the idea that the question of whether the GAC can be captured because I think the issue is more that Alan said that a - that the GAC itself could capture the process and thus make it, you know, unduly government controlled.

Now again that goes back to how we count abstentions and what our super majority is and frankly it's not necessarily even the GAC, I think the idea is that no one - as we said before no one SO AC should be able to (subort) the desire of the entire rest of the community as we look for balance here.

So I think that's kind of where we're looking and I don't think we necessarily even need to single the GAC out for that - at that point. But I also agree with the point that, you know, the GAC is - and the advisory committees generally are sitting in a different relationship to ICANN. The names are not just window dressing.

And they're not necessarily the same to each other. ALAC has a board seat, none of the other ACs do. But then again ALAC, you know, is different in kind from the other ACs. I guess part of the question is whether you want to be part of governance or whether you want to advise the governance machine. If they don't have a voting voice then I guess the question is whether they have an advisory voice in any attempt to exercise a mechanism. Thanks.

Leon Sanchez: Thank you, Greg. I see Alan's hand is up. Alan, could you please make it as brief as possible?

Alan Greenberg: Two things, both in relation to what Greg said. To be clear I didn't say the GAC would control or attempt to control. I said they might choose to not vote

as a philosophical issue but because of the thresholds that would act as a veto; it wouldn't be done to affect a veto but it may have the net result of essentially blocking any action.

So I wasn't attributing malice to it, it's just that because of their philosophical position they may end up making it impossible to take any action if we're not careful about counting abstentions, that was the point.

With regard, Greg, to you're saying the ACs are different, in fact each AC is very different from the others. The GAC is made up of governments and that implicitly, or representative governments, that implicitly makes them different.

The SSAC is actually selected by the board, the members are appointed by the board. The ALAC is a different thing altogether and the RSAC is, again, created in a completely different way. So each of us all we share is a title. Just a little bit...

Leon Sanchez: Thanks.

((Crosstalk))

Alan Greenberg: Thank you.

Leon Sanchez: Thanks, Alan. Next on the queue I have Thomas Rickert. Thomas. Thomas, are you on mute?

Kavouss Arasteh: Yes, I cannot follow the argument of Alan. If GAC does not vote it does not block the situation. If they vote negatively, that may block but it does not vote with abstention and does not (unintelligible) what way they could block the

process. I'm not defending GAC, I'm not defending the (unintelligible) government, I don't want any government to influence anything at all, that is the main question. But I don't think that the non-voting would be blocking. Non-voting that is no use. Still you have the threshold and the threshold could be achieved.

If you allow (unintelligible) to vote and they vote negatively that may have influence. So not voting is not a problem.

Leon Sanchez: Thanks, Kavouss. I believe that we are in agreement that this is not a legal question, it's rather an (operational) question, that should be addressed and of course discussed in another forum, not this legal sub team group. So in order to move forward I would like to hand it to Thomas Rickert whose hand is up but we weren't able to listen to Thomas a moment ago. Thomas, are you ready or are you on mute? Thomas, we can't listen to you.

Okay so I think Thomas might be having some audio problems so while we look into it I see he's typing. While we look into I think we have already addressed Questions 1, 3 and 4. And I would now like to jump into Question Number 2 which relates to the caretaker of board. It was discussed today when we discussed the power of recalling or removing the board whether it completely or for individual members.

There is of course the option of removing the whole board. And the questions and the concerns were raised on what would happen if we did in fact remove the whole board. So a question that was raised or a concern that was raised was that we should go back to our lawyers and get advice on whether a caretaker board could be implemented, how could it be implemented and which would be the details or the practical side of things with regards to a caretaker board.

So we can go back to the community and let them know that while removing the board might seem a nuclear option, we would of course be putting safeguards so that ICANN is not paralyzed and we would still have a board - a functional board that could carry on with business until a new board gets elected.

So could counsel please address this issue?

Holly Gregory: Yeah, this is Holly. So I want to make a couple things clear. You're absolutely right that if you invoke a recall procedure you have to have a mechanism simultaneously to put another board in place. There is a concept of a holdover board that a board that has been recalled is actually still the board until you put their replacements in place.

The difficulty is once you recall a board they're probably not going to hand around and say, yeah, we'll continue to stay here and be abused. They're going to probably quit. And so you really have to think about at the point at which you're recalling you also have to be saying who's going to be the new board? That's the clearest simplest way.

Now you could say who's going to be the new board by putting in place some people as kind of placeholders with the thought that you're going to, in the very near future run a selection process to come up with the people you really want. But what you have to understand is the board you put in place temporarily is still the board and has all the powers and duties of a board.

So we can call them a caretaker board but they are the board while they're there. And there's nothing - and again, and this is the question that we have not yet dug down on, we need to go back and do some thought and I would

suggest that this is a question that you should probably certify to us for a written product but a little bit later.

We can't do this one in a day's notice, this is a question that we really have to develop and come back to you with some very thoughtful guidance on how you would do it. You have to understand that a recall procedure, a procedure to get rid of an entire board all at once is a highly unusual mechanism. We believe you can do it but we're going to have to work hard to do some lawyer-ing to come up with the correct protections so that you never have a situation where ICANN is without a board; that's a very dangerous circumstance.

And there are ways to do it, we just have to sit back and think about it, look at it under California law applying our experience from other jurisdictions and situations, working with the Adler team. So, you know, I hate to kick the can down the road but I think I've given you the short answer and then the long answer which is we need to do some more work to work out all the details.

Ingrid Mittermaier: And this is Ingrid here, one of our California lawyers. So the good news is California law really does give a lot of flexibility to setting up the structure and the bylaws. So once we do have clarity on what to implement this is an area where California law really gives a lot of flexibility to set it up the way we want to. That's the good news.

Leon Sanchez: Excellent. So fair enough to ask for a little bit more time to address these questions as for their seriousness and the delicate issue we're touching here. And, yes, Holly, please do address these questions in writing.

Holly Gregory: Leon, if I may? Leon if I may?

Leon Sanchez: Yeah.

Holly Gregory: And the other questions that you have on this list we have drafts in the works and we think we'll be able to provide them to you if not later tonight certainly early in the morning our time so we have them well along the way. We can add this caretaker board question though is of a different order and we'd like to put it in the works but we're going to need, you know, more than the 24 hours. I mean, we need some time.

Leon Sanchez: Okay.

Holly Gregory: The remaining questions on your list we have in the works and we should be able to provide well within the following 24 hours.

Leon Sanchez: Excellent. So then let's do it that way. Let's give you time to reply in reason or in writing to the rest of the questions. Of course the sooner the better. And I would like just to remind you that at this stage we need only a one-pager on the questions. And when I say a one-pager I mean a one-pager for all questions as opposed to each of the questions.

Holly Gregory: Leon, in that respect we're trying to do one paragraphs on these questions, the remaining questions on this page.

((Crosstalk))

Leon Sanchez: Thank you very much, Holly, that is excellent. I see that Thomas is back and I also see that Kavouss hand is up but I'd like to go to Thomas before, if you agree, Kavouss, since we Thomas...

((Crosstalk))

Kavouss Arasteh: Yes, certainly. Yeah, certainly, yes.

Leon Sanchez: ...on the queue before. Okay, Thomas, if you like to chime in.

Thomas Rickert: Yes. Thank you very much for your patience and so sorry for wasting everybody's time when I was trying to get on the audio through the Adobe Connect. I'm now on the call bridge, on the audio bridge, which works fine apparently.

I have two comments to make. One with respect to the discussion that we're - that we previously had on the interim board or shadow board or whatever you might call it. I guess the information that we need, and this can potentially be very brief, is that this caretaker board can be installed in a way that it provides for an interrupted operation of ICANN.

You mentioned that once the board is recalled the directors will likely not be available to conduct the business and I think it would be good for us to be able to give certainty to the community that even if we provide for such community power that might be invoked in unlikely cases that nobody has to be afraid that we - that we put ICANN to a halt if this happens.

So, you know, if we can just get that assurance without any specificity on how that can be achieved I think that's good enough for the point - for this point in time.

The other point that I wanted to make is certainly a little bit outdated because this has - you know, I couldn't make myself heard when we discussed this but the situation with the GAC and voting of the GAC. I guess the way that I would phrase the question would be slightly different.

It might not necessarily be around the GAC not being willing or able to vote but they might actually come to a situation where they say okay we're an advisory committee, we have huge diversity of views in our own group and we're not going to have any representatives that can vote on behalf of the GAC. Which is why they might not be able to vote at all, right?

Yet there might be members and so the - while we sometimes have the - or in certain scenarios we have the situation where abstentions would be counted as no votes, I think we must avoid that we envisage the same situation with the GAC that can't vote. So their non-voting must not be counted as a no.

At the same time we might not even want their votes or the votes allocated to their group be counted for determining quorum which is why I think the question would be is it possible for them to entirely waive their voting right so that 100% of the total votes would be constituted by all the other SOs ACs excluding the GAC.

So this is also not for now but since we have the question tabled I guess we would need an answer to that a little bit later on should the hopefully unlikely case occur that the GAC can't vote. And just to be clear, I hope that they can but I think that's a certain uncertainty.

And to respond to David's question in the chat, I think it would be good to have answers both to the question of a waiver per vote or permanent. I think if the GAC is not able to allocate representatives for the voting power that would likely be a permanent waiver that we would need to (unintelligible). Thank you for your patience, I know this was a long intervention.

Leon Sanchez: Thank you very much for this, Thomas, it's very useful. And I would really encourage not to - not to bring back the GAC discussion as we have already moved forward. But we appreciate of course your input and your thoughts.

And I see next on the question is Kavouss. Kavouss, could you please take the floor?

Kavouss Arasteh: Yes, the - with respect to the recall of the entire board, it was mentioned that there should be one possible option and that would be the alternate member. When we - an SO or an AC elects or select, whatever you call them, (unintelligible) at the same time have the alternate (unintelligible) and this is any of those board member are not (unintelligible) that also need could take up immediately. That has something that could not be excluded. There are some possibility on that.

And I agree with you, we don't come back to the GAC but it's quite necessary that the legal counsel write a piece of - a few lines with respect to the GAC because GAC we will resume discussion on this issue in next month and they have to have something for discussion.

They may not be at all wish to be part of the voting at all so we may just say that, no, we don't want. But this is explained (unintelligible) of that and should be something from the legal point of view and so I just - I request that to be included in the - that will be provided by legal. Thank you.

Leon Sanchez: Thank you very much, Kavouss. Anyone on counsel wants to react to what either Matthew or Kavouss just said? I mean not Mathew, Thomas, I'm sorry. Okay so next on the queue I have Greg Shatan. Greg, could you please take the floor?

Greg Shatan: Thank you, Leon. With regard to the list that is in the chat or in the center of the screen there, when it came up in the email earlier I started typing in the email suggesting another question based on some of the discussion that had taken place on the list earlier. But given the press of business it's still sitting in my outbox as a draft.

The question I would like to suggest be added is whether the SO ACs could form unincorporated associations while still retaining their current SO AC entity status in its current form within ICANN so that there in essence would be back to back organizations.

Holly Gregory: Greg, yes.

Greg Shatan: That may solve...

Holly Gregory: Simple answer. Yes.

Greg Shatan: That may solve certain problems with regard to, you know, converting SO - at least certain SO ACs...

((Crosstalk))

Holly Gregory: Greg, could I speak to this for just a quick moment?

Greg Shatan: Please.

Holly Gregory: This is easy. Okay? There's very little by way of formality to the unincorporated associations. And we believe that in your current bylaws you already have much of what would be required, not all. Mike, do you want to speak to this?

Mike Clark: Yeah, and the Adler firm really has been very helpful on fleshing some of this out in some of the papers we've written together. But, you know, we think that basically you just need to adopt simple articles of association which may very well just incorporate by reference provisions in the ICANN bylaws or other procedures that the SOs and ACs have already adopted and notify the State of California that you're claiming that you're an unincorporated association so that there's no doubt that you get the benefit of that status where it is helpful.

And we don't think there's a whole lot to do beyond that. And certainly the groups can continue to participate in ICANN as they have before but importantly they can be something like, for example, a member which could enforce certain legal rights and exercise certain legal rights. So it's really just kind of layering on something that you don't have now but that builds very much upon what's already there and the existing documents.

Ingrid Mittermaier: And, Mike, let me chime in. This is Ingrid Mittermaier. So it wouldn't have any assets, but maybe that makes it even clearer so it wouldn't have assets, it wouldn't have activities, per se. The activities of these SOs or ACs would still occur in the ICANN corporation, the volunteers, the people would still be over there conceptually so that's really where a lot of it is still happening. And then we still - just in a parallel way, as Mike was saying, create this structure to hold the contract rights, any contract rights if there's contracts in use to be the member. It's a fairly limited extent that this kicks in.

Greg Shatan: Thanks, that's helpful. And I think there's somewhat of a precedent, although it's not quite analogous, in that the ASO and the NRO are somewhat mirror organizations one being a supporting organization within the ICANN universe and the - and Numbers Resources Organization being an external organization that's outside - sits outside the ICANN bubble but they're basically the same

organization, the same members or same organizations making up their corpus so it's thinking along those lines that may help certain people express concerns that at least certain players may not want to become members, kind of like Groucho Marx. Thank you. Apologies for the culturally specific reference.

Leon Sanchez: Thanks, Greg. No problem. Next in the queue is Alan Greenberg. Alan, could you please take the floor?

Alan Greenberg: Thank you very much. I guess I still don't understand some of the dynamics of this. You know, all of the ACs and SOs have people drifting in and out of them on a regular basis. In the case of At Large or ALAC, the group that selects the director is not actually the At Large Advisory Committee, it's a superset of that.

So I guess I still don't understand the mechanics, you know, would people be joining the association and canceling their membership in the association as they go in and out of the groups? That part of the process certainly is not clear to me. And the question of once you are an unincorporated association are there liabilities associated with it because you're going to be really clear if there are any liabilities associated with it over and above what we have right now. Thank you.

Leon Sanchez: Thanks, Alan. Counsel, can we have an answer to that?

Ingrid Mittermaier: Well this is Ingrid. So at least the way I pictured it, no, I don't think that, you know, that individuals that join these groups would become in that sense individual members of the unincorporated associations. I think we still need to flesh out exactly what sort of - how exactly this looks. But it's - we obviously don't, you know, it would need to be a manageable group that sort of actually

forms the association to hold these contract rights so that needs to be, I think, thought through a little bit.

In terms of the liability I think the general sense has been that if anything just provides an extra layer of protection, I mean, if people are already engaging in ICANN activities and if anything this just creates a little bit of a layer of protection around them but certainly shouldn't add to the liability.

Alan Greenberg: On the other hand, if I may continue, these...

((Crosstalk))

Leon Sanchez: Yes, please do.

Alan Greenberg: ...these designators or members are now going to be taking exclusive actions and therefore maybe there's liabilities associated with that.

Josh Hofheimer: They're not - this is Josh speaking - they're not taking specific action. The member organization is taking an action. And the participants in that organization, whatever charter mechanism there is, will, you know, decide like who's going to be the director that's selected by that organization. And they have voting - they have means to vote and make decisions about what their position was going to be on the power that was reserved to the members.

Ingrid Mittermaier: Yeah, this liability concern, in our view, is very much a non-issue. It's - we think in some ways that there are additional protections that are given by having a structure where it's clear that these are unincorporated organizations. And I think also the membership structure where it's clear that members - members of an ICANN would bear no fiduciary obligations and we could

really reserve rights and powers to them. But we think the clarity around it also is helpful from a liability perspective.

Leon Sanchez: Thanks for the answers. So well having already keeping in mind that the rest of the questions on the list are already in the work by the lawyers and they will be providing feedback as soon as possible, are there any other questions at this point that anyone in the room would like to raise? I see Avri's hand is up. I assume that, Kavouss, that's and old hand. I just want to double check since I...

((Crosstalk))

Kavouss Arasteh: No, no, sorry.

Leon Sanchez: Okay, okay. So next on the queue would be Avri. Avri, could you please take the floor?

Avri Doria: Okay thank you. This is Avri speaking. I wrote this question in the chat but I also wanted to vocalize it. And one of the questions I had is if the SO AC become the unincorporated associations with a certain amount of legal identity and that's independence, how does that, at the moment, the way it works, is that the SO AC have sort of their charters and their methods of operation are in some cases are decided by the board. The board determines, the board has its Structural Improvements Committee, and we're constantly negotiating with them as to our internal structures, etcetera, how we do things.

Would that still be the case if they were, you know, these unincorporated associations, or would that be something that would no longer make sense in that kind of context? Thanks.

Leon Sanchez: Thank you for your question, Avri. Anyone from counsel want to respond to that?

Mike Clark: Ingrid, I'll start and you can see if you've got anything else. To the extent that, you know, you've created - the new entity is created then there is a measure of independence there. And it could be - in its charter you could still have an exchange or an interface with the board to whatever degree you wanted and, you know, get the benefit of structural improvements and the like.

But, you know, at first glance it would become, you know, an initial reaction. It would become, you know, your - the entity's decision in how they organize their charter as to sort of how much, you know, independence versus reliance upon board guidance and governance - ICANN board guidance and governance they would want.

Ingrid Mittermaier: Yeah, I mean, let me chime in as we think a little bit about this. I think the idea here is that whatever the current bylaws say that sort of define these organizations and for that matter documents outside of the bylaws that define how these supporting organizations work with these ACs the relationship to the board or changes to that, there's no intent to change that process at all.

And again I think we're still kind of thinking through the very specifics here but I think the general idea is just whatever is in place, whoever is in whatever roles at, let's say, an SO because of the current situation that that just then also becomes the framework for how the unincorporated association looks. It's just a - somebody sets sort of a parallel organization you could think of as sort of ex officio by virtue of what plays out on the ICANN side already, that sort of translates into what the unincorporated association looks like.

And the only reason we have this parallel structure is to hold, you know, to be able to act as the legal person for these very narrow matters of acting as a member when this occurs and, you know, holding contract rights.

Leon Sanchez: Thanks for this. Avri, does that address your question?

Avri Doria: Thanks. It gives me more to think about.

Leon Sanchez: Okay. Fair enough. Next on the queue, I have Alan Greenberg. Alan, could you please take the floor?

Alan Greenberg: Yeah, thank you. I'm actually following on so Avri may choose to think more. The structural improvements that may avail ourselves of may be an instruction to dissolve. Remember, the ACs and SOs right now are creatures of the bylaws. If the bylaws are changed to say the ALAC doesn't exist anymore than the ALAC doesn't exist anymore from an ICANN perspective.

This has happened before. Before the ccNSO and the GNSO there was another group, the DNSO. The bylaws were changed, the DNSO ceased to exist. Many people still regret that but it happens and we have new organizations in their place.

So that's the kind of concern I have that, you know, does the unincorporated association still exist as an analog to the group that no longer exists within ICANN? Does it still have voting rights for - does it still have the rights to take out a board member even though it doesn't exist as an entity within ICANN anymore?

Holly Gregory: Well if I may - this is Holly. You know, I guess that ICANN wouldn't have the power - we have to make sure that ICANN doesn't have the power to

dissolve the group and that it's the group that's the unincorporated association decides that they no longer want to exist or participate. And if they no longer want to exist or participate and no longer want to be a member then, I mean, a member can always withdraw, right?

I mean, you're not going to - this isn't slavery, we're not going to force entities to be members if they don't want to. There's a benefit in it to participating in this governance structure.

Alan Greenberg: Yeah, no...

Holly Gregory: I guess I'm not quite sure that I understand the concern. We can certainly - you know, we could certainly - you can be an unincorporated association and still be reflected in the bylaws if you'd like, I mean, that's - and I think that you probably would want that.

We can have protections in the bylaws so that the ICANN board can't change provisions around, you know, who those folks are and how it works. That would - you would expect that in defining who the membership are that those would be provisions that the board can't change but the members could on some kind of super majority level.

These are all legitimate concerns but also concerns that are easily addressed as we think them through. We've got lots of mechanisms to protect against these kinds of concerns. It is very important - these conversations with you all are very important because it helps us to identify concerns that have arisen over the many years here.

And, you know, we're reliant on you to bring these things to our attention, unlike most of our retentions where we get to sit in a room with people and

have some quiet interviews at the outset of the retention to find out, you know, what's on people's minds, what the goals are, what their priorities are and what they're concerned about. We really haven't had that with you except through these interchanges.

There's a bit of a stilted nature to the interchange too because of the, you know, raising the hands and things, so sometimes I feel like it's difficult to have a real conversation but we're getting a little bit used to it. But that was helpful to hear for us.

Alan Greenberg: Yeah.

Ingrid Mittermaier: Yeah and, Holly, let me just - having gathered my thoughts I think though there's no intent here that setting up these groups as unincorporated associations somehow increases their rights as members or decreases their rights, I mean, it's not - excuse me, it doesn't increase their rights as a group. I don't think using the unincorporated form is meant to sort of solidify them more in the ICANN structure necessarily than they already are.

Holly Gregory: No, that's - Ingrid, I have to disagree with you. The whole purpose of making them into unincorporated associations is so that they can enforce rights.

Ingrid Mittermaier: That they can enforce rights but I think it's supposed to look - obviously we still need to work this out, as you can tell, we haven't all thought this through. But it's supposed to look to the bylaws as to the existence of these entities I think.

Holly Gregory: I'm not sure that I understood that comment. But I think you get the drift. We don't think that this is a big issue. We think we can draft protections both in the bylaws and that we don't think that this move to formalize what these

entities are as unincorporated associations is a big change either through what it will take to implement it or in terms of liability or in terms of relationships to ICANN. We think this is fairly much at the ministerial level.

The bigger issues, the bigger fundamental change would be if these entities then become members, you know, they will have greater rights and that's important; they will have greater powers...

((Crosstalk))

Holly Gregory: And the board can't just dissolve them and we can make that clear.

Mike Clark: If they want that power...

Holly Gregory: Right.

((Crosstalk))

Holly Gregory: So, I'm sorry, Ed, do you want to comment? Okay. I'm wondering how much longer we're going. I don't know if you folks are losing steam. We are rapidly losing steam after three hours of sleep last night.

Leon Sanchez: Yes, yes, that's true, Holly. Actually what I was just about to suggest is that since - and I see that Alan hand is still up, I don't know if that's an old hand or a new hand. And also I see Josh Hofheimer's hand is up. I will of course turn back to you, Josh, after just saying this since I can clearly appreciate that everyone is really tired now. And since we have had already feedback that the rest of the questions are in the works and we would probably like the lawyers to concentrate on that rather than keep the discussion going this call.

If there is no other relevant question at this stage with regards to the discussion that we've carried out on our sessions, we could call this or we could have this call adjourn, if we agree. And of course recover a very valuable of our lives. And I would like just to go to Josh before calling for an agreement, so, Josh, could you please take the floor?

Josh Hofheimer: Thanks, Leon. This is Josh. I do want to respond just briefly to the thread that was of questions in the chat around sort of the international concerns and unincorporated associations. And, Robin, I know you had focused on some of the earlier expressed concerns about the use of an unincorporated association internationally and that was when we were talking about having Contract Co be something other than a corporation to ensure the best protections for that organization.

But just focusing on the SOs and ACs, you know, right now to the extent that you all wanted to have them not be unincorporated associations but still have certain powers then, you know, you are potentially creating liability for the individuals who are involved and whose names are on the pieces of paper where those powers are exercised.

And so that's what we're trying to help you all avoid. When you want to enhance the community's powers we feel that the better way to do that or the appropriate way to do that is through the use of unincorporated associations that can provide, you know, at least a degree of greater protection.

You also have, and so in this regard it's no different if those unincorporated associations were ignored then you'd still have the same - you'd be confronted with the same, you know, legal issue or potential legal issue as you do today. And the individuals would be relying upon the indemnification provided by ICANN to them, you know, as volunteers.

And so the same would be true with respect to the unincorporated associations. You know, and the bylaws would provide, I'm sure, that the bylaws would be drafted in a way or the indemnification provisions would be drafted in a way, because - and I'm sure of this because we would help you all with it - to provide that ICANN would be indemnifying those organizations and to the extent that those organizations were not recognized that they would indemnify the individuals acting or purporting to act on behalf of those organizations.

((Crosstalk))

Josh Hofheimer: And that would be part of the governance of the organizations and ICANN and its involvement. So, you know, I heard - I saw Ed's - Ed Morris's thread and Robin's thread and I did want to address that to try to provide some measure of assurance that it is something that we have thought about to let you all know it's something we've thought about and we've thought about how we'd make sure that you were not, you know, put in a situation of having any greater potential liability than you have to do, to the extent you take decisions or make decisions when you're not - when you don't have the protection of a legal entity in these SO ACs.

And also trying to think through the procedures and mechanistic changes that would need to take place to assure you that you had, you know, those same or greater protections going forward.

Leon Sanchez: Thanks, Josh. Next on the queue I have Alan Greenberg. Alan. And I'll close the queue with Greg Shatan. Alan...

((Crosstalk))

Alan Greenberg: Yeah, I just wanted to ask did you want to do that NomComm stuff or defer it? I don't know how relevant it's going to be for tomorrow's meetings it might - if we're talking about removing board members tomorrow or NomComm appointees it might well be relevant.

Cheryl Langdon-Orr: Although it could be dealt with then.

Leon Sanchez: It could also be dealt with then, you're right, Cheryl. That was Cheryl for the record if I'm not mistaken.

Alan Greenberg: I don't care, I'm just reminding you it's your choice.

Leon Sanchez: Okay. Well let's say - let's see what Greg has to tell us and then we'll go right into deciding whether we take care of the NomComm issue right now or we defer it for tomorrow. So, Greg, could you please take the floor?

Greg Shatan: Thank you, Leon. I was just thinking that before we broke did we need to review any kind of questions about, you know, what deliverables are, expected when or what any priority issues, kind of any of the technical kind of client counsel issues, who's showing up on which calls, whatever kind of not substantive legal analysis but, you know, logistical review of managing the process and the progress. Thanks.

Leon Sanchez: Thank you very much, Greg. So first thing's first, would anyone like to jump into the NomComm discussion at this stage or should we defer it for tomorrow when of course...

((Crosstalk))

Alan Greenberg: Leon, I can summarize it in about one minute. I don't know how quickly Cheryl will respond, it may well be very quick also.

Leon Sanchez: Okay. Please go ahead then.

Alan Greenberg: Okay. Thank you. The issue was how do you remove NomComm appointed board members where the general precept seems to be that only the body that appointed them can remove them. And the suggestion was that the NomComm could enter into an agreement with the other ACs and SOs that if the other ACs and SOs remove their board members the NomComm will remove all NomComm-appointed members as well.

And my personal feeling was the concept of the NomComm taking instructions from the ACs and SOs, even if it's for removal, as opposed to appointment, would essentially taint that group and put into question their independence and their appointment process. And I thought that was something that we really wanted to avoid.

And so I thought that was something that would raise bristles in many different circles and put into question the NomComm as an independent body. Later in the discussion it was pointed out that we might be able to get around it by having NomComm-appointed board members sign a pre-service irrevocable letter saying they will resign under certain conditions and not require that the NomComm take action. But that was the substance of the discussion.

Cheryl Langdon-Orr: May I...

((Crosstalk))

Leon Sanchez: Thank you very much, Alan. Yes of course, Cheryl, please do.

Cheryl Langdon-Orr: Thank you. It will be a brief reply. Cheryl Langdon-Orr for the record. The latter part of what Alan outlined would work. The prearranged letter would be able to work. And I would strongly encourage you all to go that way.

Alan's concerns are very valid. And it is complicated of course one step further because a NomComm is something that in the current construct at least, only exists for a calendar year that runs from AGM to an AGM and so you're not actually dealing with a continuous body at all, you're dealing with continually reconstituted entity.

And I believe the concept of it taking instruction under those circumstances, or indeed any other, would be highly resisted and would indeed taint the process. But the prearranged letters would be ideal and in fact may solve some other problems whereby not a full board spill but a non-performing or unsatisfactorily performing in the view of the community individual or small group of individuals, remember NomComm appoints eight of these voting members, could also perhaps be dealt with that way if the letters were written properly. Thank you.

Alan Greenberg: You must have been listening to what I said yesterday.

Cheryl Langdon-Orr: No.

Alan Greenberg: Leon, did you forward that - the message I wrote to the legal committee?

Leon Sanchez: No, I don't - I don't think so.

Alan Greenberg: Okay because Rosemary had asked me to write something. I sent it to you and asked you to forward it. Cheryl, I think you'll find I said a lot of what you just said in that message.

Cheryl Langdon-Orr: Okay.

Leon Sanchez: I think I need to check on my email but I, I mean, I definitely don't have - I don't have it on the top of my mind at this...

Alan Greenberg: I'll send it to you again.

Leon Sanchez: Yes please do.

Alan Greenberg: Okay.

Leon Sanchez: And (Adam) is raising a question, I don't know, Adam, would you like to raise that openly? (Adam)?

(Adam): Hello, can you hear me?

Leon Sanchez: We can hear you.

Adam Peake: Okay, sorry, I was on mute to the usual way. So if you'll - apologies for a staff question but this is as someone who's also a former Nominating Committee Chair, yesterday - I think it was yesterday on the call counsel mentioned the solution of a community vote which if I understand it correctly meant that the voters needn't be either designators or members.

And I think it is the case that the NomComm would find it difficult to be a designator or member, then would that potentially be a solution? Although I

suspect that the - that the letter that Cheryl mentioned may be a better mechanism. But it would be interesting to hear a bit more about the community vote, if I understood it correctly. And thank you very much for this.

Josh Hofheimer: This is Josh. Unfortunately I don't think you understood that correctly. There needs to be - the community is voting through the various members or designators that are created depending upon the function. The Nominating Committee here, which it's odd because it's not really a Nominating Committee because it actually selects members or directors as opposed to nominating them for a vote by the board or others.

But the Nominating Committee would need to be - wouldn't have to be - if you had a member structure you don't have to have the Nominating Committee be a member as well, you could have it be a designator. But it would have to be organized in some way as a designator most likely to enable it to select board members and to remove those board members.

Leon Sanchez: Thanks, Josh. Anyone wants to comment...

Ingrid Mittermaier: Yeah, I think - this is - I think - this is Ingrid Mittermaier. Again, this is an area I think on the NomComm, which is of course a much more complicated structure in a way because of the sort of conglomeration factor that we obviously still need to really work through. I think there is, you know, you can think of it as a - at this point it's really the closest to a designator.

I think there is a possibility to not think of that being - becoming an unincorporated association but there might be a different structure to let it do this work that ends up playing out differently in terms of how an appointment

or removal process might look. And obviously that's a detail to still be figured out.

So I do think, on a legal level, there is some concern with the pre-resignation letter approach. I think there is some concern that at least among the lawyers I've talked with that if that's overused that there's some corporate law sort of concept that that gets in conflict with.

Holly Gregory: We disagree with that. It's - resignation letters of this sort are used all the time in Delaware law. They become very common in the wake of majority voting as a standard replacing plurality voting in corporations.

Leon Sanchez: Thanks. I see three hands still up. I see Josh hand up, I don't know if that's an old hand, Josh, or if it's a new hand. Okay then Greg, is that an old hand or a new hand?

Greg Shatan: That's a new hand. Just briefly I think to go back to the earlier discussion we had about having essentially an alter ego or mirror unincorporated association that that shadows an internal ICANN structure like the NomComm rather than forcing the NomComm to become, for all of its purposes, an unincorporated association is - that's what we were discussing before. And I think that thought should carry through. I think that would be very useful in this situation.

The NomComm doesn't have to become an unincorporated association to have legal person-hood. It just needs to create an unincorporated association and somehow manage that. I think the unincorporated association just needs at least two people to show up and not too much more than that, a few legal formalities. It doesn't have to be the body of the whole of the - and for all purposes replacing the NomComm.

So if we want to give the NomComm the power and we need to have a legal person to do it then we can create an alter ego legal person for that purpose without kind of screwing up the NomComm, I believe. I'm, you know, speaking with half of a lawyer's hat on and also no brain cells left, but I think that could work. Thank you.

Leon Sanchez: Okay. So you touch a very important issue at this stage with regards to the fried brain that most of us have by this time. So I see no one else on the queue. There is one last question from Robin Gross in the chat that states that since the Nominating Committee is already a collection of designators, members, so to speak, couldn't they apportion some of the original rights to the NomComm.

Okay so I see Josh's - do you still hear me? I see David is saying that you lost my audio. Okay, so I see Josh is addressing Robin's question so, Josh, would you like to voice that out?

Josh Hofheimer: I'm not 100% sure I follow Robin's question. The - she's saying that - yeah, I have to admit I don't understand her - I thought I understood her question but I don't think it understand it anymore. She's asked, "Since the Nominating Committee is already a collection of designators, members," it's not though yet, "couldn't they apportion some of their original rights to NomComm?" What does that mean, apportioning some of their original rights to the Nominating Committee? I guess I don't know what it means. And she's not on the phone so I suggest...

((Crosstalk))

Josh Hofheimer: ...ask when she can.

Holly Gregory: I think we're hitting a wall.

Leon Sanchez: Yeah, me too. I think that maybe we could...

Holly Gregory: Thank you.

Leon Sanchez: ...let this issue rest and maybe we can go further deep into this question tomorrow when it's brought up. And I don't know, Greg, is that an old hand or a new hand? If it's an old hand then I'll just go into the technicalities of deliverables. And so so far we have the questions on the screen. I pretty much Question 1, 3 and 4 have been - already been addressed since they mostly are the same things that phrased in different ways.

Question 2 is something that counsel will need a little bit more time to look into. But so far the short answer for this is that of course a caretaker board is something that can be implemented. And of course we will be - we will be assigning formally these questions, I mean, the questions referring to the caretaker board, to counsel.

And I think that for the rest of the questions that had already been assigned we will be looking into having answers from the lawyers in a very short time. And just reminding them that these are top priority and we will be looking to get a one-pager on the answers to these questions.

And then we can move forward with the rest of the questions that have been assigned so far. If I'm not mistaken we still have some answers pending on those questions raised by Sam Eisner at some point which have already been assigned but were put aside to address the prioritization that was set on the assignments.

We also have the questions raised by Pedro Ivo from Brazil. And we have I think also a couple of questions from Jorge Cancio in the (part) line. So right after we get the deliverables for these top priority questions I would kindly ask the lawyers to continue with the rest of the questions that have been assigned. And of course we would appreciate the questions or the answers coming in short as possible.

So if there are no further comments or any questions at this moment - does anyone want to add anything to this call? Okay, so seeing no one wanting to add anything I want to thank everyone. This has been a marathonic session for all of us.

Again, I would like to make it really clear and loud that we are very thankful to the lawyers for the work they're carrying out. They've been awesome. They have been excellent support. And, well, I think that as you can appreciate that we are all thankful to you.

So with no further delay I would like to have this call adjourned. And talk to you in less than nine hours. Thank you very much.

Holly Gregory: Thank you, Leon. Thank you, everyone. Bye-bye.

Thomas Rickert: Thanks, Leon. Bye-bye.

Cheryl Langdon-Orr: Bye.

Avri Doria: Bye, all.

Greg Shatan: Bye, all.

END