

**ICANN**

**Moderator: Brenda Brewer**  
**May 27, 2015**  
**6:00 am CT**

Cheryl Langdon-Orr: Thank you. My name is Cheryl Langdon-Orr. And this is the Accountability Stress Test Work Group meeting on the 27th of May. And at the moment we have a fairly small turnout of members but hopefully a couple of others will join us shortly.

We will be taking the Adobe Connect room as the roll call. If there's anybody on the call who is not in the Adobe Connect room please make yourself known now. Not hearing anybody just on audio. We will assume that those that are shown as participants, which is five work group members and four staff, so we're just in a slight majority. According to the Adobe Connect room are the current attendees.

Well ladies and gentlemen, we've had a couple of weeks off so perhaps that's why we're a bit light on, we've got people out of the habit of joining us for our stress test work group meeting at this time of the week. But it's time we got back to it as we are now coming out of the public comment phase of the work, we're getting a better indication from the community as to what is likely or not so likely to be the mechanisms and the powers for community that will be

going through the rigor of the community and work party - cross community working group activities.

And those of you who were on the accountability call this week Steve DelBianco, who will be doing the lion's share of taking you through today's call, as is always the case, did report to the committee as a whole that we felt that it was worthwhile for us to start at this stage to go through our stress test scenarios again and this time take into account the different possibilities of what methods of membership and powers and community powers may or may not be the case.

So with that very, very general preamble, and noting that we haven't had anyone else join us, we may make this a certainly shorter call than usual seeing as we have such a small roll up. And, Steve, I'm going to ask you if you'd like to take us now from I'm assuming the top and we will start running through this stress test again. Over to you, Steve.

Steve DelBianco: Thanks, Cheryl. Can you hear me okay?

Cheryl Langdon-Orr: Perfectly, thank you.

Steve DelBianco: Thank you. And I think that the discussion in the CCWG, and all of you are familiar with it, is gravitating to the notion of whether our powers will be enforceable and the attorneys seemed to have advised us that enforceability comes through California law regarding the member structure. And that enables the members then to invoke California law if they need to in order to force an order upon the board.

It doesn't mean you go to court all the time, it doesn't mean you need to go to court, it means that you have a basis in law as opposed to persuasion to get the board to follow what's in the bylaws.

And when we ran through these stress tests, all 26 of them, you'll see a common thread in how we assessed whether we had adequate accountability to address the particular scenarios. And almost every single stress test has the word block or veto, challenge or binding in it like blocking the bylaws, blocking a proposed budget or strategic plan, challenging through an IRP with the ability to have a binding reversal of the board's decision. And of course spilling the board, either one or all, came out as well.

The prevalence of that language sends a signal that we the stress test team, are assuming that the powers would be enforceable. They would not have to rely upon persuasion, that they would be enforceable. We didn't say in the stress tests that it had to be member versus designator, we were sort of leaving that to the other part of the report that laid it all out in terms of where - I believe it's pretty clear - it seems to me it's clear anyway that our legal advice was that the member structure is the best method to get enforceable powers that we talked about.

And that CCWG has had a lot of discussions about whether the member structure would require the creation of unincorporated associations or not and whether that is incrementally complex and challenging.

We had two hours on pretty much that topic yesterday. So it's possible that a hybrid can emerge where some ACs and SOs would do unincorporated associations and others might just designate their chair or individuals.

If that's the case then it's still a member structure and it's still enforceable. So I don't think we, Cheryl, need to get into that at all. And I know, Avri, you were on the call yesterday too. I think all we need to say is if we took another fast pass through the stress tests and blocking, vetoing, challenging and binding had to be taken out would we still pass most of the stress tests or any of them for that matter?

So that's what I had proposed on the call yesterday. Cheryl, you seemed to think that might make sense. But before we embark down on a one at a time basis let's just take a queue and discuss whether this really does meet the needs, okay?

Cheryl Langdon-Orr: Certainly, Steve.

Steve DelBianco: Go ahead, Avri.

Cheryl Langdon-Orr: Over to you, Avri.

((Crosstalk))

Steve DelBianco: Yeah, Avri, if you could explain that comment. I'm not sure I understand.

Avri Doria: Right, okay thanks. This is Avri speaking. So, yeah, there's two parts to this, two parts to my questions. And the first part is when I listen to Sidley I also hear them saying but you guys could take each other to court right now if you wanted to. So sometimes I get confused in their saying that members gives us more enforceability because you can go to court.

And that's the only enforceability that they're saying it gives us, it doesn't of itself give us more enforceability, it just gives us the ability to go to court.

And then they indicate but this is America, this is California, you can take anybody to court any time. And then people argue that those of us that don't like going to court as our method of enforceability sort of say, you know, we don't like court being the solution. And they say, what's the matter with you? That's the solution for Americans and, you know, you could argue do it now. But the fact that you haven't means that it's not something that's likely to happen. So the whole argument has become very twisted and fuddy.

My other issue that I think has come up, and it's come up a couple times in various guises, if we create these shadow unincorporated associations or these - or appoint members, you know, the chair of the group as a - as the UI that's making the decisions in these member bodies, what holds them accountable to the stakeholders of that group?

In other words, if the GNSO Council - the GNSO chair, right, as defined in bylaws, is the member of the - the voting member of the members council, we've never really given it a name but let's call it that, what keeps him accountable or are we back to well you could take them to court or you could vote them out in three years. You know, well actually for one year terms so that's a silly thing. But so you can vote them out at the end of the year.

And so the question becomes unless these unincorporated associations are indeed the SO AC itself you've created a new separation of bodies where you have one entity, a legal entity, responsible to another entity, not a legal entity. And how does that work? And how does the accountability in that so that, you know, we don't have people operating on behalf of one of the SO ACs without being accountable to them, so it's a separate issue that comes up.

I don't know if I made myself clear. I was hand-waving as normal. But, you know, hopefully I made my points. Thanks.

Cheryl Langdon-Orr: Cheryl for the record. Thanks, Avri, you have in fact made your point very clear and it echoes issues that have been raised in a number of fora on this topic. I think Steve's point earlier on is still valid though where the trust, in inverted commas, in this relationship sits is yet to be decided by our wider community.

But we do still have to run our stress tests and see how robust things are with mechanisms in place regardless of where that trust is. The ability to remove an officer if an officer or person serving in a particular capacity from an AC or an SO is acting as the vote - the member, the legal entity in what you outlined also would need to be, I assume, from what I understand tied in to some form of agreement.

So, for example, in the case of at least one of the advisory committees, the At Large Advisory Committee, the existing rules of procedure for that organization has quite clear abilities for removal of all of the individuals who take those leadership roles. And so it wouldn't be a matter of, and we have to not vote someone back in or remove them at a particular point in time. That can be a case of they can be removed without cause at any stage should their community believe they're not acting as instructed or in their best interest.

But that's probably something that also needs to be tightened up across the board. And I think that may be something that you're also alluding to, Avri. Avri, you still got your hand up, you want to continue on? And you've put it down. Would someone else like to raise some general points before we look at the stress tests in particular - the scenarios in particular?

Steve DelBianco: Cheryl, it's Steve.

((Crosstalk))

Cheryl Langdon-Orr: Yes, go ahead, Steve. Thanks.

Steve DelBianco: With respect to Avri's point I did sense that Avri is raising what others have said is that perhaps we ought to have a stress test about what would happen if the designated member or unincorporated association individuals or chair were no longer accountable to their underlying SO or AC.

((Crosstalk))

Cheryl Langdon-Orr: ...wishes of, yes.

Steve DelBianco: Right. And it's interesting, Stress Test Number 12, which lives on Page 80 of our document, was the stress test of capture by one or several groups of stakeholders. And of the three paragraphs we have in the proposed measures we said, "Each AC and SO needs accountability and transparency rules to prevent capture from those outside that community."

And I think that would be - that is the closest we came in responding to that. But it really doesn't get to the question that Avri raised which is should we, the stress test team, should we actually go study the charter of every AC and SO to understand whether it can remove its officers, you know, for cause or not for cause in some sort of a democratic movement at any time.

And do you believe we should undertake that or that we should just say normatively that each AC and SO needs the ability to recall its officers or representatives to the membership structure in order to elect new individuals.

((Crosstalk))

Cheryl Langdon-Orr: I see Avri immediately putting her hand up and just before I go to her my personal view is I think the normative statement indicating that that would be a requirement would be what our group should be doing rather than doing the analysis to say. But over to you, Avri.

Avri Doria: Okay, thank you. And with apology - this is Avri speaking - with apologies, I disagree. First of all with all the - with both suggestions, I don't see it as the stress test group to create normative, we're creating stress tests. So if anything the normative statement needs to come out of the rest of the CCWG from the appropriate study group or work group or work party or whatever we call these little thingys but not specifically from the stress test, stress test doesn't necessarily create or shouldn't be creating the solution but testing them.

I also don't think we need to go down a level to test what - you know, each of the individual groups and its ability to be accountable and such. But we may want to - and it may be close in 12, in the capture one, you know, we might just get there by saying was captured by outside or inside or its chair or whatever that if we've got one stakeholder - one SO AC, not stakeholder group, I want to use the right term, we have one of the SO ACs that goes rogue do our accountability measures work?

If we have more than one go rogue does it? So the notion of the stakeholder group or its representative going rogue may indeed. And so we may actually be very close; it may just be a fine tuning of 12 to make sure we've dealt with the number of ways, and if you want to call it capture, you know, going rogue is capture by a rogue agent, you know, is dealt with. Thanks. But I don't think we need to do either the micro management or be the ones to make normative statements. Thanks.



Cheryl Langdon-Orr: Thanks, Avri. Back to you, Steve.

Steve DelBianco: Avri, there were a few places where we took a stress test and then ran with it into a normative area. And you were a big leader on that, you took the stress test on cancellation of the AOC to do, you know, normative statements about adding in all of the commitments and reviews. But you're right, we didn't (unintelligible) the stress test, the stress test provoked it and then we did it within the body of the document in the section immediately before this.

So we would...

((Crosstalk))

Avri Doria: Exactly, we showed the need, we didn't do it.

Steve DelBianco: Right. So it's possible that rather than us go in, dive into every single SO AC charter, which you also agreed didn't seem - I think you, Cheryl and I all agree that doesn't make much sense, you're also saying that it's probably not appropriate to just simply have a normative statement in the stress test.

And the thing that's in between is to indicate the need which is one step short of normative, that indicates the need for something just like we did on Stress Test 12 where we said each AC and SO needs accountability and transparency rules to prevent capture from those outside.

Another statement just like that is each SO and AC needs rules to be able to recall its member representatives or UA representatives in case they are not needing the wishes of the SO and AC membership. Would a statement like that work?

Cheryl Langdon-Orr: Cheryl for the record. If you think that that is a appropriate way forward, in other words, that's the type of editorial information we should be putting into our next generation of our stress test document, can you please put up a green tick? And I'm putting up a green tick because I think that's a good way forward. That's a yes from me, a yes from Steve and Avri's typing, Par agrees. Assuming we can show the (unintelligible), etcetera, yes. Thank you, Avri.

Okay so that looks like our way forward. You can clear your checkmarks now, thank you ladies and gentlemen. I would just draw attention, it's Cheryl for the record, to the notes I made in the chat.

I think rather than try and stress - sorry - stretch our existing Stress Test 12 to also capture this issue, pardon the pun, I think we probably need to put in an additional stress test which the wording of which I'm sure we can come up with after this call that tests - gives us a scenario that outlines this particular issue. Which, as Avri has articulated we can probably even take from the transcript of this call but we have heard raised in a number of forum and from a number of people within the CCWG.

That said, Steve, what do you think then if we're making that addition to make it up to at least another - another stress test, a 27, what else do we need to do?

Steve DelBianco: Yeah, thank you. I think that Avri gave us some of the - she recapped some of the concerns that others have about going rogue. I don't know that capture really covers it, right, so I'm in full agreement it should be new stress test where we have to describe the flaw, right Avri, the flaw of when you create individuals that represent the SO or AC and they have the powers under California law...

((Crosstalk))

Steve DelBianco: ...of a member that there has to be an ability to recall, reappoint and do we need to suggest in there to remedy the flaw so the flaw in this case is that they're not listening, they're not heeding the wishes expressed by the membership, clearly expressed by the membership or the majority of the membership, whatever structure the SO and AC has to provide instructions to the individual to vote.

And I'm just zeroing in on that while we're all on the phone together to make sure we're understanding what the flaw is and we think the flaw is that your designated individual is not listening to the membership. Do I have that right?

Cheryl Langdon-Orr: Steve, Cheryl here. I think it's an appropriate mechanism within the AC or SO that allows its community to rest assured that its member or its representative within a UA is acting as instructed, as agreed and in the best interest of its community.

Steve DelBianco: And that by acting do we mean mostly the word voting or in addition, you know, discussions? Because there may be opportunities where each of the members are getting together right before the vote and they're debating things. And those would be instances where let's say the GNSO's - two of the three - two of the five GNSO members are really being disruptive, they're not following the wishes of the underlying GNSO body that appointed them, and that is a flaw that we would identify in a scenario.

Now, Avri, let me read what you wrote here. You said if one or more SO AC member representatives go against the will of the community they are an elite after all and understand things differently (unintelligible). Yeah, that's...

((Crosstalk))

Cheryl Langdon-Orr: Oh dear. Okay, Avri. We may not use all of your words there but I think we are heading in the same direction. I did use the term acting specifically as opposed to voting because I do think the ability to ensure in some cases that a vote never comes to pass and to derail things needs to be considered and communities should have a mechanism and clear power that they are able to exercise that if they are not happy with those outcomes and behaviors that there is a remedy for it.

Steve DelBianco: And if we did the unincorporated association as the legal person between say the GNSO and the member structure it has five votes but it doesn't have to have five individuals does it, the UA.

Cheryl Langdon-Orr: You could have one person holding five votes, you could have four people holding five votes, you could have three people holding five votes. It matters not one iota.

Steve DelBianco: And if in fact it were GNSO it might be that the Commercial Stakeholder Group that I represent gets one of those five and if the Commercial Stakeholder Group felt that that individual was acting voting and discussing inappropriately we are suggesting in our stress tests the need for the ability to recall that member and appoint a new one.

Cheryl Langdon-Orr: In a timely manner, yes. That's what I believe anyway.

((Crosstalk))

Cheryl Langdon-Orr: And in a way that - Cheryl for the record - that comes back to something Avri also said and that was she was outlining part of the, in inverted commas, confusion in this sometimes circular debate that we've been having on this

topic. For example, the - what I hear out of some of the advice our legal counsel has given us is that under California law we already have the right, ability and mechanism within a structure like ICANN for those of us appoint an individual to sit on the board to remove that person without cause.

And that probably is - and I don't doubt is exactly the case under California law. But what ICANN and we as entities that send someone to sit on the ICANN board don't have is a mechanism in place to do that. So what we need to do is ensure that (unintelligible) the mechanism. So I see Avri, over to you, Avri.

Avri Doria: Yeah, thanks. This is Avri again. And really my concern is much greater in two of the scenarios. And as I understand it we really have three scenarios for the UAs. One was as an identity between the SO AC and the UA that basically the one becomes - takes on the characteristics of a UA.

There's the other extreme where there are just the chairs of the group have been designated as the members. Right, we spent a lot of time talking about that one. Now I think we're probably not going to take that one because of this other failures but that's one of the possibilities.

And then there's the fuzzy middle that I have - that I've never fully understood and so maybe hallucinating about there being an issue is that when the SO remains an SO is not a UA but it has a UA somehow attached to it.

((Crosstalk))

Avri Doria: Or is represented as it in the mix. And there's a level of discontinuity between the two. And does that create a different kind of issue. Probably not but that's why I avoid stress test groups usually because once I start thinking about how

to break things I go on indefinitely. And so I start to fret over little things may be insignificant. Thanks.

Cheryl Langdon-Orr: Avri, thank you. It's Cheryl for the record. And I don't believe they are bad characteristics that you're bringing to our stress test group at all because it is in fact going down those rabbit holes that we do need to have a - at least shine a torch down the rabbit holes if not take ourselves down them totally.

Certainly I don't think if we word the newly proposed stress test regarding this issue appropriately that it will matter which of those variations on the theme comes to pass because if the ACs and SOs have appropriate internal and robust mechanisms or rules it shouldn't matter which of those comes to pass or even some hybrid of all of them comes to pass. But I see Steve. And, Avri, is your hand up to continue?

And I know you didn't say it was bad for the group. I suggested it might be a bit of a sort of a stress on you. Steve.

Steve DelBianco: Thanks, Cheryl. Yesterday on the CCWG call Sidley referred us - Sidley and Adler referred us to the memo they wrote on May 3 of 2015. It's a memorandum on the use of unincorporated associations in ICANN's governance. And I would ask ~~(Adam)~~[Adam](#), Alice, Berry or (Kim), if you could find and put that link up on the right hand side of the discussion notes or in the chat.

I want to refer you to the fact that Sidley I guess took a cue from us because they have four stress tests just like what we're describing written up in their document. And I realize it's only with regard to the UA and if we don't do UAs this might not be complete.

But for instance there's a question on the Sidley document on Page 4 that says, "What mechanism would a ccNSO use if its UA was not acting on the instructions of the ccNSO?"

Cheryl Langdon-Orr: Yeah.

Steve DelBianco: "Assume that a CC UA had five members selected by ccNSO but in a dispute the five members refused to act in the ccNSO's interests and also refused to step down." And they lay out a full paragraph of response to that. And the response talks about the fact that they have bylaws established, rights, and therefore they would have to literally invoke some action to enforce their rights and that might well involve, wait for it, that might involve going to court if people didn't listen.

And I suppose that would be the case now if a councilor refused to give up their seat when they lost the election do we bodily take them off of the stage, you know, Avri, I'm speaking of the GNSO, we don't take people off the stage but I suppose that the threat of legal action, injunctions and so on, is sufficient that we never have to use it.

But I do refer - thank you, Alice, for posting that to the link. And we're going to need to consult with that a little bit and perhaps even in the stress test answer I could quote from the Sidley Austin, Adler memo. And there may be some other gems in that memo with regard to scenarios that indicate flaws or potential risks in our model.

I'm not an attorney so I have to rely heavily on what these folks come up with. So this is the May 3 memo on UA.

Cheryl Langdon-Orr: Yeah, thanks, Steve. I think that's probably going to be the way we go on that. And over to you, Avri.

Avri Doria: Yeah, thanks. Indeed, I had read the memo and, you know, wasn't necessarily making things up. But the things that they have said though is that in other conversations, and maybe this is a piece that I already put into it, is that but of course this being America, we could already do that. We could already, based on our bylaws just as what we are, take them to court.

Anybody could take anybody to court in the US. That's one of the reasons why they've knocked down the notion of mediation in other places because even after mediation you can always be taken to court. You know, at the end of every process in the US is I'll take you to court.

So what then I wonder is what makes those - and perhaps this is not a stress test, although perhaps it is - because the question you had asked for this meeting is what is there special in the nature of being members or not members that changes our test?

Now in one sense we could say well perhaps nothing because if anybody can take anybody to court any time anyway then being a member or not being a member becomes insignificant to the test. Is there something that being a member, I was going to say called being a member, but being a member by having members be significant? And that's a point I don't understand. Thanks. And I too am not a lawyer, just spent way too much time hanging out with them.

((Crosstalk))



Cheryl Langdon-Orr: Thanks, Avri. And I think that's actually a question you've articulated that that issue very well but it echoes, I think, what I've heard out of other people's mouths when they've been discussing this matter as well. It is an issue I believe we probably need to grapple with in some way. But, Steve, go ahead.

Steve DelBianco: Yeah, thank you. Getting to court is easy, it's winning that matters. And the question of standing is the first. And I understand from the lawyers that members have standing under California law. Everyone else has to somehow earn it or argue for standing.

And the other is to be able to prevail. If California law contains statutory requirements that a member-based nonprofit association gives to its members the right to block a bylaws change, to block a budget and to spill the board, and it's my understanding that is written into California law, if that's there and getting to court isn't the point, it's about having standing and winning.

And I believe that member gives you the standing and dramatically increases the opportunity for you to win and, you know, prevailing in that case. So, Avri, let's confirm that if we can. We'd even ask staff if any of you can dig up the particular phrase in the particular memo from our legal counsel. Hell, we spent \$1 million, it ought to be in there somewhere, right? So I think that they've answered Avri's question. But I would love to be able to find that answer in a definitive paragraph.

And I think that it's not enough to say anybody can go to court. I realize the lawyers did say that several times on the phone. It's not all that helpful especially if it creates the impression that there's nothing incrementally better for the member structure than without it. And I think that was the basis of Avri's point.

So while we wait for staff to find us that particular what's better about members, let's maybe dive into the first stress test and see if this group believes that we would still pass the stress test if our powers were not enforceable. And the first stress test, Cheryl, lives on Page 69.

Cheryl Langdon-Orr: Yeah.

Steve DelBianco: This is a combination of four stress tests that deal with financial. This would probably be a good one to start with because it's not particularly controversial. And we - with the help of ICANN legal we were able to determine that existing measures give input to the community and in fact the Registrars have an approval process.

By the way, Avri, if the Registrars did not approve the ICANN's variable fees but ICANN tried to charge them that's an example where an attorney would say well you Registrars could take ICANN to court. It's true. Anybody can go to court at any time. But here we are told that Registrars already have the ability and ICANN's reserve fund.

In Column 2 there we said - Column 3 we said, "We would, as a community, have the power to veto the proposed budget." And that is in fact part of our proposal. And it uses words like veto and block. So that point there is saying that we have an enforceable power to veto a budget. If we don't have that power what does this stress test tell us? It tells us we have not improved the accountability at all.

The second paragraph in that column is on challenging a board decision using a reconsideration request. And this might be something that would happen outside of the annual budgeting cycle so that if, for instance, in the middle of the year when there's a financial crisis hitting ICANN if ICANN decided to

slash its compliance staff by half that would be a decision that they made in the middle of the year so it's not part of a budget blocking process.

And one of the powers that we have proposed is that the community be able to challenge through an IRP. And that's any aggrieved party or the community. Community does it cost-free. If we have a super majority that wants to challenge that decision it goes to an independent review panel. And the standard of review for the IRP is supposed to look at our mission statement and core values.

And by looking at that and understanding that the community has asked for an IRP it's possible that they would reverse ICANN's decision. And if they did reverse the decision that reversal needs to be binding, it needs to have enforceability. I'm not suggesting that an IRP would always reverse a board's decision but when they did reverse it we have this expectation that it has enforceability to be binding.

So I'll go out on a limb and say that if we lost enforceability that we would not have adequate accountability measures for this first chunk of stress tests. Any disagreement? Okay fantastic.

Let's do one more if you don't mind...

((Crosstalk))

Cheryl Langdon-Orr: Steve, just before we move on. Cheryl here. I guess I do need to play the devil's advocate here and ask would that be different, that response, be different in any of the member UA or delegation models? And I don't think it would be different.

((Crosstalk))

Steve DelBianco: Yeah, Cheryl, that's a great question. I do want to understand that better because all of I've used is the word enforceable...

Cheryl Langdon-Orr: Yeah.

Steve DelBianco: ...without diving into whether it's enforceable via...

((Crosstalk))

Cheryl Langdon-Orr: At what degree, yeah.

Steve DelBianco: Yeah. I think - yeah, I wasn't endeavoring to ask that. I was endeavoring to say that if it's not enforceable we probably would fail the stress test, which is going to be an easy thing to do and we wouldn't have to spend very long on this because there's a common thread through everything.

But you asked, well, you asked the question we debated yesterday, what is the enforceability...

((Crosstalk))

Steve DelBianco: ...with the UA member, without, is there an enforceability difference on the designator model? Is there an enforceability difference? Agreed? And I think somebody is working on that table for us. I don't know for sure. Isn't that the table that Kavouss asks about all the time?

Cheryl Langdon-Orr: Yeah, he did. ~~(Adam)~~Adam can you reassure us as the stress test working party that someone is looking at those differentiation points between the

proposed models in terms of enforceability of our mechanisms? I note

~~(Adam)~~Adam is typing so he might be unable to connect with audio.

~~(Adam)~~Adam Peake: I'm sorry, I was on a deep mute.

((Crosstalk))

~~(Adam)~~Adam Peake: I understand that that's happening - I understand that that's happening but I haven't got the action points from yesterday's call in front of me. So I cannot give you a definitive answer.

Cheryl Langdon-Orr: Well let's assume then...

((Crosstalk))

Cheryl Langdon-Orr: ...from our point of view ~~(Adam)~~Adam, Cheryl for the record, that it is essential that assuming that action item is carried out as we believe it will be from yesterday's call, that that material and that information and those - that tabled outcome is essential material for our stress testing working party to consider, review and integrate in our next run through.

Steve DelBianco: You know, Cheryl, on the call yesterday - is it possible that right before we assigned the attorneys to do the table we got cold feet over legal fees? And that...

Cheryl Langdon-Orr: Probably.

((Crosstalk))

Steve DelBianco: It's possible nobody's working on it.

((Crosstalk))

Cheryl Langdon-Orr: I think it's a highly probable thing but, yes, go on.

Steve DelBianco: Yeah. Yeah, and the notion that Leon said a few times they've generated an awful lot of content, our attorneys, and therefore the answer is in there somewhere. So it's possible that staff or volunteers can dig it out. But I for one would prefer that we spend a little bit more money, put some good money after this and ask the attorneys to help us understand it better in a comparison table.

Because this document from May 3 that I referred to you earlier it talks about unincorporated associations, the legal entity to exercise voting rights as a member or designator of ICANN. So their May 3 memo still talked about both member and designator.

Cheryl Langdon-Orr: Right.

Steve DelBianco: Both of them requiring a UA only if the UA was going to enter contracts with ICANN. And I really believe that the UA was necessary where there was contracts with ICANN to exercise the legal rights. But we'll figure that out when we get some better answers. Should we go to the next stress test then, Cheryl?

Cheryl Langdon-Orr: I think so. Go ahead, Steve.

Steve DelBianco: Yeah, Page 70.

Cheryl Langdon-Orr: Seventy.

Steve DelBianco: Stress Test Number 9, which was corruption or fraud. On that one we suggested three ways that our proposed measures would make a difference and the first one has the word "force" to force ICANN's board to consider a recommendation arising from an Affirmation of Commitments review.

Avri, this is 9.1 from the ATRT that you contributed. If that's in the bylaws then ICANN board would be forced to consider and make a decision. And if the board decided not to implement the recommendations we then, as a community, could file reconsideration or an IRP that would presumably be binding.

So the enforceability part comes up in the IRP on the board's decision not to follow the bylaw on considering decision. And I suppose that the second paragraph is the same way, another proposed measure is us to veto - the community to veto an annual budget to block a budget proposal that's tainted by corruption or fraud.

In the third paragraph, 447, it says if the board itself - if members of the board were involved in the corruption one proposed measure is that the community to remove individual directors or recall the entire board. And there enforceability is required because the board members who get recalled have to step down.

Cheryl Langdon-Orr: Yeah.

Steve DelBianco: So I don't believe this one is even debatable, right, this one requires enforceability. Any objections to that? Right, Avri, when you vote the bums out, which is tough, right, I'm the one who calls that the nuclear option because it requires a very high super majority, it's very disruptive and there

are times we're going to want to challenge the board because they didn't implement an ATRT recommendation.

The board just resisted and said no an IRP is something that I believe the community could come together on and push for. But I highly doubt we'd get a super majority to dump the entire board because they failed to implement one part of the ATRT recommendation.

Cheryl Langdon-Orr: Exactly.

Steve DelBianco: So only (unintelligible) practice is going to make it politically doable to throw the bums out. So I don't want to rely entirely on the nuclear option (unintelligible).

Cheryl Langdon-Orr: Steve, Avri's hand is up so let's see what she wants to say. Go ahead, Avri.

Avri Doria: Oh what I'm hearing is as we (unintelligible) is that we can either go to court or we can vote somebody out. That every place we have the enforceability, which means go to court because it's only enforceable because of the threat of going to court, which I think is a far worse nuclear option. Just imagine the spectacle of one of the AC SOs suing ICANN in court. And that's - I think it's probably a much bigger spectacle and, you know, larger nuclear device than voting a particular board member or chair of an SO or what have you out. So just when comparing nuclear options.

But what I'm hearing in almost every case is that if we don't have that legal enforceability, which we have anyhow, all we're talking about is a statistical difference and the likelihood of winning, but not the ability to use the method. And we have the method of voting somebody out, we basically have two different unacceptable ways of achieving the goal.



And so I still sit here saying I don't see what it really adds. I think on any of these tests, except for the one - there's only one where - and that's we vote them out and they cross their hands and say nope, we're not leaving. Then in that particular case, yes, having the one extra step and having a better chance of winning, although I think, you know, we get a class action of ICANN against a board member, it would have standing.

But anyway so what I'm hearing is that what membership adds is a redundant unacceptable possibility that removing that we still have a way to do all this, it's just we don't like it. Well, a lot of us don't like this one either and see it as just as much of a nuclear option.

I know that gets poo-pooed by American lawyers because that's their bread and butter, of course it's the right thing to do. But to others in the world, even as US citizen, let alone others, I question whether that isn't as bad a nuclear option as voting somebody out of an office. Thanks.

Cheryl Langdon-Orr: Thanks, Avri. And from a personal perspective I agree but more importantly from my region, which many of our member states and countries grapple with understanding why this degree of enforceability has to be wrested in a court of law and the standing to take (punitive) action on people, it is just so foreign to many of the countries, certainly in my region.

It would have in general, in our opinion, the entity we would have been taking to court we would have already stepped away from, so a dissolution of the thing that's called ICANN or the UA in the lower level would have already happened.

Steve, back to you. But I don't think regardless of that it changes the answer that we've put in our third column of our stress tests. Steve.

Steve DelBianco: Thanks, Cheryl. You made a remark there at the end about not being familiar with these concepts. And, yet, in Australia, the shareholders of a corporation or the members of a trade association, a nonprofit, have certain rights...

Cheryl Langdon-Orr: Yeah.

Steve DelBianco: ...and if the shareholders of an Australian corporation adopted a resolution about investing in certain parts of the world or green technologies, those resolutions are binding on the corporation. And I'm going to bet you that if the corporate board didn't listen that the shareholders go straight to court.

((Crosstalk))

Cheryl Langdon-Orr: That'd actually probably be muted in other ways before even the court action, if it was to exist, came to pass. But I wasn't specifically talking from an Australian perspective, I was talking from a Central Asian and Western Asian and indeed Southeast Asian in some cases perspective.

Steve DelBianco: So educate me on that. If shareholders in a corporation in those parts of Asia need to enforce their will upon the entity that they own...

Cheryl Langdon-Orr: They would walk away and never do business with them again. They would be...

Steve DelBianco: You're quite sure about that?

Cheryl Langdon-Orr: ...crippled without any court action.

Steve DelBianco: And yet the assets that the corporation is sitting on is - the corporation can spend that money even though it doesn't belong to them, it belongs to the shareholders.

Cheryl Langdon-Orr: Remember...

((Crosstalk))

Cheryl Langdon-Orr: ...that many cases the type of shareholders base that you're referring to is also economically unfamiliar in some of these areas because you'd have public private partnership and in fact inability for assets to be used in such a way. So without going into those economically different issues rest assured that the total devolution of the entity would have already occurred before it got to a court situation and in some cases probably even more drastic circumstances.

But that said, we are talking about a not for profit company which is based in a California corporation environment. And we do need to recognize that that's what we're working with.

Steve DelBianco: True enough. And I was just wondering if it were in Switzerland, if it were in Australia or New Zealand, we'd have the same conversation because we'd have to figure out how would the members - it'd be lower case M for members, right - how would the community enforce its will? And ultimately the only thing I'm aware of is that ultimately you rely upon a court who looks to the law and looks to the contracts and bylaws to enforce something.

So enforceability was going to be a given no matter where we are based. And we are looking to maximize the statistical probability of winning as the way in which we enhance enforceability.

((Crosstalk))

Cheryl Langdon-Orr: ...harm and the court of, in inverted commas, public opinion is in certainly Australia more likely to be used before even a - and be more effective in (unintelligible) change than any financial or lawsuit.

Steve DelBianco: And that may be true and yet I imagine that if that were not working fast enough or thoroughly enough the courts would be a next step that could be taken, right?

Cheryl Langdon-Orr: We have of course vastly different levels of action. We don't take people to court anywhere near as frequently as other jurisdictions do. And even in a successful court case the amount of money, of damages given are also vastly different.

So we are talking very, very different degrees even when we're talking about similar mechanisms. However, it doesn't actually change the stress tests. So let's get back to those.

Steve DelBianco: Okay. It's one hour in and I did want to leave some time to cover off the Chris Disspain stress test, which I circulated in the email yesterday. Let me ask you, Cheryl, I didn't get a reply from you on that. But did you want to leave time on this call to cover Chris's stress test?

Cheryl Langdon-Orr: Well let's raise it today recognizing that we do actually have a fairly small gathering. But let's put it on the table for discussion or at least to put it in the arena. And we may indeed come back to it at a later time. And I for one am sorely tempted to wrap this call up at now close to the top of the hour rather

than take the extra time today because I think we do need some of the information that was discussed in the CCWG call yesterday.

And coming back to that, I noted earlier on in the chat Steve, ~~(Adam)~~Adam did want some specific language on the action items so I do need you to go back and make sure ~~(Adam)~~Adam is clear on what we're asking the legal counsel to do for us or whoever to do for us. But, yeah, raise the Disspain issue.

Steve DelBianco: Okay. Well the first question asked was about making sure ~~(Adam)~~Adam understood clearly. And I think what we asked for was a comparison of enforceability amongst the different structures, members with UA, members without, designators with, designators without UA or no members and no designators at all which is the status quo.

((Crosstalk))

Steve DelBianco: So those were the five columns we'd want some comparison about enforceability and not just the ability to go to court but the standing and the likelihood of prevailing. Do I have that right, Cheryl?

Cheryl Langdon-Orr: I believe so.

Steve DelBianco: Okay. Now I would ask ~~(Adam)~~Adam, Alice, Berry and ~~(Kim)~~, could you put up the email that I sent yesterday because it has the Chris Disspain stress test right at the very top. You guys are fast. That was awesome, thank you.

Cheryl Langdon-Orr: Steve, all I can say is I think we have become predictable.

((Crosstalk))

Steve DelBianco: Amazing, well done. Okay so...

((Crosstalk))

Steve DelBianco: ...folks, take a moment to review that if you hadn't seen it. This was first generated a week ago and Chris was engaging in his colloquies back and forth over this. And Mathieu, one of our co-chairs, in particular asked on yesterday's call said, "Steve, please cover this on your stress test call tomorrow."

So the - it's an interesting scenario. And I know Mathieu, for one, doesn't feel as if it's a significant risk. But let's walk through it. The first thing that Chris suspected here is that through a vote required threshold for support directs the board to do X.

And I don't even think this makes any sense because it's not in the fundamental bylaw, I believe, where - well maybe it is. Would this be the IRP where we could...

((Crosstalk))

Steve DelBianco: I don't even understand his first point. What is the fundamental bylaw we're proposing that would allow the community super majority to direct the board to do something? I'm unaware of what he's talking about.

Cheryl Langdon-Orr: Well I'm not going to try and second guess what he's outlining either but what I think we can - and Cheryl for the record - take from this is the hypothesis starts with a clear direction from the community based on a high threshold therefore a strong and unambiguous direction from the community

for the board to do X. And I see Avri has her hand up and she may be able to channel Chris more effectively than I can. Over to you, Avri.

Avri Doria: I have no idea - this is Avri speaking - I have no idea whether I'm channeling anyone but one of the bits of popular mythology coming out of the accountability work I have heard many times is that, yes, we have the ability to force them to do something. And then someone always responds, no, no, no, no, really.

But there seems to be a result of mythology that sort of says that is one of the things we are producing is the ability to require action because it was one of the things that was discussed often.

There are those that listed among the things that needed to be solved for and I believe there are those that believe it's in there somewhere. And I also agree with Steve I don't see it in there somewhere but I think that that might be part of it. I don't know though like I say I can't channel people, thanks.

Cheryl Langdon-Orr: Darn I was hoping for clarity. Steve.

Steve DelBianco: Yes Avri I think you're right about that and yet let's suspend this belief for a moment and consider two potential powers that could act like this. The one is that the affirmation review teams make a recommendation and the board has to make a decision as to whether to accept the recommendations.

And if the board decided not to we could include IRP and the independent review panel could do a binding decision that says we reverse the board's decision to ignore the recommendation of a ATRT.

Cheryl Langdon-Orr: And then at that point that is the basis of refusing to do X because it maintains X is outside of the mission of ICANN.

Steve DelBianco: You know what I mean then Cheryl? So I guess through a slightly different wording I could potentially get to this notion that the community is telling the board we can't force you to do something but we can reverse your decision to do nothing.

So it's within the IRP and it might be provoked by the recommendations that come out of a review team. And then so we would rephrase number 1 in Chris' list but now let's just park that for a moment and go straight to step 2.

Step 2 Chris says now the IRP comes back with a decision to reverse the board's refusal but the board says no we're not going to implement that recommendation because it's outside of the mission of ICANN.

And as you all called in the mission part of the bylaws one of our fundamental sections is this new limited scope. And this could be a very likely scenario. There's just a disagreement about whether this particular new element maybe it's part of Whois, is outside of the scope as written on the ICANN bylaws.

Then what would happen if the board refused to change the decision? That's the second bit of the apple it's the same decision the board made again. Would we then open up a second IRP on the very same decision? Probably not.

Cheryl Langdon-Orr: Steve, Cheryl here. I think in the scenario that Chris specifically outlined we're probably already up there -- excuse me I had to startle a sneeze.



We're probably already up to sort of points 4 and 5 here because it would be the arbitrator finding in favor of the community and directs ICANN to do X. That is in that binding finding probably (unintelligible) can see.

But regardless of where we are in (Chris'), you know, points of 1 to 7 here the scenario despite its details still holds. What happens if the board still refuses to act?

So I say again that it believes this action is outside of ICANN mission. And then as a result of that the community does head to the State of California, you know, in a legal dispute.

Steve DelBianco: Well and that's where I have to differ because if you go to page 31 of our document the standing panel the IRP it doesn't do arbitration right? It comes back with a decision and the decision (wasn't) to direct the board to do anything.

It can set aside a decision. All we can do quote, "It shall be - it can confirm the decision by ICANN, it can cancel a decision totally or in part." So it's not directing the board so much as canceling its decision.

Cheryl Langdon-Orr: Yes all right.

Steve DelBianco: And the bylaws that they have the capability to do that then the board's decision is vacated but that means they still haven't implemented the recommendation.

Now the community has to decide what is the next level of escalation the community would do if the independent review panel came back and said we

vacate the board's decision not to implement the recommendation because that's all the IRP can do.

He's making stuff in here by saying the arbitrator...

((Crosstalk))

Cheryl Langdon-Orr: But that's (unintelligible) because let's not get too tied up with the details of the hypothetical rather let's not look at the words of the song but let's listen to the tune but right now I just want to go to Avri because she's had her hand up for a little while, Avri.

Avri Doria: Okay thanks, actually I just put it up because I had put it down for a while. In looking at this I'm becoming much more sympathetic to what I think I'm hearing.

First of all in my initial instance it was, you know, the old philosopher's trick of put a false statement as your basis and then you can build any castle you wish on top of it.

But having shown Steve that that number 1 wasn't a false statement because as you say the affirmation could indeed make such a recommendation and you have shown a possible task for it.

Then I do think that your - you've basically got a reasonable basis for this scenario in one. And then also the other point that was made that someone said you wouldn't go back to the IRP on this same issue.

Actually you might because the issue would be slightly different. In the first case it was you didn't do X and then the second case was you ignored a process by which and you could take it back.

But I think it is very likely that this scenario would fall through, you know, to step 7 in a quite possible way that one could manage the process through these seven steps and get to where (unintelligible).

So I actually think that having shown that one is possible the rest of it does follow, thanks.

Cheryl Langdon-Orr: Thanks Avri. Steve back to you.

Steve DelBianco: Yes on page 34 of our document where we describe the IRP, Item 18C says quote, "It is expected that judgments of the IRP panel would be enforceable in a court of the U.S. and in other countries that accept international arbitration results."

But if that decision of the IRP was to vacate the board's decision we are still left with the board refusing to implement a recommendation and then having a panel vacate the decision to refuse.

And I don't know that that suddenly turns into forcing the board to do something I really believe it doesn't. It ends up leading us pretty close to the nuclear option because the board would say fine, fine our decision was not to implement your recommendation.

The IRP came back and said that decision is vacated. That still leaves you at ground zero. There has been no implementation for acceptance at that point. That probably leads you straight to what Avri talked about earlier on the call.

The notion of a board that would then have to be spilled and reconstituted with a board that would presumably honor the communities views on that recommendation.

There is no way to force the board to make a decision. There's only to reverse a board's decision or (advert).

Cheryl Langdon-Orr: Right, Cheryl here. In many ways I think this is a scenario that would be best run through with a protagonist that was coming from the mindset that (unintelligible) in the first place.

In other words I wish that Chris was here to point and counter point as we analyze and debate this. But I don't see that any way we need to...

Steve DelBianco: And Cheryl...

Cheryl Langdon-Orr: ...need to refute whether or not it's earlier on in the (unintelligible) an issue rather more look at that final end game in this scenario which is after necessary community votes.

The community heads to the State of California (unintelligible) and then it's that analysis that Chris follows on that I think is what we need to discuss. I'd also like to welcome (Jonathan).

(Jonathan,) thank you for joining us. We really do need some more than the five or six people we have on the call to chew on the facts today (unintelligible). Yes back to you Steve.

Steve DelBianco: Thanks Cheryl. It turns out that I think I'm being the creator protagonist for Chris Disspain on this call. I am trying to take sort of his false premise and turn it into a scenario and Avri acknowledged as much.

So I believe what I could do is easily re-write Chris' scenario in terms of an affirmation, new recommendation the board considered...

((Crosstalk))

Cheryl Langdon-Orr: (Unintelligible) yes, yes.

Steve DelBianco: Right and I could write that up and it would be much shorter than the 7 steps Chris has.

Cheryl Langdon-Orr: Sure.

Steve DelBianco: And so be...

((Crosstalk))

Cheryl Langdon-Orr: I think that's fine Steve because I think what he's trying to get us to test is the difference between taking things to a California court to decide what is the (unintelligible) of public interest within ICANN's mission versus managing it through the existing global multi-stakeholder mechanisms that are messy and in many cases inefficient (unintelligible).

Steve DelBianco: Well we will need protagonist on the call because when I walk through this we make a recommendation on a review team, the board refuses to implement and IRP vacates the board's decision to refuse.

The only step left is to spill the board. It turns out we don't go to court and ask a California court to figure out who is right. That isn't part of the proposal because we cannot force actions.

All we can do is vacate decisions through an IRP. So there isn't a court that would determine the interpretations of the public interest and the bylaws. The members of ICANN who would resort to their nuclear option in spilling the board if there was an inconsistency.

So I'll write this up today and circulate it as a more realistic scenario...

((Crosstalk))

Cheryl Langdon-Orr: And what we'll do is we'll ask to have a protagonist hopefully Chris on a future call. But ~~(Jonathan)~~Jonathan you put your hand up you brave man.

~~(Jonathan~~ Zuck): Yes I mean I guess something occurred to me that I wish had occurred to me on the call with the lawyers yesterday which actually has to do with what the substance of a court proceeding would be if it came to that.

And I'm wondering whether or not if actually asking the court to evaluate the substantive argument that's in place, the specific affirmation review whether or not it's within ICANN's mission and as Steve describes and similar to what Chris is saying the question of scope.

Or would the court be simply evaluating the authority of the community to make that decision? I think fundamentally what we're putting in place with these bylaw changes is an empowerment of the community and a designation of the community as the ultimate authority and it's that authority that it would in fact be tested in court not the substance, the actual scope of ICANN.

But what we're giving the courts the jurisdiction to do is affirm our authority and impose that authority on the board which I don't think...

((Crosstalk))

Cheryl Langdon-Orr: The community will have the ultimate authority.

(Jonathan Zuck): That's right. I mean how does that strike people? That's literally just been my thought this morning and I wish I'd asked the lawyers that and that question still needs to be asked but are we really I mean by giving ourselves the ultimate authority we are right by virtue of that authority.

It's not a question for the court whether or not something that is proposed is in scope or out of scope. It is in fact that the community is right by virtue of its position as the last word within the organization.

Cheryl Langdon-Orr: Okay (unintelligible) with that because I think that is a, that's a founding discussion that we need to have when we look at Steve's re-write of this scenario or a similar scenario.

But I also noted that (~~Adam~~)Adam did put into the chat what would happen with this scenario without the proposed (power). And I think that from a hypothetical point of view is probably a valid exercise as well.

I think what and I'm not against say claiming to be able to channel Chris and what he was meaning here but I do go to his second last paragraph where he says, if we agree that the CCWG recommendation we will not be handing ultimate authority to the members but rather be handing the ultimate authority to a state based American court to make binding precedence (hitting) decisions about the interpretation of ICANN's mission.

That's very much a different tact to what you were just articulating  
~~(Jonathan)~~Jonathan if I understand you correctly because in fact you...

((Crosstalk))

~~(Jonathan)~~Jonathan Zuck: Very different.

Cheryl Langdon-Orr: ...what we were doing is in fact handing ultimate authority to the  
(unintelligible). And so there's a bit of good discussion and debate to...

~~(Jonathan)~~Jonathan Zuck: Well even Chris would concede that it is our intention - even Chris  
would consider that it was our intention to hand ultimate authority to the  
members.

Cheryl Langdon-Orr: I think that's where the empowerment is meant to be yes.

~~(Jonathan)~~Jonathan Zuck: Right but I mean so he would suggest that that's our intention and  
that we're only handling it - handing it to a court by virtue of the fact that we  
might bring a substantive dispute to the court.

And so the court would end up deciding ICANN's mission. And I guess my  
argument is that the community is the ultimate authority over ICANN's  
mission.

Steve DelBianco: Yes I don't agree ~~(Jonathan)~~Jonathan. Give me a chance to reply on that.

Cheryl Langdon-Orr: Please go ahead Steve and I know Avri has some issues she's raising in  
the chat as well. So Steve over to you.



Steve DelBianco: And I did respond to (Adam's) question and I think it's very clean that without a binding IRP there's nothing we can do to force the board to implement a recommendation.

One of the reasons 9.1 from ATRT is still not implemented yet. We don't have a standing (IRP) because we cannot force the decision. Under the proposals we have we still can't force a decision.

We still can't do it but we will turn to an international panel of experts the IRP panel and its international it's not American Corps. When we turn to them and say please use the initial statement and bylaws that we helped to craft and use those to evaluate whether the board's decision just taken is in keeping with those bylaws or not.

And that international IRP panel will come back and say whether or not the bylaws were followed. That's all they can do and they can vacate a decision or they can affirm a decision.

If they vacate the board's decision not to implement a recommendation we are left with nothing. Nothing will have happened and then there's no point in going to court.

All you can do at that point is spill the board because there isn't an ability for us to force something. All we can do is get a IRP to evaluate against the standard of review that's in the bylaws because ~~(Jonathan)~~Jonathan this came up probably three months ago when we had this debate about whether it would be a type standard of review and a limited mission in scope for ICANN versus the community could redefine over time what ICANN should do.

And were we ended up is we can't force the board to do things but we could over time change the bylaws. So we as a community could mount a long-term process to change the bylaws so that our will would be reflected in the bylaws that future IRP's would look to when they judge decisions.

Cheryl Langdon-Orr: Yes that is gradual course correction which might have a whole style if not absolute community support. ~~(Jonathan)~~Jonathan do you have anything else?

Steve DelBianco: You're Avri we can't. So the mythology about our proposal the mythology of going to court to have them decide what happened in the bylaws it's not even anticipated.

These are binding IRP decisions to overturn or affirm the board's decision and that's it. If we have to go - if for instance we told the board to reverse the decision that it made where it took a certain action let's suppose the board decided to fund NMI and we challenged it in an IRP and the IRP said, we reversed the decision.

If ICANN continued to send money to NMI there's an opportunity to go to court to enforce the decision of the IRP and that's on page 35 of our document where we could go to court to enforce the decision of the IRP.

And it would be able to - a court order that would stop ICANN from spending the money because it's against the decision of the IRP. And if that didn't work I suppose you would spill the board, thank you.

Cheryl Langdon-Orr: It's interesting that we...

((Crosstalk))

~~(Jonathan):Jonathan Zuck:~~ So Steve I completely agree...

Cheryl Langdon-Orr: Please ~~(Jonathan)Jonathan~~ yes go ahead.

~~(Jonathan):Jonathan Zuck:~~ ...sorry I actually completely agree with everything you just said and I shouldn't have spring boarded off of this scenario because I agree that this scenario is not the one that would take us to court by any means.

The one you described might be and I guess what I'm suggesting is that once we got to court that it would not be the courts (purview) to decide whether or not funding NMI was a good idea or within ICANN's mission.

We would simply be taking the ICANN to court for not following the decision of the IRP. So I guess that's I'm still trying to make the same point is that the basis of any litigation against ICANN would be about its adherence to the structures that we've put in place not the substance of ICANN's mission.

Cheryl Langdon-Orr: Well thanks for that ~~(Jonathan)Jonathan~~ this is Cheryl.

~~(Jonathan):Jonathan Zuck:~~ Does that make sense I mean...

Cheryl Langdon-Orr: It does.

~~(Jonathan):Jonathan Zuck:~~ ...it appears that courts end up deciding what ICANN's mission is and that is not in fact the case.

Cheryl Langdon-Orr: Yes and it is handing that ultimate authority to anything other than community that I think would be seen as unpalatable by community. And in Chris' scenario he's drilling in specifically to a state based American court.

Steve we've only got a couple of minutes left on the call and what we have done is in response to this particular email being sent we have given it a once over.

We've had I think a reasonably good analysis of it and we are taking an action now that we will re-write and by we I mean you a new stress test scenario which to the best our knowledge will explore the primary issues outlined in this particular thesis.

And then once we have that and I would suggest we will ensure that that draft of that is sent to Chris and probably copied to (Paul Shendler) because I know he's been more involved now in the CCWG as the CWG will be, is starting to taper off with him.

To ensure that we have captured all the key issues that we're trying to tease out with this particular scenario. And in that case assuming we do have that new scenario I think it then takes us to 28 that we need to discuss because ~~(Jonathan)~~Jonathan before you joined the call we've added another scenario that is yet to be fully pinned.

But it's an expansion of the current stress test 12 whereby we take it beyond just a capture issue and look at AI stress tests that analyzes what our mechanisms may or may not need to do in the case of recalcitrant at the member or individual legal entity in a UA.

So we've moved already from 26 to what I suspect will be 28 and maybe even more like 29 stress tests to discuss. Can I ask then Steve that we stop here now at almost half past the hour.

We take the rest of this particular discussion online that you make sure that ~~(Adam)~~Adam is clear on our desire to have that tabulated information as discussed in the call yesterday from the lawyers.

It may be that at our next call or perhaps at a call which comes after our next call if we want to look at these new hypotheticals specifically after we go through the rest of the stress tests again.

And I'm open to either way that we might need to invite some legal counsel onto the call as well as a protagonist. But let's yes certainly readdress the stress test working part to Chris and us before the (unintelligible) absolutely Steve.

~~(Adam)~~Adam I'm going to ask you and Steve to make sure that you've captured that particular AI which links with the AI from yesterday's CCWG call. We've only managed to get through about a third of our stress tests on our rerun tonight.

I would suggest what we might do then is take the first half hour, the first 30 minutes of next week's stress test call to try and go through the rest of our stress test as we were doing today.

And then we will take the second hour, sorry the 30 minutes on to the 90 minute mark to look at what will be two new scenarios. This one that will be born out of the email stress test that you have in front of you at the moment from Chris Disspain.

And the modification on the capture which explores the other commonly discussed issue of how we keep either the delegated members or the UA's themselves as accountable to the community as they may need to.

Have I missed anything in that summation? Let me know if I have and if you think of anything don't forget to send it to the list. And with that we will reconvene and pick up pretty much where we've left off from this call today the same time next week.

But I would like to ensure ~~(Adam)~~Adam that we specifically invite Chris and/or ~~(Paul)~~ to join us and quite probably depending on what (Leon) and the co-chairs suggest when they look at what we're doing we may need to have legal input either at next week's call or as a result of next week's call do a briefing to get some opinion from them and I don't mind which way we go.

We could perhaps make some valuable discussion on these matters when we actually meet face-to-face in Buenos Aires. All right ladies and gentlemen anyone have any other business before we wrap up 3 minutes after our appointed close time?

Not seeing anybody raise any issues I'd like to thank you one and all and look forward to getting back to our regular calls. We've had lovely holiday for a couple of weeks and now noses to the grindstone ladies and gentlemen we've got a lot of work to do. Bye for now and this call is now over.

Steve DelBianco: Bye now.

Avri Doria: Goodbye.

END