

ICANN

Moderator: Brenda Brewer
June 3, 2015
6:00 am CT

Cheryl Langdon-Orr: My name is Cheryl Langdon-Orr and this is the CCWG's First Post-Working Party Call for the 3rd of June, 2015. I think it might be the second of June in the rest of the world, but for me it's already the third in the (unintelligible).

We have carry agenda from last week's call ahead of us today, where we're going to look at rewrite based on a hypothetical that Chris Disspain, CEO of the .AU ccTLD operation in Australia, put towards the list. And Steve DelBianco has been kind enough to take the specifics within that particularly outlined and staged hypothetical that the list discussed and creating a particular stress test. And I'll pass it on to Steve in just a moment to go through that.

But what also needs to be noted is that we're at a point with the discussions and deliberations and the input from our public comments starting to come in that there is a need to identify and articulate some additional stress tests. So as far as I know from Steve, we have one that has been proposed from Mathieu, one of our co-chairs, and one from Avri. And I don't see Avri on the call but

perhaps she will be joining us shortly. So we will also get to that as part of it -
- or those I should say -- as part of our agenda for today.

So with that very brief introduction, we have a document up on the screen which articulates the linkage materials and activities between last week's call and this week's call, and I'm going to hand over to Steve. Steve, over to you.

Steve DelBianco: Hey good morning, Cheryl. And Avri was with us a moment ago on Adobe but she fell off. Maybe she'll get back on. I hope so.

So, Cheryl, you want to start with what's on Adobe now, which is the framing of two additional stress tests or scenarios that arose from Chris Disspain's initial. So you have control of the Adobe. If you scroll to the bottom, you'll see Chris Disspain's original note from May the 21st, where he laid out a seven-step scenario wherein he feared that -- hey good morning, Avri, I'm glad you're back on.

Avri, we're just quickly checking what's in the Adobe, which is the way I reframed Chris Disspain's stress test. This is a follow up to last week's call, and I'm going to walk through that a little bit, because when I did that work later in the day, I sent it around to each of you. I waited 24 hours, didn't hear back, and said okay I guess that's a go signal. And then I did send it to Chris Disspain. And then I can follow up that he and I talked over the weekend too, so I can sort of bring us all up to speed on that.

So I think it was a completely worthwhile exercise, because in Chris' scenario, which is at the bottom of what's in Adobe, the scenario would have a court, a California court, interpreting the meaning of ICANN's mission statement of core values and potentially issuing decisions about interpreting ICANN's mission statement and bylaws.

I'll be the first to admit that's a frightening prospect. I don't think that's at all what we are intending to have happen. I don't know that we can ever prevent that under mechanism or structure. It probably could happen today, I don't know. But we didn't want to set up something where the expectation was an aggrieved party or the community would end up going into court to interpret the bylaws.

So we reframed it based on a discussion that the four or five of us had last Wednesday. So if you go back to the top, we made it into two stress tests. The first one is more fitting in with what Chris came up with, and the second one is more along the lines of what Jonathan Zuck said at the end of the call. All right?

So the first one, the good news, is if the board refused to follow a community recommendation, and we used as an example -- this is near and dear to Avri's heart, the ATRT -- came up with a - recommending a new policy for implementation. Now sometimes that requires a PDP, but there are times that an ATRT recommendation doesn't require a PDP, it can be implemented, such as a new procedure at ICANN, a new bylaw change the board would then put forth.

But in this case what Chris said is that if the board decides to reject a recommendation on the grounds that it conflicts with ICANN's limited mission statement, and working group is proposing that it be even more tightly limited after the transition than it is today. Sorry. Avri's not hearing. Cheryl, can you hear me?

Cheryl Langdon-Orr: I can indeed, loud and clear.

Steve DelBianco: That's good because if nobody was hearing me I would have to start over, sorry. Okay so Avri has to dial back in. Okay.

So, Cheryl, cut in any time, same for your, (Pierre). If you spot anything in this set of four steps, please intervene. But these four steps indicate that the community members could challenge the board's decision with an IRP, not a court. And the IRP are international arbitration experts. They're not U.S. judges. And all they can do is negate the decision. They do not give the members or the IRP panel the ability to tell ICANN to do something specific. All the IRP panel can do is either confirm or kill the decision that the board made.

So given that, it's not in court at this point, it's strictly with the arbitrators. If the arbitrators come back and give us a clear step, saying that the board's decision should be set aside and then the board refuses to actually implement ATRT recommendation, which is in step one above, we have a recourse. I guess we could recall the board, which is rather dramatic.

We could also block the budget for the very next year, or the strat plan for the next year, if it failed to include funding for that ATRT recommendation. That doesn't actually solve our problem in the sense of a change that requires no expenditures, right? So a change to the bylaw that didn't have any expenditures that came out of an ATRT recommendation, we wouldn't be able to block the budget, hold the budget hostage until it was added.

So we wouldn't have much to go on there except this: you could go to court to force ICANN to follow the decision, but the decision was simply to set aside the board's refusal to implement. So I don't understand how a court gets involved at all in the first scenario. And when I sent this to Chris, he called me

over the weekend and understood that we would had a good point. He had some other points to make though that I'll go through with you.

The second stress test is the one that Jonathan Zuck sort of put a twist on it, where the board actually follows the community recommendation but later is reversed by an IRP. So it's the same example, where the ATRT came up with a recommendation, the board decides not to accept it - sorry, the board decides to accept it, thinking that it's fine, that it's not inconsistent with the mission statement, it came from the community, but then someone in the community, like an aggrieved party or potentially the whole community, has second thoughts and challenges the board's decision with an IRP.

And again, the IRP has a standard of review, substantive limitations on the permissible scope, and the IRP could cancel the board's decision to implement that recommendation. Then if the board ignored the ruling and continued to implement, well then the board would be ignoring the IRP decision, right?

So if it did, we have the ability to recall the board but we could also block the next decision, and in all cases we could go to a California court and enforce the IRP recommendation because the courts of any country that accept international arbitration results are presumably empowered to take an IRP panel recommendation, enforce its implementation. I don't know the legal steps as to how that happens. Presumably the court would look at whether all the steps were followed by the IRP, whether all the information was appropriate, and they would say look this is an IRP, we need to enforce this and it creates some injunction and serve it upon - on ICANN.

So in neither of these cases is the court involved in interpreting ICANN's bylaws and mission statement. It's simply enforcing an IRP decision as a

result of an arbitration. So I'll stop there. Cheryl, Avri, (Pierre), why are your thoughts about the way we rephrased all this and are we on the right track?

Cheryl, when I didn't hear back for about 24 hours last week, was I correct to interpret that to be consent that we had this right?

Cheryl Langdon-Orr: Well I think its consent that...

Steve DelBianco: I think you were - I think you were in the middle of a goddaughter being born, right?

Cheryl Langdon-Orr: My granddaughter actually, yes. So I think its consent for us to write up and run it through as a stress test. There may be some nuances that needs to still be discussed and there may even be other stress tests which come out of the woodwork as we work in this next couple of weeks.

Avri, are you now - can I just get to confirm that you are now fully connected with audio?

Avri Doria: I guess so.

Cheryl Langdon-Orr: Yes and we can hear you, but I'm disappointed to see that (Pierre)'s having sound issues as well, but he does have to go off to another meeting. Okay.

With this particular stress test, the first one, well and to a lesser extent I suppose the second one, we have not as yet put it into our tabular form. And I guess we should be looking towards that, assuming that we all agree that this does become I think 27 and 28 of our stress test published on the wiki.

Is there anybody who wishes to speak to embellish, follow through and do any update they weren't able to make during the call for input that Steve made last week? If you'd like to make yourself known and your opinion known now, that would be a good time to do so. And that's resounding silence, Steve. So I guess the answer to your question is yes.

Steve DelBianco: So, Cheryl, Chris Disspain called me over the weekend and he acknowledged that perhaps maybe he had misstated his original seven-step process in light of what the IRP actually does. And he appreciated the work we've put in to reframing it these two ways, and acknowledged that a court would not re-litigate. And that's good. So Chris acknowledged that. So I think we could move these into Table four.

But while I was on the phone with Chris, what he did was try to surface what he called his underlying concern. And his underlying concern was he suspects that the creation of members would somehow give extra standing to go to court directly and bypass things like the IRP. And that's not the scenario he'd originally come up with it but it's certainly one that's worth exploring.

But before we turn to Chris' underlying concern, let's just be sure that - I wanted to be sure that Avri was comfortable with the two new stress tests that we proposed and that I wrote up after last Tuesday's call, because I know that you weren't on the audio bridge earlier, Avri. So Avri, are you comfortable with the way these two four-step programs, or four and five-step stress tests are looking?

Avri Doria: Yes I was actually just reading them now. I apologize for not having read them before the meeting. I guess I find it interesting that now we have people voting - yes I suppose. I think it's funny that now post court we're voting

people out as opposed to court being the last step. If I'm reading it correctly, we're actually putting court as a middle step ourselves. And I think...

Steve DelBianco: I don't think you read that right.

Avri Doria: If they go to court then - and we don't follow what the court said, if the board member continues to ignore and a court orders to enforce it, members could vote to recall. So the court orders to enforce it. But indeed, what would the court do to enforce it? People would say okay thank you court. I'm not going to do it. And then somebody has to take them back to court.

((Crosstalk))

Avri Doria: The question is what we're doing, and I think Chris is right. What we're doing is making court one of our tools and we will use it anywhere.

Steve DelBianco: I think it's the opposite, and Chris will back me up on this, Avri. Chris acknowledged as much. There is no court in step three. Step three is the IRP, and if the IRP comes back with a decision, the way the IRP works, if you looked at Page 32 of the proposal, is that any court that recognizes international arbitration results can give an order to implement the decision of the arbitrators. That's all that the court does. And the court only does that if in this case ICANN refused to do what the arbitrators instructed it to do.

Avri Doria: I understand.

Steve DelBianco: But there is no court in step three, no court at all in step three. In step four what I laid out was well what do we do if the board continued to refuse this ATRT recommendation that the arbitrators said ICANN you are wrong to

refuse, you were wrong to reject it, which doesn't force the board to implement it. It says you're wrong to reject to it.

At that point, you know, we're befuddled. We have a board who rejected our recommendation, wouldn't put it in. The IRP said the board is wrong not to put it in. We only have a few tools in our arsenal at that point, but they are court enforceable, if we become a member organization, right? We could recall the board, and the court helps enforce that if the board doesn't step down. You could block the next budget or strat plan if it failed to include the recommendation from the NTRT, and a court could enforce that budget block.

Avri Doria: How? I've gotten curious...

Steve DelBianco: And I understand from many lawyers... Go ahead.

Avri Doria: I've gotten curious. How do the courts enforce this, that give a judgment? And then what happens if the judgment is not followed?

Steve DelBianco: Yes well I'm not a lawyer either but when you get an injunction, I thought an injunction was enforceable. I thought that...

Avri Doria: Only by dragging you into jail or fining you millions of dollars. But of course fining you millions of dollars doesn't work since we're the ones that pay the dollars in the end. It's all very interesting. I - yes your stress test follows through logically.

Steve DelBianco: And it avoids what Chris was fearing the most, which was having a court interpret wow look at this ATRT recommendation, let me go interpret it against the mission statement and the bylaws. The court never looks at that. The independent review panel does. And all the court can do is evaluate

whether or not the international arbitrator's resolve was properly constructed so that they can be put in.

Well there's the snoring again.

Avri Doria: I think it's a wonderful comment on this whole thing. I wish I was doing that at the moment.

Steve DelBianco: It's come up on a few other Adobe calls so I'm pretty sure it's not snoring, it's something else. But it is pretty...

Cheryl Langdon-Orr: It's actually sadly my beasts. My microphone picks up extraordinarily well, so I have to mute and I failed to. My apologies for background noise. It's family. Okay. So, Steve, it looks to me like we've got additions to our section four.

Steve DelBianco: All right, and we can write those up. And I was saying earlier, Chris would like to spawn another that Becky and I working on now, which is this notion that - I don't even know if it's a stress test. Chris hasn't posed it as a stress test. He said okay so my underlying question was what prevents - have we really turned loose some new power where a community member, an AC, SO, could go directly to court and bypass the IRP.

Well Becky Burr jumped on that, did a bunch of research, and discussed an awful lot of it on yesterday's call in the slides that she put up at the end of the call. And those slides would show that the use of an IRP can be a binding part of the member relationship with ICANN. So if Becky has properly addressed that there, I don't think there is a stress test. And nobody has asked us to do one on that. I'm just giving you a head's up that that was really at the core of

Chris' concern, and he concedes that if you follow these steps the way that the process is designed, we don't have a court risk in these two sets of stress tests.

Cheryl Langdon-Orr: Okay. There was, however, out of today's, earlier today's call, one if not two suggestions for stress tests. And I believe, Steve, you were able to capture some proposed wording for those, which would be our - we're heading towards 30 aren't we, 29 and 30 in our stress test numbering.

Steve DelBianco: I think so.

Avri Doria: And this is symbolic of a problem I think we have. But I don't think it's the stress test group's problem, I think it's a solutions problem. All I can compare it to is the way I pack a truck, which is very badly. And then I have to tie off everything, and then I notice something moves and I add another rope, and then I notice something moves and I add another rope. And finally I've got a connection of ropes inside the truck that my friend has called really a spider web.

And I think that's what we're doing. You know, Becky - somebody notices oh my God, they could take things to court halfway through the process and not follow the process. Oh okay, let's add another rule. And it's that membership is looking like it only works if we keep adding rules to it to constrain it. And I just get more and more convinced as we get more and more stress tests to prove that the tie offs really work, that we have an unworkable solution. But that's not the stress test team's problem.

Steve DelBianco: Still, Avri, I'd love to know can you give me another example of a tie off, a couple of more, so I have a better understanding of what you're thinking?

Cheryl Langdon-Orr: Yes.

Avri Doria: I think we've seen them all the way through the process, that, you know, oh okay a UA doesn't really work. Well we'll create this, this, this legal binding and this document that if it doesn't work we'll go to court. So that was another one that's come up recently. I think if you look back at the solutions all the way through, it's membership. Well membership doesn't quite work, but if we do this and we add that and hey, you know, I'm not a member. Yes I don't think we need an extra stress test. I think, you know, it would terminate where they all do, yes you'd go to court.

So I think its fine. I think, you know, the U.S. California courts, which are the new arbitrators for the multi-stakeholder model at ICANN are the ones that would solve this problem as well. So you're right, there is no problem that meets a stress test.

Cheryl Langdon-Orr: Thank you, Avri.

Steve DelBianco: Avri, come on.

Cheryl Langdon-Orr: Sorry. No, no, I'm giggling but I also resonate with what you're saying, because there is reasonable numbers within the At Large community that are also saying that what so we just, you know, go to court for everything. You know, if we don't go to court then we spill the board. And I guess that's where the general community working group as a whole needs to take stock and see where they want to draw the lines in the sand.

But our stress tests, win, lose or draw, are tools and so they need to simply be able to be applied as hypothetical exercises to see where in a spectrum of risk analysis things may need to be shored up, we need to be aware if they're not shored up what might happen, and whether or not our proposed mechanisms

and community powers, et cetera, are aiding or gaining or improving or shifting existing things. So I'm - I keep coming back to that because I think it is important.

Avri, your hand's still up. Okay? Back down. It was an old hand. Back to you, Steve.

Steve DelBianco: Yes I mean I know Avri well enough now to know when she's being exasperated and satirical, and I know you are and I know you were on purpose. So that's not going to work, Avri. We can't just throw up our hands and say okay great, everything goes to court. In fact in the end, anything we say in community powers have to be enforceable. They have to be enforceable.

And (Jonathan) has it right in the chat. I mean in today's world, forgetting membership, in today's world if ICANN ignored the articles of incorporation or bylaws, quite frankly the only solution is to sue them in court. And I don't even know who would sue them and under what ground, but somebody could sue, go to the attorney general of California in today's world, and a court would actually have to crack open the bylaws and read them. The court would have to drill into the action at hand and interpret the bylaws and make a decision.

Thank God we haven't done that yet. That would be bad, but it would be the only way we could do it today. On the other hand, this changes everything. This new structure says that the members can get an independent review that is binding, get the decision, and if ICANN doesn't follow the decision, it can simply take that to a California court and said here's the decision, enforce the decision. Don't review the decision. Don't read the bylaws to see whether the actions fit the bylaws, just enforce the IRP.

And I'm told from Becky and others that any court around the world that respects independent arbitration results that were properly constructed will enforce the findings of an independent arbitrator. So if what makes you really uncomfortable is going down the line and saying in the end enforceability may require going to court, in the end enforceability may - if that's make you uncomfortable then you're just as uncomfortable today, and every one of our stress tests will make you uncomfortable because they all assume that the powers that we have, blocking the bylaws, spilling the board, even spilling the board ultimately won't work without the court behind you.

Not that you went to court, but everybody knows that if we voted to spill the board and the board would not leave, which - would continue to meet, continue to vote on things, you may have to go to court and say get an injunction for these individuals to step down. We hope it never happens.

Okay, Avri, you say you see it just the opposite. My goodness, can you explain?

Avri Doria: Yes. What we have now is a system where we don't go to court. It's not part of the system, yet (unintelligible) there, any American, anybody in the world can take anyone to court that they wish. That's part of the American system and we see it happen all the time. But we have created a system at the moment, for better or for worse, and it doesn't rely on NTIA as much as people think it does, but perhaps to some extent it does, although much less than I think people argue, where we butt our heads against each other and find compromise points.

And we have built a multi-stakeholder process and we've built these accountability loops where we judge them and they judge us and this cyclical

cross-internal accountability keeps happening. And we wanted to tone it up a little. We wanted to fix, you know, the reconsideration process and we wanted to fix the basis on which one could do, you know, an independent panel review, and those things we've done.

So it wasn't - I'm not arguing that it was perfect, so please don't - but at this point, court is not part of the fabric or what we do. It's the interplay, it's the reactions, it's the groups getting together and saying this is not what we want and something needs to be done. And that multi-stakeholder process that we keep refining and working on gets stronger and gets better through the cyclical reviews of each other, done in a very public, transparent way.

What we have done now with these membership structures is we have created a very easy to use legal opening so that when things go wrong, what do you do? Do you continue to go through the hard process and the argument and the finding of consensus or do you just say hey, you know, let's just take it to court. That'll solve it. And so my belief is that we're putting in actually makes the going to court far more likely.

But as I said, that is not a stress test issue. The stress test works. We have a solution for every stressable situation. We could take it to court at the end if things aren't working out right. I don't think anybody would have made that claim on the existing system. They would say well argue it. We will, you know, we'll get together and we'll put together letters. We'll, you know, we'll replace the bums the next time there's a cycle. There's any number of processes and actions we would have taken, but going to court isn't one of them.

Once we have put this in and once we have put in the stress tests to show that anything could be fixed eventually by going to court, then the reasoning that

starts to come in is well if I can go to court to fix it, why am I going to spend the next year butting my head against the wall? But even if I do spend the next year butting my head against the wall, you know, what I am doing? I'm building up evidence for my court case.

So it really changes the emphasis of the system. It changes the direction of the system and to my mind makes it far less multi-stakeholder because it gives us an authority, as opposed to, you know, we pretend that the NTIA was this authority that was keeping ICANN in order. I don't really think so. I think that every ten years when the contract was about to go up, we cleaned ourselves up, put on our ties and dresses and stood there looking real pretty and accountable.

But as a steady state factor in our multi-stakeholder processes, there was always not the I can call NTIA and they'll fix things for me notion, because that wasn't the case. But now we do have this out, and just my personal belief is that that acts as a foil to the multi-stakeholder processes. Thanks. But it's okay for the stress test team because we've got a solution.

Cheryl Langdon-Orr: Thanks, Avri. I notice ~~Jonathan~~(Jonathan)'s hand is up and hopefully he's properly connected now. Over to you now, ~~(Jonathan)~~.

~~(Jonathan Zuck)~~: Yes can you hear me now?

Cheryl Langdon-Orr: Indeed we can, go ahead.

~~(Jonathan Zuck)~~: Okay great. And I guess this may just come down to a different crystal ball about what changes, you know, will occur in people's mindset as a result to this framework. And that may be - it may be something we can't just debate our way out of. But it is certainly my understanding that there's a great deal of

frustration among the community over the process that exists because there weren't sufficient mechanisms for redress, there weren't specific ways to get things done. There weren't ways that reviewed - the board reconsideration process was nothing short of a joke. And that was an issue of growing concern.

And so you've actually had people going to governments more, you had people suing ICANN, et cetera. The desire to go outside the ICANN process is something that I feel is percolating now. And I think what we're doing with this framework is creating more mechanisms for redress and more authority for the community that's ultimately backed by a court and makes it mandatory the two actually go through these processes before you actually get to a court.

And so in that sense, there's less I think incentive to go to a court willy-nilly because the court doesn't have the jurisdiction in most cases to deal with the substantive issues that are at hand. The only thing that they would have the jurisdiction to decide is whether or not the processes that we're putting in place had been adhered to.

So that would create a narrowing of focus of courts, which courts like by the way, and a focus on these processes as the ultimate arbiters or the substance of the issue. And so I think, Avri, I'm completely with you that - in support of the hard work that we do to get these things resolved within the community. I do think that there's a growing frustration that after doing all the hard work that the board does something else.

And so fundamentally changing the ultimate authority, if you will, to the community is the objective of these measures, and the court are simply a means of enforcement of that authority, not the arbiters of the questions that we have at hand. So I think that's fundamentally where the difference of

opinion or misunderstanding lies is the ways that we'd be able to go to court. The real way to go to court would be to say look we went through this whole process and they still ignored it, please enforce this.

That's very different than they made this decision, I disagree with it, come and play the role of Solomon and arbitrate this decision. And I think that our likelihood of doing that now is much greater than it is with these new accountability mechanisms that we're trying to put in place. Thanks.

Cheryl Langdon-Orr: Have we lost you, Steve?

Steve DelBianco: No I'm here.

Cheryl Langdon-Orr: Oh good. I just heard a clunk. Was that you, (Jonathan)?

Steve DelBianco: I definitely heard a clunk there.

(Jonathan Zuck): I don't know if I clunked or not.

Cheryl Langdon-Orr: Okay.

(Jonathan Zuck): I'm hoping that my ideas took wing and that they didn't clunk, but you guys will have to...

Cheryl Langdon-Orr: We want them to take flight, not crash and burn, okay. Steve, over to you.

Steve DelBianco: I'm - there's four of us most significantly engaging in this conversation, and I think we are ships passing in the night. We're not even on the same body of water, be it is so clear to (Jonathan) and I that you don't go to court, you go to the IRP and only if you followed all those rules and processes - there's even

this notion that you don't even get to do an IRP if you didn't participate in the public comment process if one was held on a particular issue. And that notion came from Google, who put it into the business constituency comments that I'll be filing in a few hours.

And the BC supported this idea that you shouldn't even be to sit on the sidelines and wait till the decision was made and then file an IRP. It'd be crazy. So we're trying to really say everything happens within the IRP, and the stress tests, I'm going to check, but my belief is that the word court doesn't appear anywhere in the stress tests as part of the solution. Instead it says that these powers of the community - we assume that these community powers are enforceable.

And if somebody said well how do you enforce that -- this is the question that Avri put to us with regard to section two of the UA articles -- how do you enforce that? Well the answer to how do you enforce that is always going to end up in court. It's a legal relationship between shareholders in a corporation, between members in an organization, between voters and elected officials. Eventually you go to court if you can't get satisfaction. If they don't just sort of listen, everybody understands that the court can force the action to happen.

So if in the final result it could go to court to be enforced, if that gives you guys pause, well then nothing we're doing makes it worse than the fears you must have today. But, Cheryl, you indicated agree with, Avri, and I'm still wondering. What is it you say that you agree with Avri on?

Cheryl Langdon-Orr: Coming off mute. I think I'm off mute not. The concern of - that Avri's articulated is resonating across a number of the members of our community, where the question of do we actually need to have a -- I'm going to go into metaphor world now here, so apologies in advance -- a belt, a bracer, a

capturing net and a tether rope approach to everything, or are we setting up a set of systems that really mean if in doubt spill the board or go to court to see if they will or won't change their minds and agree with the wider community, and if they don't or they're recalcitrant to spill the board, in which case why don't we just make sure that we have properly articulated and reasonably reinforced mechanisms that allow and (unintelligible) process methods of spilling the board as required.

I also feel that -- and this is beyond the I agree with you Avri -- a number of the people I've been talking to within our community are concerned that in some cases all we're doing is shifting where the transparency focus is, where the critical control points for transparency is. And that might be okay, Steve. Don't get me wrong. It's an observation, not necessarily a criticism. And I think that's where we do need to bring the wider community along with us in the stress test scenarios in the not too distant future.

Steve, I know you said that the slides on the screen show that members do not get to go to court to challenge the board. Well they do of course if they can show that they've been materially harmed. And I had a long conversation today with someone from the ccNSO community who was concerned about the possibility of putting a scenario forward for our consideration which would test the hypothetical of release of - to the technically country codes into gTLD world and whether or not a - the member that would be representing the ccNSO in such a scenario in our future model would in fact have standing to go through the challenge and the IRP processes to say that a board decision to release those two codes has resulted in material harm or the potential for material harm for the entity which they represent.

And I think these are conversations that we do have to have and a stress test that we may indeed have to pursue. Well I see (Jonathan)'s hand back up. (Jonathan), over to you.

(Jonathan Zuck): Old hand, sorry.

Cheryl Langdon-Orr: Well we know you're an old hand, (Jonathan). You're always welcome to leave it up. You usually have something to fill in anyway. Steve, back to you.

Steve DelBianco: Thanks, Cheryl. Slide 4. If you please scroll to Slide 4, this isn't a tie off as much as Becky trying to respond to what might be a misconception, this notion that creating the member structure suddenly empowers people to go to court more so than they could today. But even so, there's a tie off, and that's what Slide 4 is supposed to be.

And the key question here was can we avoid having a California court resolve a substantive dispute with ICANN members, to your example in the ccNSO, an aggrieved party? And if the aggrieved party is one of the ACs and SOs, then their rights to sue are limited and the bylaws can suggest that they have to go to IRP. The forum in which claims are brought, the third - the fourth bullet on this slide.

So if it's an AC and SO, there's nothing about membership structure that will increase the likelihood you're in court. In fact it forces you to do the IRP. An IRP if it ever ends up in court, it's only to enforce what the IRP came up with, and that is extremely transparent. The panel itself is individuals that the community approved or recommended, I've forgotten which of the two it was, and they're supposed to be experienced people that are paid to be on standby to be available for an IRP whenever we need them.

So the beginning of your scenario started with this notion that an aggrieved party is going to run to court, but we're not creating a structure that makes that more likely than it is today. And (Jonathan) suggested less likely. So I mean the stress test if we had one would say something like aggrieved parties in the community abuse the new member structure and community powers and we have one of those, then maybe we can expand it to indicate that they can't abuse these powers by going to court if we suggest - if the bylaws suggest that IRP is the avenue of disputes about the board's actions or inactions with respect to the bylaws.

Yes we had talked about - there is one stress test that talks about number 13, it's on Page 81, which says one or several stakeholders excessive rely on accountability mechanism to paralyze ICANN.

Cheryl Langdon-Orr: Yes, yes.

Steve DelBianco: And again that doesn't speak at all to courts, it just talks about redress mechanisms more accessible. This might be a new one, this notion of courts. Nobody's trying to run away from this. We're trying to take it head on.

Cheryl Langdon-Orr: Absolutely, Steve.

Steve DelBianco: In the first instance we're saying - I'm sorry, nothing we're doing is making your fears more realizable than the current situation. And that's not a tie off, that's a clarification. You may still discover that you have concerns that require a tie off, and we may have to come up with one, but so far I feel like we're mostly rebutting some fears and uncertainties by clarifying, like we did with Chris' case at the beginning of this call and like I think Slide 4 with respect to this notion that aggrieved parties just run to court. I don't see it. Thanks.

Cheryl Langdon-Orr: Okay. Thanks, Steve. I'm very aware of the hour and looking towards us just having a couple of minutes more on the call. Do you want to take an action item then to expand on that stress test 13 to have a subset or additional one which does speak about the specificity of using the IRP, not the court pathway? That's a clumsy way of trying to articulate what you just said, Steve, so I apologize.

Steve DelBianco: Yes sure. No, I'll do that. So there's to to-dos for me today. One was Mathieu on the FIFA scandal and then the other one is to draw up - expand on 13, okay.

Cheryl Langdon-Orr: And to that, if we could have those - that draft out to us as the work party list and then send to the wider list for feedback from before our next call, I think that would be a good way forward.

Steve DelBianco: I agree with that, and that is what I did last week. When I sent it to this list I heard crickets expect for Jonathan Zuck, and then I waited 24 hours and sent it to this list. I'll do the same thing this time.

Cheryl Langdon-Orr: I think that's a good precedent to follow and we will have a full frank and fearless discussion hopefully with some more people involved, although...

((Crosstalk))

Cheryl Langdon-Orr:...so it doesn't matter. And can I say, can you all hear how loud my dog is snoring? I can barely hear over it, but I have little choice. I'm surrounded two very elderly dogs in the lounge room, so my apologies.

Steve DelBianco: Yes there were a few calls earlier on in February I think where we heard them snoring at the beginning of the call. I couldn't believe it.

Cheryl Langdon-Orr: What can I do? I live in an aging community. There's a whole bunch of bitches here.

Steve DelBianco: Hey, Cheryl, I too regret there weren't more people on the call but I don't mind at all having the discussion like this and debate. I mean you guys are airing concerns and then we're getting a chance to push back and explore them better.

Cheryl Langdon-Orr: Well, Steve, I think also -- Cheryl for the record again -- when you're hearing, you know, Cheryl saying, Avri saying, we're not just representing our own, you know, internal turmoils and concerns here, we're reflecting what we're hearing from the communities that we're talking to as well. And these things have to be worked through. And after all that's really the basis of what a stress test working party is all about.

So I'm happy with our progress to date, but we do need to decide what we're doing after this time next week. And I would suggest that we have a hiatus from our - we'll do our call next week but the following week will find many of our members are starting to travel, and so I think we should advance now that we won't be holding a call in the week of the is it the 15th or 13th or 12th or 11th, or whatever date it is. I'm sure (Kimberly) and Brenda and everyone will sort that out quite effectively.

(Adam), you've waved your hand. You probably have the answer to my question here.

| ~~(Adam Peake)~~: Can you hear me?

Cheryl Langdon-Orr: We can indeed.

~~(Adam Peake)~~: Sometimes my computer mic is quite useless. Anyway I just wanted to know do you anticipate needing a - any series of calls in respond to the public comment or are you just going to stick to the current schedule as you just described? Because we do want to start scheduling up all of the intense sort of work of calls that will be needed after public comment. Thoughts on that would be great. Thanks.

Cheryl Langdon-Orr: Okay. I think we'll cover that in a little more detail in next week's call, ~~(Adam)~~, but my initial reaction is we have powered on with an existing schedule and probably will still continue to power on with an existing schedule, cancelling the odd meeting when there is insufficient critical mass of information or people to do anything with. (~~Unintelligible~~~~Olaf~~) told me it's the week of June 17 that we will not be holding a call. Thank you, ~~(Olaf)~~. It's good to have a voice of sanity and calendar accuracy in all of this. So ~~(Adam)~~, I would suggest at this stage will just be doing our weekly calls as is.

Steve DelBianco: Cheryl, question?

Cheryl Langdon-Orr: Please go ahead, Steve.

Steve DelBianco: When staff pulls together all the comments that will flood in today, who -- there's two questions I guess -- who will go through them and find all the new -- any implications for stress tests? Sometimes they're not new, they'll be implications to modify a stress test. But we need go through all the comments and see if people have mentioned something that suggests or directly implicates a stress test, and then this group has to get on the phone and talk

through how we want to react to the public comments. Do you think that would happen as soon as next Wednesday or does it happen the week after?

Cheryl Langdon-Orr: I doubt we will be doing that in the next Wednesday. I think we'll probably be doing that in the post BA period. We would be using I would have predicted the pro forma tool that has been used in other cross-community working groups and allows us to show that we have discussed, considered and responded to particular public comments that come in.

Now, ~~(Adam)~~, hand up. Heavens above, it's not an old hand. You're chatting as me as well. Go ahead, ~~(Adam)~~. We can't hear you, ~~(Adam)~~. We see your microphone attempting to talk to us but no voice coming through. Okay whilst ~~(Adam)~~ is typing, I'll note that ~~(Olaf)~~ has kicked out yes there are stress-test related comments.

I must say in the CWG, staff had been worth their weight in gold, you know, identifying the particular parts of CWG work that we're relating to each of the comments. And they ended up with a color-coded tool which indicated what design team or teams needed to consider and respond the specifics from public comments. And I perhaps am living in a utopia, but was rather hopeful that we would get the same kind care and consideration and support in our endeavors as well.

Okay ~~(Adam)~~ is saying, "You will see the compilation of those stress test responses in the PC tool." Okay, so it looks to me like ~~(Adam)~~ is saying that yes the way that the PC tool has been used in the CWG work is going to be emulated to some extent, if not exactly, in our work as well. So, Steve, that means that we should have readily identified the particular public comments that we need to address and we will then make it the business of one or two or

more meetings, as the design teams have in the CWG in the recent ten or so days to address each of those issues in our meetings in a transparent manner.

(Adam), is there anything else that you want to type at us or try and say? No he's all good. Okay.

All right well gremlins considered and the cacophony of my aging what do I call them, I guess I'll call them the chorus room with me tonight, who I trust can be forgiven, let's call it a day for this call. We will meet again same time next week, but we will be not meeting in the following meet, which is the week of the 17th of June, as most of us, if not all of us, will be traveling.

Thank you one and all. Don't forget, respond if you wish to respond, and I encourage you to do so on the list to the couple of new scenarios that Steve will be putting forward. Thank you, Steve, thank you, staff, and thank you very much one and all for joining the call. Bye for now.

Avri Doria: Bye.

Man: Thanks.

Cheryl Langdon-Orr: Thanks a lot. Bye.

END