

CCWG on Accountability with ICANN Board Members
Initial Draft Proposal for Public Comment
15 May 2015
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>>STEVE CROCKER: Okay. Well, welcome, everybody. As Bruce said, we have a lot of people here. I'm almost in the Adobe room myself.

I've asked Bruce to chair this from our side, and my understanding is that this is primarily a session for the Board to listen to the Cross-Community Working Group and ask questions. And, Bruce, it's now yours.

>>BRUCE TONKIN: Thanks, Steve. Yeah.

Yeah, just to provide context. So the Board is providing --

>> The meeting has now started. You may proceed.

>>BRUCE TONKIN: Thank you.

So the Board is preparing comments on both the Cross-Community Working Group on the naming transition as well as this Cross-Community Working Group on accountability. So this is fairly early days for us, so the Board is yet to form a formal position on the proposal, but in having this call, I think it would really help board members get up to speed on the key elements of the proposal and help give us context to eventually provide a formal response.

What I suggest is that, I guess, the co-chairs of the Cross-Community Working Group go through some of the high-level points and then we'll open it up to questions from board members, which will mostly be questions of clarity, because as I noted, we don't actually have a formal position yet, but we're still learning.

So I'm not sure whether Mathieu, or Thomas or Leon would like to kick off on the -- to discuss the proposal.

>>MATHIEU WEILL: I take on, Bruce. This is Mathieu Weill speaking. Can everyone hear me?

>>BRUCE TONKIN: Yes, we can.

>>MATHIEU WEILL: So Mathieu Weill. I'm one of the three chairs of the Cross-Community Working Group Accountability. And first of all, thank you very much to Steve and Bruce and you all board members for organizing this session. As Steve said, this is really intended to introduce the proposals as well as answer any (indiscernible) questions. And the three co-chairs, we've split the presentation between ourselves to take you through the various aspects of the recommendations

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so far, and we'll take questions on each block of slides to make it a little bit more interactive.

Before jumping into the presentation itself, a quick reminder that our group's -- the public comment is about an initial draft proposal, so it's no -- it's not consensus recommendations yet. There's still a lot of aspects where we're looking for guidance from the community and as well as aspects where we want to ensure we're moving in the right direction in the community views. So that's the kind of input we are looking for in the public comment period as a whole, and the public comment ends on June the 3rd.

In terms of resources available, of course there's a beautiful public comment document, but there's also graphics that you'll see in the -- in the slides that are designed to help facilitate understanding, but obviously the report itself has a higher value so we encourage everyone to go and look in the report as much as possible.

The slides, as Thomas is stating in the chat, the slides we're using are the same we've been using in the Webinars that we held early this week.

And I'm going to jump to the next slide, but first I want to stress that Bruce Tonkin has been our Board liaison in this work, and he's played an outstanding role in facilitating discussions and providing informations about how the Board's working, and it's been immensely useful, so I want to acknowledge his contribution to this group.

So the next slide, the slide you have now on chat, the issue shows there are two tracks. Obviously you know that very well. And the CCWG proposals, when finalized, will come to you for -- in order to be transferred to the NTIA along with the ICG proposals.

The one item I would like to stress here is this linkage that exists between the CWG Stewardship proposals and the CCWG accountability proposals. And this is extremely important. And so I want to welcome, on this call we have Lisa Fuhr, one of the co-chairs of the CWG Stewardship attending in case there's any question regarding the linkage between the two groups or the -- so she's on standby if there are any questions on this interdependence of those two groups, and I want to really emphasize how we've been coordinating on a very regular basis with the CWG Stewardship, and it's been very productive all across the entire period of time we've been most active.

The next -- So one last aspect. I know it's very delicate position for the Board because in a way, of course the Board is one of the key stakeholders in the community, and you're all very much involved and skilled and some of you know

ICANN inside out, but also, you're in charge of facilitating the process and leading this process forward. And I think you all know this may lead to some positions being misread or whether in good faith or in bad faith it, doesn't matter. So I think it's extremely important that there's regular exchanges such as this one so that questions can be asked directly and we leave as little room as possible for misinterpretations of everyone's positions. So there's going to be a big opportunity in the in next few weeks to set the right tone of the various comments, and we hope the questions we have now can lead to further dialogue until you formalize the position.

If you go to the next slide, it's a quick view of where we are now. So the proposals are essentially work stream 1. So those mechanisms that would enhance ICANN's accountability that must be in place or committed to within the time frame of the transition. I mean, you know that, I think, very well, so I won't take too much time on this.

And the next slide is the timeline so far. This timeline, you may remember, we started our work in December. We started with assessing the current situation. In Frankfurt in January, our group came up with some high-level requirements for work stream 1 around the empowerment of community and the review in process and so on. And this was discussed including with the Board in Singapore, and then we find in the face-to-face meeting that took place in March in Istanbul and very intense remote work schedule in April to get to this public comment in May.

And I want to also stress that we've had the opportunity to have independent legal support. First of all, it's a great asset to our group, so we want to acknowledge ICANN's willingness to provide this. It's absolutely key to the success of the transition, and we're very aware of what this means in terms of allocation of resources from the Board to the transition process, so I think it was worth mentioning that this is an important aspect.

I don't know if on the overall process there are any questions at this point. With.

Okay. So let's move into the substance of proposals, and I will hand over to Thomas Rickert for the overall architecture of accountability mechanism. Thomas.

>>THOMAS RICKERT: Thank you very much, Mathieu, and hello, everybody, this is Thomas Rickert and I'm the GNSO appointed co-chair to the CCWG Accountability.

I will take you through a couple of slides speaking to the overall architecture of the enhanced accountability system that we're working on, and then also go through the various powers that an empowered community would have should we reach consensus on the overall package.

It's worth noting that it wasn't just the co-chairs doing this but we had an excellent working group with an outstanding commitment and high quality of work, and also the rapporteurs that we had and have chairing the subteams have been very efficient. When we did the Webinars for the community, we asked the rapporteurs to present their respective parts of work or areas of work. For this call we've chosen a slightly different approach; i.e., you will hear the co-chairs leading you through the slides but the rapporteurs are also on the call and will likely take a more active role when it comes to answering your questions.

As Mathieu mentioned that we established the status quo in the first phase of our work. I.e, he looked at what accountability mechanisms there are already in ICANN. So we created an inventory of existing accountability mechanisms. We also analyzed what the community had previously been saying and requesting with respect to accountability, and we used the report stemming from the public comment period held by ICANN last year as a basis for that. And then we came up with recommendations in terms of requirements that we would have, without talking about how these would be implemented legally. And we will speak to that later during this presentation.

But you will remember that in Singapore, we presented four building blocks out of which we thought we could build all the accountability mechanisms that are needed. And these -- we've been looking for precedent in other areas of life, and we found that some governments, some space are quite efficient in sharing powers, exercising checks and balances and so forth, and we're sort of replicating this in ICANN.

So you will have an empowered community, that would be the legislative or the people. You would have the ICANN Board, which would be the executive. And I should note that whenever we speak about the ICANN Board, we're not looking at any individual sitting on the board now, so all these worst-case scenarios that we have to play through are only for some future rogue board members or a rogue board as such, but do not relate to any experiences that we had have with the current board.

Then the third building block would be the ICANN bylaws, which would form sort of the constitution of this mini state called ICANN. And then we would have a judiciary, which would be the independent review mechanism.

Can we go to the next slide, please.

So we said that we need certain powers for the community to have, but that begs the question of, you know, we can do whatever we like at this stage, but who makes sure that the Board itself doesn't turn these over by just changing the bylaws

subsequently and, let's say, remove the judiciary -- i.e., the independent review process -- or applying other changes that would jeopardize the functionality of the accountability architecture. And that is why we came up with the idea of fundamental bylaws; i.e., bylaws that can only be changed with a very high voting threshold and can only be changed if the community expressly consents to such changes.

What we did not want to cast our proposals on mission or core values of ICANN in stone because ICANN is working in an evolving and potentially changing environment, so we can't perpetuate what ICANN is doing now. Yet in order for ICANN to be allowed to do different things than it is doing now or to apply other mechanisms than we're currently envisaging, you would need a very high voting threshold.

And we felt that those bylaws that need to be fundamental would be the amended mission, commitments and core values, the independent review process, the power to veto nonfundamental bylaw changes and to approve changes to fundamental bylaws, any reviews required by the CWG Stewardship, and new community powers such as the recall of the Board. And to these community powers, I am going to speak in a moment.

You will see here the first link to the CWG. So the CWG thought -- the CWG felt that the IANA functions review was an important feature in the revised IANA system. And, therefore, we wanted to make sure that not only do we have these reviews but also that these reviews can't easily be sunset at any future point in time.

Next slide, please.

Okay. Let's talk about the empowered community, then, briefly. You will have heard of reporting that we have five powers that the community needs, and that would be the possibility to reconsider or reject budget or strategy and operating plan; the possibility to reconsider or reject changes to ICANN's standard bylaws; the possibility to improve changes to fundamental bylaws that I just spoke to; the possibility to remove individual directors as well as recalling the entire ICANN board.

And we felt that if we enact and make enforceable the execution of these powers, then we would basically have everything the community needs at its fingertip to shape ICANN in future.

So even in the post-transition phase, if we manage to incorporate these community powers into ICANN bylaws and enact them, then we can leave a lot of what has to be

done in terms of details but also in terms of work stream 2 accountability mechanisms, for a later stage.

So this was, as we said, the least invasive way to change ICANN's accountability, because we're using building blocks that are only -- that are already in place. We're only amending them so that they would provide more accountability. And what's important to say also is at the moment, as you will certainly know, the U.S. government has the possibility to request certain behavior from ICANN, and what do we do in the absence of this historical relationship? We take the power that the U.S. government had and provide the community with the power. And, therefore, the notion of the empowered community is one of the major themes in our accountability work.

I haven't yet spoken about the legal mechanism, the legal vehicle for putting these community powers to work. We will speak to those a little bit later.

Next slide, please.

But we've been working on escalation paths for all the individual community powers of the empowered community, and I will just work you through this very briefly. I know that you might have questions, but we need to leave them later for the Q&A because some of that you will surely have heard of.

Now, the ICANN Board and staff will provide an ICANN budget in a draft format that will then go through public comment and, ultimately, to the ICANN Board which approves the budget. And then there's the policy -- the possibility if an S.O. or an A.C. objects to the approved budget, then it can bring the objection to the empowered community, which will then take a vote. And we're currently thinking of a 66% voting threshold in (indiscernible) with the respective members.

So if you look at this (indiscernible) that we present the S.O.s and A.C.s and we're currently proposing a mechanism whereby all the S.O.s and A.C.s, except for SSAC and RSSAC, do get five votes and SSAC and RSSAC get two votes. And if 66% of the votes are in favor of sort of challenging the budget, then the motion would be carried and the Board needs to rework the budget.

And in order to prevent this from being a Ping-Pong thing whereby the community brings up new items each and every time, we have installed a proposed -- a higher voting threshold for the second time around for 75%.

And also, all the -- all the issues that the ICANN community has with the budget, strategic or operating plan needs to be brought up, and it can't be brought up to the

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second time of intervention. And by that we want to make sure that we don't have an iterative objection process, if you wish.

Next slide, please.

Now you see a reoccurring pattern here. For the ICANN bylaws change, again, the proposal is made by the ICANN Board after having gone through a public comment period and amended bylaws are approved. An S.O. or A.C. can object and thereby invoke the empowered community to deliberate the case. And if there is a 66 versus 75% voting threshold, then the ICANN Board needs to redo the change that it has previously been made. So that's the reconsideration. So the community will not suggest any concrete wording of the bylaws nor do they have the power to actually request that, but they basically tell the Board to go back and work on it a little bit more in order to take on board the community wishes.

Next slide, please.

Then we have to change to fundamental bylaws, and that would be the other way around. So we don't have a veto mechanism here, but we would have an explicit approval process. And for that approval, since the bylaws are fundamental, some of them called golden bylaws, which clearly shows that these are very important subjects that have been dealt with, and, therefore, 75% of the votes need to be cast in favor of such bylaw change.

Next slide.

Then we come to the removal of directors. And for the removal of individual directors, we have two different approaches. The first would be for those directors that are being sent to the Board by SOs and A.C.s, and they can then revoke their respective members. So that is a process that lies pretty much in the hands of the S.O.s and A.C.s. And it's important to note that only the S.O. or A.C. that has sent somebody to the board can remove that individual. So it's not possible for, let's say, the ASO to remove somebody from the ccNSO.

Next slide, please.

For NomCom-appointed directors, things are slightly different, and, therefore, we suggest that -- and in our reference model -- that at least two SOs or A.C.s need to request that an individual board members is removed. Then the NomCom would consider this petition, and we have not yet made up our mind whether the current NomCom or a special removal NomCom would be called upon to vote in favor of dismissal of a board member, but we're suggesting that whichever -- whichever

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body takes care of that, that 75% of the votes are needed in order to remove a board member.

Next slide, please.

When it comes to requests for recalling the entire ICANN Board, we're asking for a high -- high entry threshold in order to prevent abuse of this mechanism. And, therefore, three S.O.s and A.C.s need to file this petition, and we need to have at least one A.C. plus two S.O.s, or the other way around, so that it's not possible for three S.O.s in isolation to file that request.

We would then have deliberation on the request. The individual groups would then debate the case; i.e., the GNSO or the ccNSO or the other groups would deliberate. And they would then, either through consensus or by casting of votes where we suggest a voting threshold of 75%, decide on the removal of the -- or recalling of the entire board.

So I think I should leave it here. Let's move to the next slide, which I think is the slide on the membership model that Leon Sanchez is going to present to you in a moment. But I would like to pause for a moment and ask whether there are any questions from your side.

I don't see any -- There's one hand raised in the Adobe, that's Kavouss. Kavouss, please.

>>KAVOUSS ARASTEH: Good day to all of you. I think this meeting is more or less for ICANN to raise a question, but nevertheless, during this period you came to a request for recalling the whole board member. Who participate in the voting? Because those who does not designate individuals and would not participate in the removal of individual board as you have mentioned, has -- or have they invited to participate in the removal or recalling of the whole board? This is silent in your slide. You put in circle, you put everybody, but who has the right to vote here, you have not mentioned.

In previous case for recalling the individual board, you clearly mentioned. Only one A.C, and that is At Large, but not other A.C.s. But here, who has the right to participate in the voting of the recall of the entire board member?

Thank you.

>>THOMAS RICKERT: Thank you very much, Kavouss. And for those considering to put themselves in the queue, please let's have the board members ask the questions first because this is a meeting to update those.

Since this is a legal question, I think that Leon Sanchez is probably best placed to answer that.

Leon, would you volunteer to respond to that?

>>LEON SANCHEZ: Of course, Thomas. Thank you very much.

So as I am about to describe what membership model, there needs to be a legal vehicle for the community, the different S.O.s and A.C.s, to enforce the different rights and exercise the different powers that we are trying to provide the community with with this proposal. And answering Kavouss's question, anyone that appoints a director that, of course, forms any kind of legal vehicle, it doesn't even have to be a nonincorporated association, I am going to give details on this a little bit later, but any S.O. or A.C. that conforms any kind of legal entity to be the legal vehicle that would enable them to enforce the rights or exercise powers would be able to vote on the process of removing directors and, of course, exercising the rest of the powers that my co-chairs have described during this presentation.

So if any S.O. or A.C. should decide not to form any kind of legal vehicle to become a member or designator under the current proposed structures, then those who decide not to conform with this will, of course, -- wouldn't be able to enforce the rights or exercise the powers.

I hope this answers your question, Kavouss.

And I'll turn back to you, Thomas.

>>KAVOUSS ARASTEH: I'm sorry, Leon. You have not answered the question. The question is that in case of removal of the individual director, only S.O.s and one A.C. could participate because only one A.C. designate the Board.

In case of recall, you said that those who are members, other A.C.s who are A.C.s not designating director, if they are members they could participate in the removal of the whole board member? In that case, why they could not participate in the removal of individual board member? That's a contradiction between what you said and what is in the slide for the recalling -- not recalling -- removing individual board member.

Please bring back the slide removal of individual board member. There's only one A.C. attending the voting but not the others. But why in the case of recall of the whole board members all A.C.s and S.O.s, if they are part of the member of unincorporated association, they could participate?

There is some legal gap between these two. Please, clarify.

>>LEON SANCHEZ: Kavouss, thank you very much. I would kindly request you to keep the conversation on the list and, of course, within the scope of our calls, our regular scheduled calls, since this call is meant for addressing questions by board members.

So I will kindly ask for your comprehension here, and I would now turn back to Thomas.

>>THOMAS RICKERT: Thank you very much, Leon.

Let me -- let me add that the proposals -- and actually we have offered various options for various items that you find in our report based on the assumption that the individual S.O.s and A.C.s would, actually, form unincorporated associations. That's what Leon is going to talk about in a moment. And thereby have the full range of powers at their fingertips to participate in this mom.

So we felt that it was not for us to decide who would join or who would not, but we are giving equal treatment to all S.O.s and A.C.s because the legal model that we have suggested as a reference model would have the best means of enforceability. But that doesn't mean that other ways of participation are impossible, but those were, that's my understanding, not necessarily be enforceable rights according to statute, but we would need to have contractual provisions to allow for enforcement or, you know, having certain powers.

I think I should leave it here and ask the two people in the queue for their questions, and that would be Steve Crocker first and then Cherine Chalaby.

>>STEVE CROCKER: Thank you very much. I'll say the obligatory but nevertheless extremely strong position of the Board that we are actually quite impressed and grateful for the huge amount of work that everybody has put in on this. And despite what people's worst fears might be, we're strongly in favor of accountability and transparency, and we view ourselves as being on the same side as you rather than in opposition.

So with that out of the way, let me get into a very specific point that has troubled some much us. With respect to the recall of individual board members, it would seem that the underlying notion is that the individual board members are representing the constituencies that put them there and that the implicit reason for being -- for triggering a recall of an individual board member might be that they are not carrying out the wishes of that particular constituency.

That's very standard operation for a representative type of government, but in our case, we've made it a very strong point in our bylaws, in our training of board members and in our discipline that board members serve the entire organization, the entire community, not their individual appointing bodies; that the Board is not operating as a brokering of individual constituencies' concerns but is acting in the best interest. And as I say, that's documented in a very important part of our -- the way we view ourselves, the way we train ourselves, the way we talk about ourselves. And it would seem to me that the creation of a recall of individual board members cuts directly against that and pushes strongly in the direction of turning the board into more of a representative government, sort of representative legislature as opposed to a more cohesive oversight process, which is where we are now.

Would you like to comment on that?

>>THOMAS RICKERT: I guess we do understand the composition and the background of the composition of the Board. The possibility to remove individual directors, as we're suggesting it now, was felt like a least measure of less weight to remove those board members that have done something entirely wrong or not in the best interest of the community.

We are cognizant of the fact that recalling the whole Board is a very big stick that we shouldn't -- shouldn't apply lightly. And, therefore, the individual director's removal would be, you know, potentially an adequate and balanced way to approach issues in the organization.

I would like to invite rapporteurs and co-chairs to chime in if they would like to add to this -- to this answer, but I guess that's the best answer that I can with give at the moment.

>>STEVE CROCKER: Before you do -- So thank you very much and I do want to listen to the others but let me add a point or two because you said something very important there.

I do recall when this was added to the proposal that it represented, as you say, a way of having a smaller (indiscernible) than removing the entire board all at once. And there is a broad principle of what's called proportionality which I think this fits into very nicely; that you want to be able to respond with something that is meaningful for whatever the problem is as opposed to having only one gigantic option, which you then don't want to exercise very often, which is fine.

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I will point out that the Board already has, or I should say the community and ICANN have mechanisms for removing board members who are behaving inappropriately today. For example, if a board member is not handling confidential information properly, is -- and seems to be serving private needs as opposed to the public need, that's a violation of our rules and there are mechanisms for removing a board member already.

And then, of course, the community has -- the board members have three-year terms, and each and every board member has to make a case for being returned or -- if he wishes to come back.

So those mechanisms exist, and I don't want to go into it too much, but they actually do work in various ways.

So it's -- but it's nonetheless -- it, I think, at least requires some clarification as to what criteria would be reasonable or appropriate to use for removing an individual board member.

Another element of this is what information is available about an individual board member as opposed to the Board's actions as a whole? We generally reach consensus and have only on occasion individual objections. We take those very seriously and we make those available at any time to any board member, but it is not common for us to wind up with factions or equivalent parties pushing one direction or another at the board level.

>>THOMAS RICKERT: Thanks, Steve.

Let me add two points to my previous answer.

Number one, we have currently suggested that the processes leading to the removal of an individual board member shall be defined by the different S.O.s and A.C.s. So we have not yet defined anything that would prescribe with how the various groups would deal with such cases. We take good note of your reminder that some of those mechanisms are already in place, and I think that we will take your point into consideration, that we will likely have to give some guidance to the S.O.s and A.C.s setting out some basic standards for such processes.

But I think I should leave it there and move to Cherine.

>>CHERINE CHALABY: Thank you, Thomas.

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I'd like to say I support Steve's comments, but I'd like to add one more concern and for clarification. And again, it's to do with the removal of board members, individual board members.

It seems from what you are showing here that there are two classes of board members, those that are accountable to the whole community and those that are accountability only to the S.O. or A.C. that has elected them. And that is a contradiction to the standard principle of governance that every board member is accountable to all stakeholders and must act at all times in the interest of all stakeholders.

So could you please clarify why a board member that would be elected by an S.O. and A.C. can only be removed or the process initiated by this S.O. or A.C? Whereas a NomCom can be -- the process can be initiated by any S.O. or A.C. and not necessarily the NomCom.

I think there should be one process for all board members and not create two classes of board members.

Thank you.

>>THOMAS RICKERT: Thanks, Cherine. The very short answer is that there are legal implications for different treatment. I suggest that we get back to you in writing, and we will have a Q&A which is publicly available so the answer doesn't only go to you but will go to the interested community, and we will provide more legal feedback on that.

The idea was certainly that we are considering cases where board members failed to act in the best interest of the whole community, but there are certainly cases in which individual board members failed to act as they are requested by their respective groups, and that's a mechanism that's already in place now where they're designated, let's say, the organizations that are seating people on the board can recall them. So we are basically stating the status quo.

But I would suggest we will get back to you in more detail. Your point that there should be a unique standard of review for all these cases and well noted.

Rinalia.

>>RINALIA ABDUL RAHIM: Oh, I'm sorry. Can you hear me?

>>THOMAS RICKERT: Yes, we can hear you all right.

>>RINALIA ABDUL RAHIM: I pose the question focusing on the foundation of the unincorporated association. The question pertains to if sectors were to move forward and form unincorporated associations, would the process involve reviewing the structure's accountability mechanism, affirming it or even strengthening it?

>>THOMAS RICKERT: This is an excellent opportunity for me, Rinalia, to hand it over to Leon Sanchez to introduce the concept of unincorporated associations in the first place. And after he has made some general remarks on that, I'm sure that he will gladly respond to your question.

I hope that this is okay.

Leon, over to you.

>>LEON SANCHEZ: Thank you very much, Thomas.

So back to the membership model that we are proposing the (indiscernible) option, it doesn't mean that this is the only way to do things, but only that the legal advice that we have received from the external lawyers points that this is the most effective and (indiscernible) way to provide the community with the powers and achieve the goals that we're trying to reach here.

So as I said you earlier, there needs to be a legal vehicle for the community to be able to enforce the different rights and the powers that we're trying to provide the community with in our proposal. So the two easiest ways to do this would be having either a membership or a designator model. And the designator model has the down side that not all powers that we are trying to provide the community could be enforced if we should go with the designator model, and that is why the membership model is being tagged as the preferred -- as the preferred model in this proposal.

And for this, as I said, there would be the need to have a legal vehicle, and the proposed legal vehicle would be to form unincorporated associations by those S.O.s and A.C.s that would like to, of course, have enough power or a (indiscernible) vehicle to exercise the different powers.

And how this -- how this would work in the membership model, of course there would be a petition by any S.O. or A.C., and there would be a check to see if the petition meets the required threshold. And if it does, well, then it will go for voting by the community mechanism. And this, of course, would be along in coordination with the different members. And if the voting threshold is met, then it would follow through on community's position.

Now, speaking of unincorporated associations, if we can jump into the next slide, please.

So you have unincorporated associations. An unincorporated association is only a legal vehicle or legal entity that will provide the personhood for the different members to exercise the membership powers.

There have been questions on whether there are any requirements or any special needs to form these unincorporated associations. The legal advice we received is that it is very easy and these would be very lightweight structures that don't require very complex arrangements. And as any legal body, their governing documents or their governing structures would be set by each of the S.O.s and A.C.s.

So we, of course, privilege the current bottom-up and multistakeholder approach that we have within ICANN. And this would be, in turn, filed upon the State Department of California, so they are notified that we are forming these unincorporated associations. And with that, then each S.O. and A.C. that chooses to go through this model would be empowered to enforce the rights and, of course, exercise powers.

Now, as I said earlier, speaking of unincorporated associations, it's only the easiest and the fastest way to provide the legal vehicle for the community to exercise the powers, but this doesn't mean that it is the only way. As I said earlier, there needs to be a legal vehicle for these, but it could also be any type of, let's say -- for example a nonprofit from any other region, any other country could also be a legal vehicle for exercising these powers. The only thing is that the unincorporated association is the simplest way to achieve this.

And as I said also, should any S.O. or A.C. choose to not go and conform any kind of legal vehicle, not only unincorporated association but any kind of legal vehicle, then they would, of course, be lacking the power to enforce the right and exercise the powers that this -- that this proposal is trying to provide them with.

So if we could jump to the next slide, please.

And I don't know, it may be a good time to make a small pause. Rinalia, your hand is still up. Do you want to comment on the issue of unincorporated associations?
No?

>>RINALIA ABDUL RAHIM: It's okay. Please proceed.

>>LEON SANCHEZ: Thanks.

So jumping into the next slide, please.

Thank you. So this proposal also recommends that we enhance the independent review process that we currently have. And in this new IRP, the positions would be binding. It allows also for review of both the substantive and procedural compliance, which is one, I think, that has been stressed by the community that this new IRP should provide. And it is thought to be more accessible in terms of who has standing to initiate this IRP. It would entail, of course, a lower cost for those who want to exercise an action through the IRP. And we are thinking or the community is thinking of a new standing panel of seven people that would conform the members of this IRP panel that would, of course, be called for making decisions.

Can we jump into the next slide, please.

So the court of this recommendation is a standing seven-member panel to serve as a truly independent judicial -- think of a judicial body that would function for the ICANN community, of course. And we have thought of many characteristics for this IRP panel. We are thinking, of course, of having a culturally and geographically diverse panel, a term limited panel, and independent of ICANN, including their S.O.s and A.C.s, a fixed term. These members would be compensated by ICANN. And there has been also some questions on how we think that it would be possible to achieve independence of the panelists when we have them being compensated by ICANN. And this is something that's still in the process of getting to be addressed. And this is why we are also trying to have the input from the community in this public comment. And this panel would also be, of course, formed by significant experts in international arbitration and with, of course, wide knowledge or deep knowledge on how ICANN works and the different issues that affect ICANN's activities.

The panel member selection process would be through a mechanism that would enable third-party international arbiter bodies to nominate candidates, and these candidates would be put in front of or on the table for the Board for consideration. And the Board would select these possible panelists and propose confirmation, and then the community mechanism would confirm these appointments.

So can we jump into the next slide, please.

So how would actually filing an IRP work under this proposal and under this mixed structure?

Anyone who is materially affected by an ICANN action or inaction -- and by "ICANN," we mean, of course, both the board and staff -- could initiate this

independent review process. And this would, of course, be subject to having this material affection or this harm done with regards to the articles of incorporation or the bylaws, the bylaws including the commitments that we are trying to incorporate into new proposed bylaws.

So there would be -- The flow chart that you see here starts with a Board action or inaction, of course, that would then materially harm anyone within the ICANN community. And then the first approach would be, of course, try to scale things without coming into the action of an IRP panel. This would mean that there would be a good data to resolve any controversy. And if this does not reach any kind of arrangement, then the IRP panel would be triggered, and there would be a (indiscernible) for consideration of the IRP panel. The IRP process would be followed. Of course we are in -- we're still pending of defining how this process would work.

And then the IRP panel would reach a decision and this decision would, of course, be binding.

Can we jump into the next slide, please.

So how would IRP decisions work when they are reached or how -- how these IRP positions would be delivered to the community? We have these standing IRP panel made out of seven members, and we thought of formulas that could provide the community with the resolution of the different controversies either by designating a one-person panel from out of -- from one of the seven members of the standing panel, or a three-person panel. And ICANN and the complaining party would agree, of course, on the panelists or the three panelists. And this -- this panel would reach the decisions, would decide on the matters. As we said, we're trying to enhance the IRP that we have now into a new IRP that would also look into not only process but substance. And these positions would need to have different characteristics that would, of course -- that you can see here in this graphic. They would be binding on ICANN and not subject to appeal except on very limited basis. The document should, of course, need to be well reason based and in line with the applicable standards. The decision should come in a timely fashion. It shouldn't take long for the panel to reach the decision. And the members should strongly consider existing precedent in decision-making to help enable consistency (indiscernible) over time.

So we are thinking of building, of course, a precedent-based system that would help the panelists resolve any controversies that would be brought in front of the IRP.

So the possible positions are that an action or inaction was in violation of ICANN's Articles of Incorporation and/or bylaws, including commitments allowed in the

proposed statements of mission commitments and core values. And then, of course, it would provide with a solution to the controversy.

So if we can jump to the next slide, please.

So the request for reconsideration process reform, appeals would -- (indiscernible) number of forms that have been requested by the community and by ICANN Boards of Directors, "I would like to consider a recent decision, action or inaction by ICANN's Board or staff." These are relevant because, as we said, we expand the scope of people that can have standing to begin this process. The goals would (indiscernible) so we can provide more transparency with the special process. Provide Board with reasonable right to dismiss frivolous requests. This is important, of course, because we don't want to paralyze ICANN with frivolous requests.

And we would like the composition to have more board member engagement and less legal department. And the decision-making would, of course, include the transparency and would have a rebuttal opportunity. And the accessibility would extend the time for request of reconsideration from 15 to 30 days.

So with this, I would like to open the floor for questions again.

Okay. I see no one raising their hand, so -- I see Kuo-Wei Wu.

We can't listen to you, Kuo Wu. You might be on mute.

Okay. So I'm sorry, but we are not able to listen to Kuo Wu.

>>BRUCE TONKIN: This is Bruce Tonkin. I just have a question, I suppose, in terms of work load that might be coming before an IRP panel. So my understanding is the scope of the IRP has been broadened from just the following of bylaws but also incorporates compliance with core values and a broader set of topics. The step two of the process there says anyone materially harmed. Is there some sort of test that would be done there at step two? Because otherwise I could see a lot of stuff will end up in step four, which is before the IRP panel, because people could put -- you know, could claim to be materially harmed on a whole raft of topics, I guess.

I'm just wondering if there's any thought to saying how you -- if you have any sort of threshold or test before you move too far into the process.

>>LEON SANCHEZ: Thanks, Bruce. I would like to turn to Becky Burr for these thoughts on this question that you bring.

Becky, would you like to provide us with details on this?

>>BECKY BURR: Sure. Bruce, I think that the -- the standard, you know, "materially harmed" is actually the standard that exists today. So that is not a change. And the panel, you know, I think once a panel is invoked, has the ability to say, you know, in a fast track there's been no material harm. That pleading cycle would be permitted to go on. But that is actually not a change.

>>BRUCE TONKIN: Okay. So the test -- The judgment of the material harm, then, is done by the panel, Becky, in other words. So everything goes through to step four, essentially, and then at step four the panel can decide whether it proceeds on the basis of whether they believe it's a material harm. Is that correct?

>>BECKY BURR: Yes. And that's the current arrangement. I mean, I think there -- there is a requirement for constructive engagement and the ability to invoke a mediator beforehand that is being contemplated, but that -- the question is, you know, how you would sort of make a decision on whether somebody claiming to be harmed has or has not been materially harmed, that's a question of fact that the panel would need to get to.

>>BRUCE TONKIN: Thanks.

>>LEON SANCHEZ: Thank you very much, Becky. Thank you very much, Bruce.

I would now turn to George Sadowsky. George, would you please take the floor?

>>GEORGE SADOWSKY: Thank you very much. It's probable I don't understand exactly what you're thinking of here but raise this anyway. What you're doing is saying that the IRP process only applies to a Board action which results in somebody being materially harmed. Now, it is certainly possible that an organization within ICANN, an S.O. within ICANN, could do something in which somebody feels they are materially harmed. But is the assumption that that S.O., whatever it does, is approved by the Board and, therefore, it's the Board that is responsible for the material harm no matter what -- how it comes to the Board? Or is it possible that the IRP panel also adjudicates things that come from other parts of ICANN?

>>LEON SANCHEZ: Thanks, George.

Yes.

>>BECKY BURR: George, the language in the proposal is an action or inaction by an ICANN decision-maker. It could be, you know, Board, staff. Theoretically, it could

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be an S.O. or A.C., but the action would have had to have a material effect on the person making the complaint. So that probably requires some action either or inaction by the staff or by the board.

So theoretically, yes. But since the S.O.s and A.C.s themselves don't have the power unilaterally to harm -- you know, to cause material harm, I think, you know, that ultimately it will involve action or inaction of the Board or staff.

>>GEORGE SADOWSKY: Thank you.

>>LEON SANCHEZ: Thank you very much.

I see no other hands raised for questions, so now I would like to turn to my co-chair Mathieu Weill.

So Mathieu, could you please.

>>MATHIEU WEILL: Thank you very much, Leon. This is Mathieu Weill speaking.

I noticed on the chat Asha's question regarding the panelist selection process, and maybe while we are on the IRP we should close with this particular item. It's on slide number 16. Thank you. And it's on the right of the slides, you'll see the process that's currently contemplated is that third-party arbitration bodies nominate candidates. They are selected or at least short-listed by the ICANN Board which proposes to the community body the candidates which are then confirmed by this community. So we could obviously consider additions or something. So that's the selection process that's currently being considered, Asha, and I hope that answers your questions which she raised in the chat. And obviously that's one of the aspects where we're looking for input.

Moving to the other sections. So we have a little bit of time for open question-and-answer at the end, I have a very limited number of slides remaining, rest assured.

So if we move to the slide, probably 20, I guess.

Yes, slide 20 is about the Affirmation of Commitments reviews.

So the assumption from the group is that the Affirmation of Commitment could disappear in the future. That's not something we recommend in any way. It's not within our scope. But because it could disappear, the idea is to bring the review system into the ICANN bylaws so that, for instance, the accountability and transparency reviews keep being considered and run on a regular basis.

A few of the items we propose are the ability to sunset reviews or create new reviews. We suggest a change on the way the appointments to the review teams are made, and enhance transparency and access to internal documents for these review teams. And a slightly stronger requirement for the Board to consider approval and beginning implementation of review team outputs.

That was part of a larger stress test exercise which we conducted, and that's going to be the next slide.

As you know, there was a very high requirement from our group to stress test the proposals, and, as a consequence, we have been defining constituencies very early on, and we have 26 risks that we consolidated into five categories ranging from financial crisis to failure of accountability. And we've run each stress test against the current accountability framework for ICANN as well as the proposed accountability framework out of our proposals. And obviously the proposed section is still subject to the finalization of the proposals, but it's the very useful tool to look at what would be improved, what would work differently. And so it's a key aspect of our work. And I think the Board itself, through your knowledge of the key risks for the corporation, with also your experience, you're well placed to provide contributions if you see contingencies that need to be addressed and haven't been so far, obviously.

I will not spend too much time on this because I want to move to questions in the end. So if we go to the next slide, it's about the linkage with the CWG Stewardship.

The CWG Stewardship expectations from our group were outlined in their report as well as in various correspondence, and it's basically that there is the ability for the community to have greater transparency around IANA costs and greater -- the power to reject the budget was called for explicitly.

Secondly, that the ICANN Board decisions, especially when -- after a review, such as the IANA performance review that's being considered by the CCWG, should be reinforced, and that's one of the things we address.

The IANA review function we mentioned already, and it's part of our proposals. And there was also the expectation that the independent panels and the review processes should not interfere with delegation/redelegation issues for ccTLDs at this point until the appropriate process is conducted to define the policy in this regard.

So that's sort of our checklist with the CWG, and it is our (indiscernible) that we are very consistent in line with the CCWG on this.

And so finally, let's move to the timeline on the next slide.

So our public comment ends on June the 3rd. We expect to be in a position in Buenos Aires to share the conclusions of this public comment and further investigate the proposals, where needed.

A second public comment is planned for July and span across the summer, and it is expected that we would finalize the work stream 1 proposals, obviously, if all goes well, in time for approval in Dublin. And you will see on this timeline that we've also started considering how much time it would take to implement the various proposals in order to check that it's consistent with the overall transition timeline and the political window of opportunity. And I think that's of special importance considering the recent communication by Larry Strickling asking for community clarifications about the expected timelines.

I think I'll leave it at that for that section in order not to bore you too much with detail, but obviously this is open now to any broad question on the approach and the concepts that we're introducing or any other questions that you may have at this point.

And, Bruce, maybe I can hand it over to you to chair that portion of the question and answer.

>>BRUCE TONKIN: Yes, certainly.

Thank you for taking us through the proposal. And I certainly encourage all the board members and all members of the community to read the actual report itself, because there's a lot of detail behind the -- behind the set of slides that we've seen. But again, I'll open it up for any other questions from members of the Board.

And perhaps if I haven't got any questions from the Board, open it up to, I guess, the co-chairs, if you've got any questions for us at this stage.

One thing that actually might be helpful would be, given we have the Buenos Aires meeting coming up, what the CCWG has planned both for consultation with the community and what opportunities there would be for board members to engage with the CCWG during the Buenos Aires meeting.

>>MATHIEU WEILL: So this is Mathieu Weill speaking, and I can try and address this.

So we have a face-to-face meeting in Buenos Aires the Friday before the ICANN meeting, so on June the 19th. And as usual, this is a meeting which is open to any

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member and participant. So board members will be welcome to attend if they're here and available.

We are currently planning a specific session on the Sunday, so on June the 21st, I think, it's being set now, which will be a CCWG/Board session just like we did in Singapore. Once again, an open session, obviously. And we will engage each S.O. and A.C. to obviously propose specific sessions of discussions regarding the proposals and the way they are moving forward after the public comment. So that would also enable board members to participate to the discussions.

And because, Bruce, you opened up for questions we might have to the Board, I think I will seize this opportunity to maybe ask whether the Board currently has plans to respond to our public comment? And if had there's any outstanding question or need for support to enable that that is currently foreseen? And that would be my question.

>>BRUCE TONKIN: Yes, I think the question answer is yes, we do intend to respond. We're kind of working on -- Like other members of the community, we're kind of working on these, I suppose, in order of the deadline. So I think the Cross-Community Working Group on naming has a deadline that is earlier than your deadline, so we're working on our draft for that first, and then we'll be working on a response to the CCWG on accountability.

So what I expect you'll see is you'll see us respond to the naming transition proposal, you know, some days before you see a response to the Cross-Community Working Group on accountability. But I do expect that you'll get a response from us.

Okay. I guess if there's no further questions, then I might close the call and perhaps hand over to Steve just for any concluding remarks. But again, we really appreciate you taking the time and also the many members of the Cross-Community Working Group that has listened in to this call as well. We appreciate the time everyone is putting into this. So I'll hand back to Steve just for closing remarks.

Is that Steve? Perhaps we haven't got Steve.

All right. This is Bruce Tonkin. Then I will close the call at this point and --

>>STEVE CROCKER: I'm sorry. I was on mute, obviously.

I was just going to echo what you've said, Bruce. I think you said it all. This has engaged all of us a very thoughtful process. And, again, I compliment the entire group. And this is the most important stuff that we have to worry about, and you've done everybody a good service.

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I think we're done.

>> Thanks, everybody. Bye-bye.

>>STEVE CROCKER: Thank you all.

>>MULTIPLE VOICES: Bye-bye.