OLIVIER CRÉPIN-LEBLOND: …the input. So I think we can probably, yeah, let's get going please.

TERRI AGENW: Certainly. We'll go ahead and begin at this time.

Good morning, good afternoon, and good evening. Welcome to the At-Large ad-hoc working group on IANA transition and ICANN accountability call, on Thursday the 21st of May 2015, at 21:00 UTC.

On the call today we have Gordon Chillcott, Cheryl Langdon-Orr, Olivier Crépin-Leblond, Eduardo Diaz, Tijani Ben Jemaa, Sébastien Bachoullet, Avri Doria, Alan Greenberg, Tom Lowenhaupt, and Christopher Wilkinson.

On the Spanish channel we have Alberto Soto.

From apologies we have León Sanchez, Seun Ojedeji, Fatima Cambronero, and Jean-Jacques Subrenat.

From staff we have Heidi Ullrich and myself Terri Agnew.

Our Spanish interpreter today is Sabrina.

I would like to remind all participants to please state your name before speaking, not only for transcription purposes but also for our Spanish interpreter. Thank you very much and back over to you Olivier.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Terri. Olivier Crépin-Leblond speaking. And have we missed anyone in the role call?

It appears not, so let's go directly to the adoption of the agenda. We've got a fair bit of work in both the CWG IANA and also CCWG accountability. Primarily making it for the issues that remain to be resolved on the CWG, and of course, we also have, I think, was it 13 days? Yes, 13 days, to come up with a public comment for the CCWG accountability. Are there any amendments to the agenda required?

ALAN GREENBERG: It's Alan. I suggest, if we're going to continue with this group, we need to pair the agenda at some point. It's getting to be about six pages long with 61 attachments. We're going to use up all of ICANN's disc space.

OLIVIER CRÉPIN-LEBLOND: I thought you would have noticed, this is Olivier speaking. I thought you would have noticed that what I'm actually doing, it's in the some of the stuff in there is to shake the agenda up, and like leaves on the trees, everything falls into four reference, it's all at the bottom of the page. But it is true, it's getting very, very [inaudible].

ALAN GREENBERG: It's complex enough that I've reloaded documents which are already there that I haven't realized.

OLIVIER CRÉPIN-LEBLOND: Okay. All right. Let's get going. Let's go to the action items from our last meeting, and if you recall, the last meeting that we had, we launched a question with a poll. And of course, the poll was about the statement that we were going to put together. And I wonder if we can have a quick look at the results. So here we go.

We have the page of the action items there, and I just thought we'd just quickly look and comment the results. Do we have a page with the results please?

ALAN GREENBERG: Or can someone read them out?

TERRI AGNEW: This is Terri. One moment please.

OLIVIER CRÉPIN-LEBLOND: Yeah, thanks.

TERRI AGNEW: And I'm quickly bringing them up, it will be one moment.

OLIVIER CRÉPIN-LEBLOND: Okay. Thank you. Apologies. I thought it was up already. It doesn't matter, we can…

In the mean time, I guess, so as to not waste time, I can quickly go through agenda item number three, not having Mohamed El Basher nor Jean-Jacques Subrenat on the call, the ICG is still waiting the input, the proposal, from the names community. I know that there has been some discussion or feedback sent back to the other two communities, the protocols and the IP address communities.

And there certainly is already some cross-pollination and discussion between the different communities. I'm not sure whether it's via the ICG or via the chairs of the respective communities with regards to harmonizing some of the proposals. Suddenly the question of whether the numbers and the protocols community would be interested in part of a PTI, a post-transition IANA, have been raised in the other groups.

And I have so far, just having read the emails in these other groups, the exchanges, there was some heated exchanges with the for and against, people in favor or not on this. And I haven't seen any consensus on that response. It does look though that the other communities, if you will have remembered, did originally say that they were happy with the contract with ICANN, to start with anyway. So they didn't particularly feel, there isn't any compelling reason for them to join post-transition IANA.

But we're still in early days, so it just leads that over to decide. Are we ready with the results Terri?

TERRI AGNEW: Hi Olivier. I do have it up in front of me, but it's not fitting properly. I'm trying my best to get it to upload on the screen for you.

[CROSSTALK]

ALAN GREENBERG: …why don't we just read them out or put them into the chat?

TERRI AGNEW: Alan and Olivier, they are in the chat.

OLIVIER CRÉPIN-LEBLOND: They are in the chat. Yes, there is a link in the chat. Thank you for this Heidi. It's Olivier speaking. So if you click onto the link in the chat, it will show you. So the first question was, do you prefer the internal model or one where IANA is segregated into a separate company? And the internal model gained less votes, gained 36%. The segregated one was 54%, so over half of the respondents.

And there was no opinion, in 9% no opinion. So there is a preference in our community for the segregated model in a separate company. In fact that goes in line with the post-transition IANA. But that said, of those people that responded, that they preferred an internal model. They require [inaudible] that the ALAC should reject the final proposal if the final proposal still calls for segregated company.

ALAN GREENBERG: It's Alan. I will note that only eight people said internal, and despite the instructions, 10 people answered the question.

OLIVIER CRÉPIN-LEBLOND:　　Yes, that's a good point Alan, thank you. That's the magic of numbers. Okay, in any case, I think that we're in line with the majority of the respondents being okay with a post-transition IANA, the subsidiary of ICANN. As I said, this was just to gain a temperature of the room, in any case, but it certainly gives us an idea of the feeling among our group. Any comments or questions on this?

Sébastien Bachollet, you have the floor.

SÉBASTIEN BACHOLLET:　　Thank you Olivier. Just a question. Who was possible what was on this questions?

OLIVIER CRÉPIN-LEBLOND:　　Yeah, thanks Sébastien. It's Olivier speaking. It's actually, the voters were all the people on the cross community working group, sorry not the cross community working group. What am I saying? On the IANA issues working groups so that the mailing list, anyone who is on our mailing lists was able to answer. And that's why we did say, this is not an exactly science, it's just feeling the temperature, the overall temperature of the room.

It's not a case of having something that's exact and that we would be attached to in a specific way, as such.

Cheryl Langdon-Orr?

CHERYL LANGDON-ORR: Thank you. Cheryl Langdon-Orr for the record. Just a question. I recognize that our meeting notes, etc. are public and therefore these results will be public. But I wondered if, Olivier, we could specifically bring these results to the attention of the accountability leadership? And if you are in agreement to that, I'm happy to do so.

My reason for that is in our preparatory and debrief meetings, I have been trying to remind them at regular intervals that at least our community is taking the temperature and reaching out to those, beyond those that are turning up to their official meetings. And this will help me reinforce that.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Cheryl. Olivier speaking. I guess, as long as it's explained that this is not exact science, and this is just a simple straw poll, that would be…

CHERYL LANGDON-ORR: If that's the case, Olivier, if it's something that you're happy with, if staff excerpt report, just really basically a print out of what we get off the Survey Monkey results, I will pass that on with all of those riders. But I just want to remind them, you know, it's the stats on [inaudible], you know, that we have in fact reached beyond those four or five people that turn up to meetings. Thanks.

OLIVIER CRÉPIN-LEBLOND: Thank you very much for this Cheryl. I'm personally fine with that, as long as, I guess, anybody else on the call doesn't object, and we'll find

out in a moment. Let's go through the list. I see Sébastien, Alan, and Eduardo. So let's start with Sébastien Bachollet.

SÉBASTIEN BACHOLLET: Thank you Olivier. Yeah, I will not oppose, but I just want to also say that it's still experts who are answering. When we will, as At-Large, be able to reach out to our participants in At-Large, not just a member of this working group, I will think it will be a real temperature, or some type of temperature of the participant. And I really think we need to find a way to be able to do that.

We can't stay with just a few people, we know about the topic, participate. At least it's not within the CCWG or the CWG or this IANA group, but it's still the people around us. And that's good, but we need to reach out more. We need to find a way to have more inputs from the hedge. Thank you.

OLIVIER CRÉPIN-LEBLOND: Okay. Thank you very much for this Sébastien. I see next is Alan Greenberg.

ALAN GREENBERG: Thank you. With regard to Sébastien's last intervention, I think we all agree that we need to fix the system. This working group is not going to be the place to do that, but yes, indeed, we need to somehow figure out how to make At-Large more effective.

In terms of the survey, Cheryl you said you're going to present this to the accountability leadership. I presume you meant the CWG, but I don't really care if you want to present…

CHERYL LANGDON-ORR: No, no. Correct, I did mean the CWG. My error.

ALAN GREENBERG: I would suggest that we have staff to go through the individual results, and actually remove people from the second poll who didn't answer the question properly. And then have the results wholly consistent, and that would be a reasonable analysis. That would also be the names and email addresses of people and we can identify if there were anyone, you know, just to what extent they were insiders, outsiders, whatever.

However, what I was going to, I don't even remember what I was going to do at this point. I believe after we analyze the results in a little bit more detail, we'll find that the statement we made is in line with it. That is, we're very split on whether we prefer the internal/external model. I personally prefer the internal model, but I'm willing to make the compromise and I wouldn't reject the proposal because of not getting the internal model.

So, you know, it's a messy situation. There is no question about it. Let's proceed though, however. Sorry, you have two more speakers.

OLIVIER CRÉPIN-LEBLOND: Indeed, indeed Alan. It's Olivier speaking. Next we have Eduardo Diaz.

EDUARDO DIAZ: Thank you Mr. Chair. This is Eduardo. We have to be careful with this results, I mean, we have to analyze them but, you know, the bottom line is that once the final proposal is out there for the chartering organizations to look at and to improve them, I believe in that case, the people that come to my mind that will be called to approve that charter, will be the members of ALAC.

And I think if we're going to do something like this, we should measure the understand, or the [inaudible], or whatever, of the members of ALAC. That is, if I'm [inaudible] this will be one that will become, will be called to approval, disapproval the final proposal. But now if the whole ALAC is going to do that, that's a different matter. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks very much Eduardo for this. You're absolutely correct, and I actually wonder whether it might be a good idea to even consider having a one hour call to brief ALAC members on this final proposal, prior to them voting. But that maybe we could see, well, the ALAC Chair is on this call, so we will find out in a moment.

Let's go through the queue in order. And let's have Tijani Ben Jemaa next.

TIJANI BEN JEMAA: Thank you Olivier. Tijani speaking. The question of Cheryl is about [straw poll].

OLIVIER CRÉPIN-LEBLOND: That's correct, yes.

TIJANI BEN JEMAA: Okay. Thank you. So, I don't think this [poll] has a big value, to report to any part, because of two things. First of all, the question was not asked properly, because the question said that if you prefer an eternal or an external model. It is not the right question, because an external model can be and could be the contract co, for example. So this is the first point.

Second point is as Alan said, we almost all prefer the internal model, but we said we accept this model, the proposed model. So the result of the straw poll said that we prefer the to say, I don't remember the real, the right formulation, but more or less an external not an internal model. And this is not right. We prefer the internal model but we accept this compromise.

And plus, as Alan said, we have to subtract numbers because of etc. So, I don't believe it is a good image of our community. The best image of our community is about the statement, we wrote about it in the proposal. The statement Alan wrote, and that we discussed with him during the drafting. This can give, more or less, better image of our point of view, if we want to report the point of view of the At-Large to someone else.

To the accountability [inaudible] or any other parties. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you for this Tijani. It's Olivier speaking. I think what Cheryl was mentioning was just to show that, on the actual method, that we didn't just have our five working group members officiating in the CWG, but there was also some consultation going on within our working group, and we did have 22 responses, which is a significant number of people that responded to the poll.

But let's go through the queue. Let's have Alan Greenberg next.

ALAN GREENBERG: Thank you. Thanks to our diligent staff. We have records of these meetings, with who attended, with how many hours. I don't think we're going to have a hard time demonstrating to the community that we have done significant consultation and discussion on this. So, let's not spend a lot of time refining it. We will provide, as requested by the CWG, and as requested by the ICG, we are required to demonstrate that we have widely consulted, heaven help us, we have.

As Sébastien points out, we may not have gotten all of the input we would have liked to get, but we have gotten lots and lots of involvement. So, let's go forward. We have lots of decisions that we have to make in the next two weeks, some in the next week, that we haven't. So let's not just spend our time on history. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Alan. Olivier speaking. I would actually just add, to close this topic, that I think it would be helpful if our staff also maybe perhaps made a calculation of the average number of people on our

calls, and how many hours we're, or in fact, they could say how many people person hours were spent in our community on this.

ALAN GREENBERG: Olivier, may I interrupt? As Chair, I can say with certainty, our staff will give us more statistics then we want on this, or more than some of us may wanted, and probably more than they want to calculate for us.

OLIVIER CRÉPIN-LEBLOND: Perfect, excellent. I do note that in the action items, staff to calculate the number of person hours spent on this topic, by this working group. And this is something they can just take straight off the records that we have. All right, let's move on ladies and gentlemen. Because as Alan rightly said, we have some serious discussion ahead of us.

In agenda item number four, we have the, just a quick rundown of the final document draft, and of course, the closing of the public consultation. For your information, there is also a link to the form in which our comment went. So you'll see here all comments received in consultation makes for a very interesting reading. If you are into this sort of thing.

Certainly a lot of comments have been received, more than what is usually received. Perhaps less than what I thought we might get at the end of the day. But it's worth reading because it will certainly, and I would say this specifically for those people who are hands on in the CWG, we need to know what others think to be able to adjust anything

that we do as well, and see perhaps, what alliances we might have with other communities. What do we fall in line with?

Next, in 4B, there is, of course, ongoing work in the CWG, just a quick… The last call, the last CWG call had a quick summary going through the different things that still needed to be done. Design team A, the service level expectations working group that is led by Paul King from the CC, the country code community, still apparently needs some time to finalize those service levels expectations.

ETN, the escalation, is interesting because we've actually had more information published about this. There is now an escalation flowchart that shows how the escalation within the system. So we're looking just the phase one escalation, if you want. The flowchart effectively shows what happens with the complaint. The complaint, the IANA customer service department, then the IANA function liaison for the root zone management.

The IANA function program manager. Yes, these are, you know, nine people. So you need to put them in different positions here. And then the ombudsman is actually brought into that as an optional step as well. And if the issue is still not resolved, then the issue goes over to escalation on phase two, and obviously also the customer standing committee is the one that's shepherding the whole process here, with regards to the operational constraints and service level expectations.

And then phase two is when we go into the next level up, where it then goes to the, I think it's the GNSO and ccNSO, that might be something that we might wish to discuss. That's when it goes over to the second

set of links that I've put in this agenda. And that's the separation process. And in this separation process, are again, a number of steps to move up, including a separation working group.

A separation cross community working group that is being designed. That is just a proposal at the moment, and there has been some pushback on the CWG from other communities. I can certainly personally see that this is actually a multistakeholder system, because it would have all of the ICANN communities involved.

Well, the ICANN communities that are related to names. That does include the GAC. It does include the SSAC, the RSAC, and the ALAC on that. And that separation working group would go after the GNSO and ccNSO, having gone through their process to say, "Yes, we want to separate." I had a chat with Avri about this yesterday, Avri Doria who is driving this DTX separation working group.

And the aim is to have a process which makes it absolutely clear that if separation does proceed forward, in other words, you do end up with the IANA function review team deciding on separation and then starting a RFP process. You do need many different layers and levels of agreement from different parts of ICANN, including the home office stakeholder community.

And so it is actually quite a hard process. It's a hard decision to make, to proceed with separation, and it's therefore a hard process to go through with several safeguards on this. But I open the floor for comments, questions, etc. on that. So Alan Greenberg, you are the first one, you have the floor.

ALAN GREENBERG: Actually, my hand was put up so long ago that I'm not sure it's relevant. I put it up just to mention that the results of GPF, which you didn't list, which was the group looking at how do we oversee IANA for the things that we still believe that we still believe it must be overseen. And that's a process that's going on. It should be finished in a week or so, and we are likely to use the ICANN Board as the final yeah, nay, decider with a multifaceted process behind to make to actually make the decisions, depending upon what kind of decision.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks for this Alan. It's Olivier speaking. And I might add also that the current process, as it's being described, and worked out by the various design teams, is receiving heavy criticism from those people that are aficionados of the [quake] separation, and they're rather unhappy because they believe that it is too long winded, and in this sort of system, IANA will never be separated from ICANN.

And in a way, my response to this is, you know, unless there is a really, significant, compelling reason for separation, I don't really see why there should be separation. This becomes a religious argument at that point, I guess.

Any other comments or questions on this process?

Okay, I see no one putting their hand up. You can just review the, in your own time, I guess, you review that information that is in there,

bearing in mind it's still a work in progress. Tijani Ben Jemaa, you have your hand up so you have the floor.

TIJANI BEN JEMAA: Thank you Olivier. I have a small concern. You seem to work as if the public comment doesn't have any value, since you are continuing constructing on what was proposed. So you don't imagine that [inaudible] public comment period, you know in the right way.

OLIVIER CRÉPIN-LEBLOND: Thanks for this TIjani. It's Olivier speaking. The way that the chairs, the co-chairs of the CWG are thinking about it, I think, and please anyone else correct me if I am wrong. My understanding is that they wished our working group to continue work without taking note of the public comment yet, and then having two days of intensive work, where we will then reconcile the input from the public comment with the work that has been done.

It was, the timelines were so short that they felt that it was important to, you know, close off all of the loops and basically complete everything, and then input the public comment into this. And they believe that in those two intensive work days, there would be enough time to bring the comments into the process and to actually reach consensus on that.

Whether it will happen or not, I have no idea. I haven't read the, I've read only a couple of comments yet. So I haven't gone through the whole list of comments that have come in. Some are formatted on

answers to the questions, some are not formatted, they are just in freeform. And it will take probably a weekend to read through those.

And I'm looking forward, and I'm sure we're all going to spend time this forthcoming weekend to read those. And at that point, I might be able to tell you if we have a chance or no chance to complete and fold these comments into the process in two days. Perhaps someone else, Alan, have you had any chance to read those? The comments yet?

ALAN GREENBERG: I've read selected ones of them, I can't say I've read them all. I've probably read about a half dozen that I thought might be interesting as I saw them.

Some of them are indeed interesting.

OLIVIER CRÉPIN-LEBLOND: Okay, thanks. And others, I mean, Eduardo, Seun? Have you had a chance to read those comments yet as they come in?

I guess the silence is no. It's still a bit early. Okay.

SEUN OJEDEJI: Yeah, this is Seaun Ojedeji for the record. Yes [inaudible]… Can you hear me?

OLIVIER CRÉPIN-LEBLOND: We can hear you…

SEUN OJEDEJI: [Inaudible]… Yeah, well [inaudible]… I like to [inaudible]… a number of them are talking about [inaudible]…

OLIVIER CRÉPIN-LEBLOND: Thank you Seun, it's Olivier speaking. I didn't catch all of that, I'm afraid. But I gather you have read some of the comments, and this seems to support some of the, some of what has been proposed. Okay.

Now, not spend any further time on this. We do have, as Alan mentioned earlier, we do have some things to look at that are particularly important. First, 4C, jurisdiction. This has come up a couple of times in our discussions. And I have had a chat, an email discussion, with Greg [Shaton], from the legal team. They are the team that effectively is the interface between [Sidney] and ourselves.

And his thought, well what he has told me so far is that [Sidney] was actually never asked to consider other jurisdictions then the US, the two US solutions. One being the LLC scenario and the other being the not for profit scenario. LLC being perhaps in Delaware or in California I guess, but the not for profit being actually in California.

So we did say that if we wanted to actually have [Sidney] look at these international jurisdictions, specifically related to the question that was, or suggested by Jean-Jacques, on having [Sidney] review the work of the President's Strategy Committee that was done in 2009, then we would need to ask the CWG as a whole and see if there were some traction for this.

At this time, my feeling is that it's very late in the game. It would probably be for sake of completion, it would probably be interesting for sake of completion, especially if one is looking at the future, and if there were discussions in a few years time, who knows, about this, you know, about globalization of the IANA function. But I'm not feeling strongly either way, and the floor is open for comment now.

So Alan Greenberg, you are the first one in the queue.

ALAN GREENBERG: Thank you. My recollection is that the CCWG did in fact request legal input on jurisdiction and different incorporation in different locations. I can't remember the details. Cheryl might, and her hand is up, so I'll let her speak.

OLIVIER CRÉPIN-LEBLOND: Thank you Alan. Cheryl Langdon-Orr, you're next.

CHERYL LANGDON-ORR: Hi. Cheryl Langdon-Orr for the record. The answer to that question is slightly complicated. There is no specific request for jurisdictional, wide jurisdictional advice in the CCWG from the legal advisors. There was almost a request to look at specific jurisdictional advice in response to one of the early public comments that came in. And that quoted a particular jurisdiction that commenter thought had particular benefits over the US space one.

Without a full and formal research being done on that, the immediate reaction from the legal team, I'm sorry. Let me state that more clearly. The legal advisors, the counsel we have, was that that is assumption by the commenter was based on shaking, if not absolutely patently false foundations.

And that going down that pathway to even doing the research was not [inaudible] the proposition for the amount of money we'll be paying for it. That said, there has been general or generic thoughts raised on jurisdiction during the advice given by the expert on counsel to us at a number of points. Where they have looked at particular mechanisms and community powers, for example. They have from time to time pointed out that a power may or may not be recognized under a particular model outside of US jurisdiction and that sort of thing.

So the answer is, no it hasn't, it slightly has been.

OLIVIER CRÉPIN-LEBLOND: Okay. Thank you very much for this Cheryl. It's Olivier speaking. And just a quick question for the, just to be clear. The legal advisor for the CCWG is the same as the legal advisor for the CWG?

CHERYL LANGDON-ORR: Yes and no. Cheryl for the record again. I'm good at these two dollar each way answers today, Olivier. We do have [Sidney Austin], but that is only one of the two legal advisors. We also have, and I've just had a mental blank on the name. There are two law firms. [Rose McFay] is the [inaudible] from there.

But anyways, staff can put that into the record for me. But no, there are two. And in fact it is the non [Sidney] for our firm, which gives the specific governance and jurisdictional, US or otherwise, advice. And can I just say, it was a deliberate choice to not go down the jurisdictional pathway, as a matter for this early work. It has not been forgotten, it is not being ignored, it's just not being prioritized at this stage.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks very much for this Cheryl. Olivier speaking. So the question I ask here is whether the ALAC or the ALAC, our working group, should be asking for the CWG legal advice, or for [Sidney] to spend some time on this. And we wouldn't be able to ask [Sidney] we would be proposing to the CWG, that time would be sent on this. Alan Greenberg.

ALAN GREENBERG: Thank you Olivier. This has been discussed, on and off, since the very beginning of the CWG. There was certainly significant discussion on it in the Frankfurt meeting in September, October, whenever that was. The decision has been made, at this point, by the group that we not proceed. It has been made for a number of reasons. Number one, there are close to an infinite number of potential options that could be investigated.

And it's not clear we will get a lot of clarity on it. There is a general perception that if we are really wanting to see a transition, we're not going to see that with an IANA that is incorporated outside of the US. It is quite reasonable to say we should look at it sometime forward, going

forward. And it has been suggested a number of times that we have something akin to an AOC type of review to review jurisdictional issues, at some time in the future.

And that may well be something we can do. There is only so much time, it's worth, with limited resources, both money and volunteer's time, to look at something, which at this point, is not likely to be successful. If success is measured by a transition actually happening. Jean-Jacques has suggested a number of things, including the concept of incorporating in one place and operating in the US.

My understanding is that, essentially to operate in the US, you also have to have a US persona, whether you happen to have your main incorporation somewhere else, so that doesn't change the issue of US law. He has also suggested that we have the Board operating under a different legal jurisdiction than the company. I don't that is technically possible, but he hasn't clarified my last question on exactly what he was asking.

I think there is a law of diminishing returns on this discussion. As passionate as people are on it, and as important as it is in the long term, I'm not sure this is where we should be investing our time on right now. Thank you.

OLIVIER CRÉPIN-LEBLOND: Okay, thanks for this Alan. It's Olivier speaking. And another suggestion by Jean-Jacques, which is actually the one in the current agenda, is to have [Sidney] comment on the recommendations made in 2009 in the

NTFC report. I gather that falls under the same kind of response from you as well?

ALAN GREENBERG: That's changing the whole jurisdiction of ICANN, and that's not something we're going this week either. As Cheryl said, there was an early input into the CCWG that talked about Swiss, using Switzerland as the base. The brief legal advice we got back saying it may not be as sound as the commenter implied. And the decision was made not to go down that route in the CCWG.

I would tend to say that is the same decision that is likely to be made if we raise it again. People are free to raise it, of course, but from my personal point of view, I think it falls under the category of, if not flogging a dead horse, flogging a horse which is not very alive at this point. And if our intention to carry a bad simile too far, if our intention is to ride that horse, it's probably not the effective way to do it.

OLIVIER CRÉPIN-LEBLOND: Thanks for this Alan…

ALAN GREENBERG: …with a long term answer. But I think we have to be practical.

OLIVIER CRÉPIN-LEBLOND: Next is Cheryl Langdon-Orr.

CHERYL LANGDON-ORR: Thank you. Cheryl Langdon-Orr for the record. Two things. Aouer Colvin, A-O-U-E-R C-O-L-V-I-N, is the other law firm retained by CCWG. And they are acting as equal partners, but with particular areas that they're advising us on. And just to make it very clear, regardless whether such an advice being sought came from the CWG, or the CCWG, it would be to say quadrupled is probably the lowest multiplier of the current costs incurred for all of the legal advice we have had to date.

And [inaudible] say that, ladies and gentlemen, to do that research. To do a multi-jurisdictional research, and to give that advice would be one of the most costly legal exercises in ICANN's history. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much for this Cheryl. I'm looking at my pockets at the moment, trying to find a few pennies to contribute to the ICANN cause. Let's go in the mean time to Tijani Ben Jemaa.

TIJANI BEN JEMAA: Okay. Tijani speaking. Olivier, I agree very much with what Alan said. What we have to avoid is to put a [inaudible] that the jurisdiction will never change. This was, some people tried to do so in putting in the golden bylaws, that we have to stay in the California jurisdiction. Fortunately, we avoided it at the end. And I hope that we continue avoiding that, even if, personally, now, I think that the California jurisdiction is perhaps the best for this kind of work, especially for contracting.

But we don't have to make it impossible to change. Thank you.

OLIVIER CRÉPIN-LEBLOND: Okay. Thank you very much for this Tijani. It's Olivier speaking. And I think that pretty much provides the answer to the question that I was asking earlier. And so I note from what has been said so far, that it will probably be a bit of a waste of time, and certainly a waste of money, to ask for such a study to be undertaken now.

And even checking out the recommendations made in 2009, in the report, including institutional confidence, or is likely to also be significantly costly on such a level, but it might not be the right, the best time to do it now.

However, I have noted that there is support for certainly fifing of any golden bylaws that would effectively lock the IANA function to one country or territory specifically.   With this, I just wanted, before we move on in our agenda, to note that Seun Ojedeji has put in the chat what his intervention was about. That was speaking about the previous agenda item.

When I asked whether anybody had read the public comments, he had read about 30% of the comments so far, and most tend towards asking for more details, but largely in support of the progress made, compared to the CWG's first attempt. So that certainly is a good thing, to see that there is certainly some notification from the communities out there that the working group has gotten an approved proposal.

OLIVIER CRÉPIN-LEBLOND: Great.

CHERYL LANGDON-ORR: Olivier?

OLIVIER CRÉPIN-LEBLOND: Cheryl.

CHERYL LANGDON-ORR: Cheryl. I'm not in the Adobe room and I'm trying to connect to an alternate server, otherwise I would have put my hand up. Just on the golden bylaws that were being mentioned earlier on, I just want to remind everyone now, and I'm sure we'll need to remind our communities in the future, that even golden bylaws, of course, can be changed. They're just need a higher level of community support to be changed. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks very much for this Cheryl. Very good point indeed to remind us all. Golden bylaws are not that golden. Let's move on. Issues to resolve, very important and we have three major issues to resolve here that are going to discussed either in the forthcoming week, or during those intensives who work these. And we definitely need to have a consensus on those within our communities, and a really clear mind as to what we're going to do there, because otherwise those decisions are going to be taken very fast, and without our input.

First, the public benefit corporation versus the limited liability company. For this, I think, I see Alan has put his hand up, and I think perhaps, yeah, I'll give the floor to Alan to explain the pros and cons and what this is about. Alan Greenberg.

ALAN GREENBERG: Thank you very much. On the assumption that PTI will be a company of some sort, company or corporation, in terms of there is a subtle difference between the two that I never fully appreciated, and I'm not sure I still understand, but nevertheless, the two options that are being discussed is a California public benefit corporation, which essential is ICANN, like ICANN.

The other one is a limited liability company, probably charted in Delaware, just because their company law tends to be very flexible and lots and lots of case law that backs it up. So it's a good jurisdiction to settle in, in terms of within the US. The major differences have to do with details of the corporate structure, for instance a LLC doesn't technically need a Board. It can use other governance mechanisms, other than a Board, although we probably would have a Board in any case.

Among the differences are, the first one is a tax issue and a not for profit issue. As a separate company, it would have to request not for profit status. Now, it's not clear that not for profit status is crucial, because we're not expecting it to make a lot of money, and therefore the tax issue is not necessarily a large one.

The potential rub is it could, in theory, cause ICANN tax status to be reevaluated, and perhaps change, and that could have a significant impact if that changed. A LLC is deemed to be unimportant enough, okay. Also, the public interest one would not be owned by ICANN, because a not for profit company, a corporation, cannot own a not for profit company, because not for profits are not owned as such.

Therefore, it would be a separate organized, but would be tied probably because ICANN would be a sole member, if it's a membership organization, and it would likely be a membership organization. So it would be effectively controlled by ICANN, but not owned by ICANN. It has a potential, and it is potential because we don't know for sure, benefit in terms of bankruptcy as, since it would not be owned by ICANN if ICANN was forced into bankruptcy, and the most likely scenario for that happening would be a court settlement which is so large that it way exceeded the access the organization could reasonably amass, then PTI would not be forced into bankruptcy at the same time.

And any assets of PTI had would remain assets and could not be used to address ICANN's bankruptcy. That's important because one of the things I would hope ICANN would do with PTI, would be immediately endow it with enough money to have several years worth of operating funds. And therefore, specifically, if suddenly ICANN disappeared, PTI could continue doing the work, and continue making sure the Internet kept on running, even in the case of turmoil in ICANN.

On the other hand, the control over ICANN is an asset, would probably be deemed an asset by the bankruptcy courts, and how that would be handled is completely unclear. If we used a LLC, then it's part of ICANN,

and it operates within the rules of ICANN. Now bankruptcy courts normally allow organizations to keep on operating while they're trying to address their bankruptcy, assuming the bankruptcy is addressable. And the case, you know, if someone assessed a six billion dollar penalty against ICANN, I'm not sure that bankruptcy is [inaudible].

But ignoring that for the moment, that kind of case for the moment, the IANA operation would be part of ICANN and subject to what could happen to ICANN in the bankruptcy. I think the feeling at this point is going more towards the public benefit corporation. I don't think we have a really large position to take on this, and I think we could live with either of them, although if I think if I personally had to choose, I would probably chose the public benefit corporation, even though there is a potential problem with the ICANN tax status and non for profit status.

Not for profit as the charitable status, if we go down that route. So that's where I sit. I don't know whether anyone has particular feelings about this one. It's the easiest of the questions that we have on the table today, and I know our first hour is just about up, and we haven't gotten to the difficult ones yet.

OLIVIER CRÉPIN-LEBLOND: Thank you very much for this Alan. It's Olivier speaking. And I note that this [Sidney] draft was already distributed to you all last week, so you should of all had the time to read through this. Any comments and questions on this?

ALAN GREENBERG: On the second bullet, it also talks about two things. It talks about Board duties, which overlap into the next discussion, but it also looks at the costs associated with maintaining a LLC, creating and maintaining a LLC versus a public benefit corporation. I don't think any of the costs are onerous enough to make the decision based on cost.

OLIVIER CRÉPIN-LEBLOND: Okay. Thank you. Olivier speaking. I don't see anyone putting their hand up, and I think I agree with you Alan that we can probably live with both solutions. The devil is in the details, unfortunately. I must declare myself incompetent to know what the differences, as far as the details of these things are concerned.

It would probably have, really to resort to [Sydney's] best advice on that, as I believe that [Sydney's] advice is well put together, and they've been very good so far. I'm sure they would be able to tell the group which one of the two solutions is probably the least likely to cause problems in the future. It is a significant step, obviously.

ALAN GREENBERG: I tend to agree. I should note that, when one employs a lawyer to give advice, it is advice. Ultimately the customer should be the one making the decision. However, there are some things that are largely technical, and you really want to rely on the advice of our lawyers. This is one of those that I think I don't feel uncomfortable relying on advice. There are others that we'll get to in a few minutes, where I feel less comfortably relying on their advice. Thank you.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks very much for this Alan. I see no other hands up at the moment. So then the second bullet point here is that the Board duties and entity costs. Did you want to speak to that as well, or after this?

ALAN GREENBERG: I would be happy to. There was a lot of discussion, and we've echoed part of it in previous calls in this group, that we started off trying to come up with what the Board composition is. And some of us, and I'll take credit, at least, for part of it, said this is really dumb. First we should be talking about what the Board does before we decide who are the right people to put on it.

And it was not only who the people are, but how big it should be. Does it have any powers at all? Is it purely a figurehead that approves the auditors every year and rubber stamps the budget, and does nothing else? So among other things, we commissioned a review from our lawyers as to, what does the Board do? What is the Board supposed to be doing?

And they came back and had a pretty long laundry list of what a Board ultimately has responsibility for. And just like we say the ICANN Board has to share responsibilities and has an obligation to enforce its letters of incorporation, and its bylaws, so would a Board of PTI, particularly if it's a public benefit corporation, but even to some extent, it's a LLC.

So I think there is a consensus certainly within At-Large, and maybe within the overall group, but I'm not sure, that this is not a figurehead

Board. This is a Board that will have to take some action on occasion. In a steady state when things are working well, this Board will do very, very little. Should there ever be a problem, and the kind of problem that may preclude the separability discussions we had earlier, but before we ever get to that separability, the first thing one would want to do, if there is a problem, is to try to fix it.

And certainly that would come down straight on the Board to be responsible for trying to fix whatever the problem is. And of course, we're talking about a fictitious problem we don't know the details of at this point. So I think there is agreement that the Board actually will have to be a Board, and not just pass it on to ICANN, to daddy, to fix the problem for us.

I'm not sure there is closure on that, but I think there is. So the next question is, how do you constitute the Board, and at this point…

OLIVIER CRÉPIN-LEBLOND: Alan, just before you jump into that… It's Olivier speaking. I was going to ask, do you have an example of the type of action that the Board would need to take here?

ALAN GREENBERG: Yes certainly. Again, and this is not casting dispersions on individuals, but we're playing through scenarios, PTI, IANA is not meeting its service level commitments. We've gone to them, the CFC went to them, and various registries have gone to them and said, "We need to fix the

problem." And [inaudible], we'll work on it, and nothing is happening and it's getting worse. How about that for a scenario?

OLIVIER CRÉPIN-LEBLOND: Where would the Board come in?

ALAN GREENBERG: Well, remember…

OLIVIER CRÉPIN-LEBLOND: These are the people speaking with CFC?

ALAN GREENBERG: The CFC will probably first be talking to the, to whatever the senior manager is called, the executive director, the CEO, whatever. And presumably, if the problem is fixed then it never goes to the Board level. But if the problem doesn't get fixed, then who is going to fix it? Well, the Board is the entity that hires the CEO, if that's what we're calling that.

The CEO is responsible for hiring the staff. Presuming it's not a budget issue, because if it's a budget issue, then we have a whole set of different mechanisms to try to fix the budget problems. But assuming it's not a budget problem, but a staffing issue. Then we have a problem. And how do you fix it? And now we have an echo, and how do you fix that?

[LAUGHTER]

OLIVIER CRÉPIN-LEBLOND: Very exciting. Okay.

ALAN GREENBERG: Okay, very exciting. Will someone please fix that?

Okay, now it's time. Do we have staff on this call who are fixing it? Terri says if there…

Okay.

OLIVIER CRÉPIN-LEBLOND: It's not gone.

ALAN GREENBERG: It's just gotten like a longer. All right, you're going to have to deal with the echo.

OLIVIER CRÉPIN-LEBLOND: It sounds like I'm going to have to deal with [inaudible]…

Then Heidi, Terri could you please check where this is coming from?

HEIDI ULLRICH: Hi all, sorry for that. Heidi [here]. We are [looking into this issue].

ALAN GREENBERG: I'm going to keep on talking slowly so you can figure out where it's coming from. One, two. It's gone. I think it's gone. It is gone.

OLIVIER CRÉPIN-LEBLOND: Yes, back to you Alan.

ALAN GREENBERG: Can anyone remind me where I was?

OLIVIER CRÉPIN-LEBLOND: You might have been repeating yourself, so let's just continue to the second part. Because we're speaking about…

ALAN GREENBERG: Okay, we were talking about the size of the Board, and such. There is a second document, which talks about Board composition and stress tests. And that I think is a very important document. [Sydney] ran through a number of potential problems, no sorry. Before we go there, you were asking for examples of problems. Okay.

The example is, service levels are not being met, IANA has said, "Yes, yes, we're working on it," but nothing seems to happen and it's just getting worse. Now at that point, someone has to come in and say what is the problem. Is it the senior manager is not capable of doing it? Do we have staff who are messing up and they're not being, you know, the staff senior management is not reacting to it?

This is a completely standard problem that happens in business every day. And ultimately, the Board is responsible for either ensuring that the senior management of the organization, senior operation

management, has the resources to fix it, or the senior operation management is replaced. That's what gets done in companies day in and day out.

There is nothing particularly special about IANA, particularly small operation that does a very limited number of things, and if they're messing up, one should be able to fix it. We know today it's working, therefore it's capable of working in some environments. So, the question then says, how do you comprise that Board? And here is where we end up having some differences between various people in At-Large.

One of the things that [Sidney] did was look at various types of Board, and they look at an insider board and an outsider board. An insider board is composed largely of people from the owner, that is employees of the owner, or of the controller. So in the case of ICANN, these would be largely ICANN employees. My gut feel is, if you go back to earlier in our discussion, we said many of us favor an internal operation.

Internally, IANA would have been simply a department of ICANN. And would have a reporting structure, just like right now [Elise Rich] report to [inaudible]. The chief financial officer is the person who oversees the budget. So, we already have today a set of people who are overseeing the IANA operation. And if they were put, if they were assigned, as part of their employment and responsibilities, to sit on the Board of PTI, that would be deemed to be an insider board.

An outsider board is made up of people who aren't in that category, and that could be outside directors that we pick off the street. It could be

parts of the stakeholders, the volunteers, operating on its behalf, or anyone else. Their position is pretty strong, by my reading of it, but other people should read it themselves, that an insider board, if we had one, would be essentially controlled and controllable by the accountability measures the CCWG is putting in.

Because they're essentially ICANN employees, and working under the direction of ICANN. An outsider board, whether it's multistakeholders or completely outside directors, you would need some level of accountability measures. And as the governance advisor to the CCWG has pointed out a number of time, we can't just look at the board going rogue, we have to look at the community going rogue.

And therefore, you do need accountability measures which we would have to build into the PTI in addition to the IANA, to the ICANN accountability we're doing. So, what they seem to be proposing, and they haven't gotten to the stage where they have actually proposed it yet, or where we're taking that proposal, is to have a small insider board. Small, we're talking about an operation for nine, but nine employees in it.

It's not clear you need a board of 50 people to manage, not manage it, but oversee it. And in my mind, they would be the same people who would probably have managed it if it was an internal operation. And that makes some sense to me. I'll let Tijani speak, because I know he is sort of the voice of the feeling that the board could be larger and must be multistakeholder.

And I personally worry that a multistakeholder board would number one, probably be too large if it's fairly distributed, and number two, each multistakeholder puts someone on the board, but doesn't necessarily have the skills to manage the small company that's IANA. And I worry about that. But I'll let Tijani speak for himself.

OLIVIER CRÉPIN-LEBLOND: Tijani you have the floor.

TIJANI BEN JEMAA: Thank you Olivier. Thank you Alan. I have a big concern about a board populated by employees, by staff. And I heard from Alan a lot of words like operational, like people who are working on, who are the staff of IANA will be on the Board. This is, I wanted to be clear that I don't understand, and I don't assume that the board members, or the board directors, can be from the staff, first. And second can be operational people.

The role of the board is not in the operations at all. And the other concern I have, is the multistakeholder aspect of PTI. There is no, there is no way, no existence of the multistakeholder management, multistakeholder governance of the PTI. So, those are two main concerns that I have. I don't want it to be too large, but it is not my main concern to have it less large or more large.

I don't, I know that PTI is not ICANN. It is very different. If you want, the volume of the work of the ICANN Board is much more, much larger, much greater than the PTI one. But I think that, as we said in our

statement, the board must be a real board, a board that really governs the PTI.

And if we populate it from the staff and very light, etc. it is more or less meaningless, because it will be, if you want, the staff of management of the PTI. That's all. And I don't think it is the goal to have the board for this new entity. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Tijani. I note following you in the queue is Alan Greenberg.

ALAN GREENBERG: Thank you. A couple of things. First of all, I said the board, the staff of ICANN, not the staff of IANA. Under California law, you can't have a board composed of the staff of the company it's a board of. So, let's not confuse the issue about which staff we are talking about. If you look at a normal board of a company, one of the main responsibilities of the board is looking at the strategy of where the company is going.

What should it be doing? What businesses should it be in? That's not the case here. PTI will have a very limited mandate, and I presume we are going to put into its letters of incorporation and bylaws, explicitly that it cannot change what it does. It can't decide to start selling smart phones as a sideline to make money.

You know, that's not what it's going to be doing. So the board has very little to do, except when there is a problem. And when there is a problem, it is an operational problem, and to quote a former US

president, "The buck stops here." The board is ultimately responsible for fixing the problem.

So boards get very operational when you have to pick the CEO, that's about as operational involved as you can imagine. And we just heard this morning that ICANN's Board is going to have to pick a new CEO. And, you know, that doesn't mean making the operational decisions, but it means making a decision that will impact the operational decisions.

And it's a very crucial part of its responsibility. And firing the CEO, similarly, is one of those things that a board may have to do it. And it does it for valid reasons. So I do want to people on that board who understand the business aspect of running a small cooperation or a small company. And you know, Tijani, you said you don't care how big the board is, but if you start saying it's multistakeholder, aside from my concern that you may not have the right people on the board, implicitly, when we start counting up the number of fingers on our hands, and we include all the stakeholders that we're likely to be part of it, we're going to end up with seven, eight, nine people.

And in a steady state operation, I think that becomes rather silly for what it has to do most of the time, and I'm not sure it's going to help one way when you're in a crisis mode. So that's my argument for it.

We have Tijani's hand up again and Cheryl said yes to something.

Olivier, are you with us?

OLIVIER CRÉPIN-LEBLOND: I was muted. I repeated my question twice and wondered why you didn't answer. There is a question in the chat from [Morris Hilyard], does the narrow mandate of the IANA Board include any fiduciary insight?

ALAN GREENBERG: Well, yes. If you're asking me, I'll answer it. Of course it does. If the CEO of IANA, PTI starts hiring all of his relatives, and using the money of the corporation for gambling, yes that's a board issue. So of course there is oversight. If you start frivolously using your money and say, "I need twice as much," without being able to defend it, there is fiduciary responsibilities there.

    If we, in fact, follow what was my suggestion, and make sure IANA has three or four years operating funds, how you invest that money has fiduciary responsibilities that that's a board issue. So yes, I think on all accounts, it has a fiduciary oversight.

OLIVIER CRÉPIN-LEBLOND: Thanks for this Alan. It's Olivier speaking. And just before turning the floor over to Tijani, the other concern that I've heard was, will [inaudible] about having many ICANN members as staff on that board?

ALAN GREENBERG: I'm not sure what to say about that. They are the people that would manage the operation if it was internal, which was what we said we really wanted. So from that point of view, it's not a lot, it's not very

different. And the alternative is an outsider board, at which point, we have to look at what accountability measures will be put in place.

OLIVIER CRÉPIN-LEBLOND: Thanks Alan. Tijani Ben Jemaa.

TIJANI BEN JEMAA: Thank you Olivier. Two things. First of all, you said it is the staff of ICANN and not the staff of PTI. But this type of ICANN is the one who was operating the, more or less, the IANA. And it is paid on ICANN, by ICANN. So, have people paid by ICANN on the board of PTI, for me, is not very fair. At least.

Second point, you said the board of PTI will not decide to manufacture, send forms, to make money. ICANN cannot do so also, and ICANN cannot change its mission, as PTI cannot change its mission. It's exactly the same. So it is not about that. It is about how to, having a strategy for the work of PTI, is ICANN is trying to have strategy for the work of ICANN. It is, I know it is not exactly the same, I know it is later, but I don't want…

If you want it like this, don't call it board. Don't call it board at all. That's all. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks Tijani. Did you wish to respond directly to this point Alan?

ALAN GREENBERG: Sure, I'll respond very quickly. Tijani said it's not fair, I'm not sure who it's not fair to. To have paid employees on the board. I know in my previous life, I was on a board and I was doing that as part of my paid employment. I was on the board of a wholly owned subsidiary. And, you know, there is a three person board and two of the people were paid, and the third one was a member of the board of the parent organization, which again is a common thing.

The difference between ICANN, the board of ICANN and the board of PTI, is yes, I know, neither of them can manufacture cell phones. But the board of ICANN is there, essentially overseeing the multistakeholder environment. And is on a regular basis have to balance the competing interest of the multistakeholders, because the whole concept of multistakeholderism implies that we're not going to agree with each other all of the time.

And the board is there to oversee that thing. The board of PTI doesn't have that worry. It's simply an operational entity. So I think it is quite different, and deserves a different type of organization. But if we are going to go down the road of an outsider board, we need to talk about the accountability issue, and I don't think we can ignore it. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks Alan. Sébastien Bachoulett is next.

SÉBASTIEN BACHOLLET: Thank you Olivier. Yes, just to express my point of view on that subject. As you know, I prefer an internal solution, but if we have PTI setup, I

would like to suggest that either we choose, as a board of PTI, the board of ICANN itself, it's multistakeholder. It could have some improvement in the future also, but it's [inaudible].

Or it could have been the board commission or committee that was in charge of IANA. It was a committee that was closed two years ago, but it's something that would be easiest way to have something different, but still as much as possible, internal. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks for this Sébastien.   It's Olivier speaking.   Was it called IANA Board committee something?

SÉBASTIEN BACHOLLET: Yes, it was IANA Board committee, yes.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks. Alan.

ALAN GREENBERG: A subset of the Board, to have the whole Board as IANA, PTI board seems to be again, overkill.   To have a subset of the Board, I can probably live with that. I'm not sure if that would be deemed to be an insider or an outsider board, because they're not employees of ICANN, but perhaps if we did it in such a way that it's an extension of the Board, it could be subject to the accountability measures within ICANN.

I'm not sure that, of whether that's true or not. I'm not convinced that they will necessarily be the right people to manage the operational entity, but I could certainly live with that. I'm not sure how well that will be received by the other people. And I'll point out, if the CWG has, does what it's planning to, that is by next Friday, has settled all of these questions so we can produce a report that will be approvable by the ACs and SOs in or just after Buenos Aries, we're going to have to have closure on all of this.

If we're not in a position by next Thursday to have an ALAC position, then, and an ALAC position which we think is saleable to the rest of the CWG, then we're going to be in a position where, essentially, we're each talking on our own behalf, and not really have any leverage over the direction of the, this whole thing will go on.

So one of the questions we also need to resolve before next Thursday is, is this something which would cause us to reject the proposal if we don't get our way, may we have an our way. Just some more food for thought.

OLIVIER CRÉPIN-LEBLOND: Thanks very much for this Alan. It's Olivier speaking.

ALAN GREENBERG: I will point out, we only have a half hour left, and we haven't talked at all about accountability. And ALAC has a statement due in 13 days that we have not talked about at all yet.

OLIVIER CRÉPIN-LEBLOND: Thank you. I think we're going to move into that very, very shortly. Just to add, the IANA Committee of the Board was established in November 2008, and the last one before it was disbanded consisted of [inaudible], Bill Graham, Mike [inaudible], Suzanne Wolf, and [inaudible]. Which to me, like a balance group of members, names, and protocols.

So this might be a possible solution, added with a few staff members. But as you are saying, we are running out of time on this thing. Let's continue on the mailing list. Let's try and get a solution, and have a concerted approach by the next call that we have next week.

I think it has been a very, very helpful discussion that we're having here, so that's a good way forward. And now, I think it's just about time to go and deal with the CCWG accountability issues. As Alan says, we have 13 days to go until a comment on this, and we do have to move forward with things. So Alan, do you want to take it over from here? I know Tijani still had his hand up, sorry Tijani. I didn't see you. Tijani, did you want to say a few words on this?

TIJANI BEN JEMAA: Yes, only one word about the previous subject. The accountability of the board doesn't frighten me. We may have [inaudible] for the accountability of the board of the PTI, but also the proposal of Sébastien, may be resolution. I am not absolutely against. Thank you.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks for this Tijani. And we have a few days to think about this, and let's continue on the mailing list. Alan Greenberg over to you for CCWG accountability.

ALAN GREENBERG: Yeah. Thank you. Just staying on the CWG for a moment, as I said, one of the things we're going to need closure on is, if we end up with a solution of an insider board, is that something that ALAC is going to reject the proposal over? I would not. But I think we need to make sure that we have closure on that. That's something we could debate in Buenos Aries should it come to that, we don't have to decide that now, but I think it's an important issue.

All right. On the CCWG, if we move down to agenda item five, on the agenda, we don't need it in the window, there are really… Oh God. Do we still have an echo? Whoever fixed it last time, please fix it again.

If someone has a speaker phone on, and you're on computer speakers, please mute your speakers or mute your microphone.

OLIVIER CRÉPIN-LEBLOND: Would Terri Agnew [inaudible]…

ALAN GREENBERG: And we will talk slowly, and see when the echo is gone. Not yet. How about now?

OLIVIER CRÉPIN-LEBLOND: Alan? It's Olivier.

ALAN GREENBERG: It's gone.

OLIVIER CRÉPIN-LEBLOND: It's not gone. If you speak in time, we will be understand you, we'll just hear you twice.

ALAN GREENBERG: How about if I speak very fast and then all of the words get mangled together?

OLIVIER CRÉPIN-LEBLOND: Go for it, it's gone.

ALAN GREENBERG: Only when you say it's gone does it come back.

All right. There are several issues that are crucial and are currently being debated hotly within the CCWG. One of them is a very core one, and it's the item which is the second bullet in the agenda, what power do we need? Ultimately, if we want to be able to force the board to do something, under California law, the controllers, that is the member…

Right now we are not a membership organization. There is another mechanisms by which parts of the community can control a not for public benefit corporation, and that's by having things called

designators. Designators are essentially a mechanism by which the Board designates other people off the board to make decisions on their behalf.

There are certain classes of decisions that can be made by these designators, they're not as wide as those decisions that can be made by members. For instance, rejecting the budget could not be done by designators. The board cannot delegate its fiduciary responsibility. But it can designate people to select people for the board, for instance.

Right now, we are in a never, never land. Currently the SOs and the At-Large select members for the Board, and those members, when they're selected, are accepted onto the Board. Under California law, it's not clear that is something that we could force. If the Board said, "We refuse to take your member," or simply, "We're going to change the rules tomorrow and you can't do that anymore," there is nothing we can do about it.

That's never happened, and we're not projecting it's going to happen, but it could happen. So, if we are to have rules in place that the board would have to act illegally over it to not follow, then we need to have either members or designators, members if we want the full set of powers, designators to have a subset of powers. Members or designators must be legal people.

A legal person can be a person, or a entity that has legal status, a corporation, a company, and the weakest form of legal entity is something called an unincorporated association. You're not incorporated, you just send the state a letter saying, "Five of us are

getting together and we're forming an association." Not more formal than that. You don't have books, you don't necessarily have any finances, you don't necessarily have any money, you don't necessarily have any structure other than you're an association.

But you do have a legal persona, and therefore, ultimately, you could take someone to court or be taken to court. The original concept would be the ACs and the SOs would become legal entities. For a number of reasons, that's probably not going to happen. Some of the ACs and SOs could not do that. The ccNSO for instance, has members that are effectively parts of governments, and would not be legally allowed to become part of an association in the United States.

There are others for whom there are liability issues. And so there is a whole host of reasons why it's not likely to happen, that the ACs and SOs become liable, become entities, there is also liability issues, which we probably don't want to go anywhere near. And just as a matter of interest, the predecessor of the GNSO and ccNSO, the DNSO, was originally envisioned to be a separate incorporation.

And one of the changes that was made in ICANN was, in fact, to change that, because there were liability issues which were quite serious. So what is being proposed now is that every AC and SO have essentially an alter ego, an unincorporated association which is somehow associated with it. The AC and SO name people to the unincorporated association, and that unincorporated association be the member or designators of ICANN.

And they then have power to reject motions of the Board, and budgets and remove members of the Board and in a variety of things like that. They would probably also be officially the ones that name the Board members, although presumably backed up by a process within their organization. It is somewhat problematic because it's a very difficult concept to describe, and it's not clear how, let's take the example of the ALAC. If the ALAC had an unincorporated At-Large or ALAC association, and we name people to it, how do we control those people?

Because we, the ALAC, is not a legal entity, for the same reason we cannot be a member of ICANN. We also have no legal way of controlling the unincorporated association. So we're changing the point at which the trust has to happen. We're changing it closer to home so to speak, but there is still a level of trust that will have to be put there. I have asked the question, and we haven't gotten an answer from legal people yet, as to whether simply the chairs or the delegates, which are real people, could be the members or the delegates, the designators rather of ICANN.

And that's a little bit easier to understand. And there is a clear mechanism if the chair of the GNSO is the member representing the GNSO. The GNSO has a clear process by which it can remove it's chair. So, as does the ALAC and as do presumably the other parts of the organization. So that's a little bit more controllable. At this point, we may well end up with unincorporated associations.

There are a small number of people who are opposing it vehemently. The whole concept of a membership organization is being opposed by some, because it's really going to change the dynamic of ICANN. You

know, although the ACs and SOs may nominally control things, it's really a small number of people that end up being the controllers, and does that change the tone of the organization? I don't know.

But that's where the discussion is right now. And what is going to have to be resolved in the next couple of weeks. All of that being said, there is a draft proposal on the table right now. The public comment closes in 13 days, and we're going to have to have a comment on it. So I am presuming we are going to do something similar to what we did on the CWG, that is one or a small number of people will draft things, and then other people will tear it apart and agree with it or disagree with it, and hope we can come to closure.

Remembering that for everything we cannot make a recommendation on and say we accept or we reject, and if we reject what we want in the alternative, the other people in the group will end up making the decision for us. Same as on the CWG. I've done my peace, we have 24 minutes left.

Anyone still here?

OLIVIER CRÉPIN-LEBLOND: Thank you Alan. We're all here. But I guess, you're running the show here, and I guess we're all digesting what you've just told us here. It's very interesting. And I'm not sure there is right or wrong answer on this. It really is down to our own navigation of things.

If I could share my views. I have some experience with membership organizations being captured somehow by, coming together, ganging

up. You know, the issue of [inaudible], and of power, and so on, sometimes goes into this membership thing. And of course, it would be completely different, we're looking at here SOs and ACs of ICANN would have memberships, would be members, sorry, of ICANN, but then how does it relate to their own business?

I don't know really. It's a complex thing. So back to you, and I guess to the queue.

ALAN GREENBERG: Yeah. Sébastien?

SÉBASTIEN BACHOLLET: Thank you. Sébastien Bachollet. I have two comments. My main concern of that work is to be sure that we keep, or we improve [inaudible]. And I am not sure that the example, [inaudible] in the GNSO of a chair, but they are willing to stay at this level of granularity, and I am almost sure that will prove to be at the level of the stakeholder group, or even smaller groups.

And we have to ask ourselves a question is, at which level we want to be? Is it at the ALAC level or at the regional level? And I would like to suggest that we really think about this, because we have the impression that the decision must be taken between all of the SOs and ACs, and one point of view will be expressed for each SO and AC. But why we are not more flexible and, for example, we can imagine that a region in each and every SO and AC, takes the same position.

It will not be the same construct, but I think it must be something we need to think about. It could be the RALOs who are the members of ICANN. And if you look to the documents, when the [inaudible] was setup, and it's still the bylaw of [EURALO], it's really like an association with a chair, that's not a problem, but also with somebody dealing with money, the treasurer, and other things like that.

And it was never incorporated, but the idea was there. It's not to say that we need to do that, but at least we need to think about this possibility. That's my points for the moment. Thank you.

ALAN GREENBERG: Thank you Sébastien. Two comments. First of all, on Olivier's, when we're talking about a membership organization, we're not talking about the kind of organization where you can recruit 18,000 of your closest friends, and therefore outvote everyone else. We're talking about the members being the ACs and SOs, or perhaps as Sébastien said, some subdivision of the ACs and SOs.

So it's a very different dynamic, and you almost, the only way that the members could do anything, or designators if we use that model, is by ganging together, because we're looking at thresholds like super majorities, or 80% of the votes would have to be in favor of getting rid of a Board member, or getting, or rejecting a budget or something like that.

So ganging up is the mechanism, but it's a limited number of members. It's not an open-ended thing, where the problem usually come in regard to membership organization. With regards to Sébastien's comment, I

was perhaps a little glib when I say the AC chair or the SO chair. The proposal right now that's on the table, would give the ALAC, or the GNSO, and there is various options, but would probably give us four or five votes, one of them as two. That one is not likely to succeed, to be honest.

The number five was arrived at because there are five regions. The four makes some sense for the GNSO because there are four stakeholder groups. So yes, one could give the chair all five votes, but more likely, I would think you would, in the case of the ALAC, for instance, would have one per region, and my gut feeling if we were to come to closure on this quickly, is we probably saved the ALT, who are the people entrusted by each region to be responsible for the ALAC, would probably be the designators or the members.

You know, or some mechanism like that. So I don't think my glib comment implied that one vote, that only one person has the control, as you were implying. So the idea was just a little bit too glib on that. At one point, the CCWG, the people who are proposing this, believe that if the ALAC has five votes, they must all be cast in unison.

I think that has been killed effectively, and one could cast votes in a, you know, depending on the individual ways. And in fact, if you look at something like the GNSO commercial stakeholder's group, where there are three constituencies, you could in fact, give a third of a vote to each of the representatives of those people. And make it work that way. So I think there is a lot of flexibility, but I'll go back to the queue. Cheryl.

CHERYL LANGDON-ORR: Thank you. Cheryl Langdon-Orr for the record. I'm giving a personal opinion, but it's a strongly held personal opinion. I believe that the only way it is going to work with a degree of balance and fairness across the ACs and SOs, is to have officers, therefore the leadership team model that Alan just proposed fits into that, but regardless of what is a level of layer, we're talking about, that it is the natural persons who are the officers or their delegates.

To take these roles in representation to amend the model, or even perform the members of the unincorporated association. My reason for that is the ability to control and the accountability aspects. Alan was saying, you know, where the trust lies. Well, I don't think the trust can lie anywhere unless there is the ability to ensure that should a community or sub-community remove the officer, that officer and therefore that officer's delegate should be a delegation to another person.

And surely that is important in my point of view, in the moment, is therefore removed, and they have no power. They can, you know, there is no basis for them to end up in court, saying [inaudible] voice, and a lot of people don't know I am the voice. The reason I think the for delegate is important, is I don't want to see it limit the opportunity for anyone within our community of At-Large to take the role of an officer.

And there are a number of countries and individuals within my region, certainly, but not particular to my region, that simply could not act in this capacity. And so I have a particular person who manages to become the Asia-Pacific members of the ALAC At-Large leadership team. The ALAC leadership team, and they come from a country which

really means that they cannot act in this role. They should be able to allow delegates, from that same region to act in that capacity, but once that person is removed from the office, the delegate is removed from the office.

That is enough to put in place with agreements, pre-agreements, and if necessary, even contracts. But I think it's the only way it's going to work with any degree of balance or fairness across all the ACs and SOs. Thank you.

ALAN GREENBERG: Thank you Cheryl, and I tend to agree. There is a discussion in the chat about who should the person be. I would tend to say the ALT, because the, as opposed to the RALO chairs, because the ALAC is the body within ICANN that is asked to speak on behalf of At-Large. Now on the other hand, if the ALT member from Asia-Pacific, for reasons you described, could not do it, I see no reason there could not be a delegate.

And again, I would favor someone from the ALAC, because again they're already holding that role of the spokesman on behalf of At-Large. But that's certainly a detail we could work out. Thank you.

Tijani.

TIJANI BEN JEMAA: Thank you Alan. Tijani speaking. Replacing the AC or SO as members of ALAC, of ICANN, by persons, for example, as you said, the chair or five people of ALAC, or something like this, will not solve the problem for several reasons. First of all, the member must be a legal entity. Either

an entity means an organization or something like this, or a person, a name, a possible member, so it is not the chair.

So that when the AC or SO change the chair, it will change as a member of ICANN. The member is Mister X or Madam X. It is not the chair of this entity, it is not possible in the jurisdiction, in the law. It is not like this, I think. At least in my country, it's not like this. Either you are a legal entity, a legal association, a legal organization, or something like this, or a legal person.

Name, it don't [inaudible], etc. etc. So the same problem would remain. We would shift, as you said, the accountability from a place to another, or an interest from a place to another. Second most important thing is that, for being sued, it is also a problem for all people who will become members of ALAC because they have legally responsible for what we do, or for what we ask them to do. And they can also ask the ICANN Board, or they can sue them in the jurisdiction of California.

So I don't think we solve the problem by doing that. We are shifting the problem. We are displacing them from one place to another. So I don't see how it will be solved in this way. First even the designators must be an association, as the legal advisors said. So this is my comment about this point. Thank you.

ALAN GREENBERG: Okay. Thank you. We're starting to run out of time, so I'm going to ask a question, make a quick comment and question, then we'll go on to Cheryl. Certainly the person who exercises the control, must be a legal

entity and a person is a legal entity. Whether the bylaws could say, now normally members aren't listed in bylaws.

Normally members in a membership organization are more dynamic, and it's simply a process by which one identifies them. You know, in a normal members organization, you can submit an application form, you pay your $5, and you're now a member. The bylaws don't change. So we need a process document by which you identify the members. And I believe that can be done, but this is one of the things where we get legal opinion, we don't need to debate whether it is one way or another.

Whether some paperwork would have to be done with the chair, or the ALT, or the RALO chair, or whatever it is, changes. Yes, there might be some paperwork that has to be done. That's something that's manageable. So I don't know whether what I'm proposing is viable, but it should be easy enough to find out.

One of the question we're going to have to address, however, is should the decision be made that it is unincorporated associations, are we willing to accept that? My preference is that we have something simpler. Other people's preferences is that we do not have members or designators at all. We need to know where we stand. And so I think we're going to need some clarity on that over the next week or so. Cheryl.

Cheryl put down her hand. Cheryl does not want to speak.

CHERYL LANGDON-ORR: …on mute. Cheryl Langdon-Orr for the record. I had it on mute. To answer your question first, is we do that in [inaudible] [pass way]. I would suggest the unincorporated association which in the case of ALAC and probably all of the ACs, would need to be what's called a shadow UA. In other words, it's not the actual entities advisory committee. It is a subset of natural persons from that group.

And I would, again, say it would be no different from the member model. It should be the same designated officers. And like you Alan, I am absolutely confident about this. We need to ask for specific legal advice, that is very basic paperwork, which could be put in at the rules of procedure level of the advisory committee supporting organization, or could be bylaw enshrined as suggested.

We can indeed, ensure that it is the actual person occupying the particular role of officer that acts in its capacity. Thank you.

ALAN GREENBERG: Cheryl, for clarity, are you saying that you can live with unincorporated associations, or naming the people, as I was suggesting somehow, and you have a preference between the two?

CHERYL LANGDON-ORR: Okay. Cheryl Langdon-Orr for the record again. My preference, I don't mind one way or the other. [UA] or member, providing the individuals that we are talking about, i.e. in my view, the officers, that either shadow, members of the shadow [UA], or actual members. So whether

it's dressed up as a member, or as a member of an unincorporated association, makes no difference to me.

ALAN GREENBERG: Okay. I will go on record as saying, it makes a difference to me, and the reason it makes a difference to me is trying to explain to some future generation of ICANN people the concept of the unincorporated association boggles my mind as adding an extra level of complexity to an ICANN which is already incomprehensible to most people.

So for that reason alone, I would prefer to see the simpler version rather than the more complex version. We're getting close to out of time. I have actually addressed the really major substantive issues that we have talked about. We have not addressed the issue of power.

Do we believe that we really need to ultimately be able to go to court if it came down to that? At least one person has said, if we ever get to the stage where the Board has thumbed its nose at the community so much, that their only resort is to go to court, we are in such deep trouble that simply getting a decision made in our favor, is probably not going to save ICANN.

And it also doesn't address the issue of the community making a really stupid decision. It's not only boards that can make stupid decisions. Other groups can do it also.   And the question is, how do we counterbalance that? And I'm not sure I have any answers, at this point, but it's one of the issues being debated right now, and we have to cast our lots and decide with one side or the other before the next two weeks are up. Cheryl.

CHERYL LANGDON-ORR: Thank you Alan. Cheryl Langdon-Orr for the record again. I do have an opinion. I believe that whilst it may end up that we will have to agree to get a consensus outcome, and therefore move on to higher levels of accountability, and particularly, if any of us are actually interested in IANA transition, that we do have to accept this [inaudible] and [inaudible] with all assurances of the doable actions.

My personal revulsion, and I use that term with all the [inaudible] that was meant to be in that word, revulsion of this basis for any form of activity and trust relationships [inaudible]. It's really sticks in my craw, and I suspect it's sticking in the craw of a number of my compatriots across my region.

However, we are but a space within the globe, and our absolute lack of understanding as to why the need to be able to, and [inaudible] ridiculous penalties, is a way of operating. And it's certainly, it's not just my view, I can assure you. I've talked with a number of other people, is not going to necessarily [inaudible] fly over the rest of the world.

We recognize that, but I personally don't believe we should have to go for the powers, we will probably end up there in the end game? Sadly I believe, it's probably the case. I wanted to make sure we can live with a model that used as many of those powers has have to be kept in. But wherever you go, if you came through, you can [inaudible]. Thank you.

ALAN GREENBERG: Yes, thank you Cheryl. I'll point out, for those who, for the bulk of the people here who are not participating in the CCWG and following the hundreds and hundreds of emails that seem to come in every day, the issue is not really can you sue. The issue is, unless you also have the ability to sue, we do not have the ability to compel the Board to do something.

Ultimately, the Board has a fiduciary responsibility to do what they think best, unless the bylaws are setup such that they can be compelled to take some action, whether it's rethink the budget, or step down, or whatever. And the ability to compel goes along with the ability to take court action.

So the reason we're going into it is the ability to compel. There are other things that come along with it, that are less favorable from some of our points of view, and I don't disagree with Cheryl at all, even though I do live on the North American continent.

Anyone else? Last call. All right. You're going to be seeing lots of stuff on the mailing list on this. We haven't come to closure on exactly who is going to do the drafting or how I guess a few of us, the five people on the, who are the formal members of the CCWG will come to some agreement as to how we go forward on this and propose it on the mailing list, so you can expect to see something moderately soon.

Any last comments? Going, going, gone. Thank you very much for putting up with a very hard two hours. And I wish you all a good whatever the rest of the day has for you.

OLIVIER CRÉPIN-LEBLOND: Alan, we haven't finished. It's AOB time, any other business.

ALAN GREENBERG: AOB, anyone have an AOB?

CHERYL LANGDON-ORR: Please no.

ALAN GREENBERG: The only AOB I have is Olivier said he was going to do a debriefing with me for a few minutes right after this call, so we will do that.

OLIVIER CRÉPIN-LEBLOND: That will happen. And just quickly, I'd like to thank Sabrina who was our only interpreter on the call today. Two full hours, I think it's insane. I hope you've got a good bottle of tequila now that you can down and party, because it's just unbelievable. But well done. And thanks to all of you for being on this call.

And Doodle for next week, same sort of time, same kind of timing, maybe a rotation if we can. And with this, the call is now adjourned.

[END OF TRANSCRIPTION]