

ICANN

Moderator: Brenda Brewer
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2:00 pm CT

Coordinator: The recordings are started.

Thomas Rickert: Thank you very much. Good morning, good afternoon, good evening everybody. This is Thomas Rickert. I'm one of the co-chairs of the CCWG. And I would like to welcome everybody to this 35th call.

As usually we would like to take the roll call from the Adobe Connect. And I would like to let those who are just on the audio bridge to please speak up so that we can add you to the list of attendees.

Do we have anyone on the phone bridge that is not in the Adobe?

There don't seem to be any. As usual I'd also like to ask where there are any updates of statements of interest?

There don't seem to be any. So with that I think we can dive straight into the agenda of this call.

I would like to remind you to please keep your mics muted when not speaking and also to please state your name and affiliation when you speak for transcription purposes. And with that I'd like to hand over to my co-chair Leon Sanchez for the second agenda item. Leon over to you.

Leon Sanchez: Thank you very much Thomas. This is Leon Sanchez. And today we'd like to show you a draft of articles of association that we put together to make them an example of how our non-incorporated association should be formed.

And this example or draft Articles of Association are very simple. I don't know if I can't see them in my screen already. I don't know if they're already up.

Could you please confirm that you are able to see the examples of Articles of Association on your screen?

Okay for some reason I don't - I am not able to see them on my screen.

Cheryl Langdon-Orr: Leon here, Cheryl here. You might...

Leon Sanchez: Yes?

Cheryl Langdon-Orr: ...be having a connectivity issue I think because they're even typing to you that yes they are up. So I think you're Adobe's lagging a little but, we can see them.

Leon Sanchez: Okay. Well as I said, these Articles of Association are only to make them an example of how actual Articles of Incorporation might be when any SO or AC should decide to in fact form an unincorporated association.

As you can see it is a pretty simple very lean text that references to the actual ICANN bylaws. And if we'll follow the text of this suggested draft you will be able to see that we have no more than three, four articles so far as I can tell.

And I - and this is what I recall because as I said, I'm having some connectivity issues that don't allow me to have the articles in my screen.

So, this is only to illustrate that it is not as complex as some have thought that it would be. And of course we would like to open the floor for discussion taking into account that we have been apprised by council that there is not much more than what you see in your screen to forming the unincorporated association that we would of course keep in mind that forming this unincorporated association would only constitute the legal vehicle so that the SOs and ACs could have the power to enforce or to exercise different powers that so far we're trying to provide the community.

So with this I'd like to open the floor on this discussion on this sample Articles of Incorporation and would welcome of course any questions that you might have with regards to this subject.

And I'd like to ask one of my co-chairs to handle the queue because since I have connectivity issues I might not see who's raising their hand.

So could some of my co-chairs please handle the queue? I see Sebastien's hand is up, so Sebastien could you please take the floor?

Sebastien Bachollet: Yes, thank you Leon. We have provided different solution in the report. We spend all our time in one and only one solution.

When we will have a - the same discussion on the other solutions and the same example?

If the goal is to push the Working group in one direction please tell us and be transparent. I think the membership it's not a good solution. I am not the only one, maybe not majority. But I may be some or other member of this group think the same then I - we can spend time and time on that.

We are not yet deciding which way we want to go. Then please stay equal on all the solution we have provided in the report. Thank you very much.

Leon Sanchez: Thank you very much Sebastien. And I think that we're not trying to steer the group towards a particular solution.

Let's not forget that this has been post at the preferred way of trying to achieve the goals that we have set in our proposal and the fact we continue to analyze this, all we (unintelligible) is that we still have doubts on how we should proceed.

And it doesn't mean that we want to steer or direct the group towards a preconceived solution. So I would kindly ask you to of course see this exercise as it is and let's continue with the discussion and continue with trying to answer the questions we have had on this approach.

So, next in the queue I have ~~(Cavose)Kavouss~~. ~~(Cavose)Kavouss~~ could you please take the floor?

~~(Cavose)Kavouss Arasteh~~: Yes, good time to everyone. May I follow-up the pervious speaker Sebastien that membership or membership model is one possible solution. There are other possible solutions.

Actually one of them were discussed or was discussed. That is designator. And the problem of designator was that the designator might have some difficulty in two areas, the area of project and the area of the subject plan or plan.

But in the four other areas there is no difficulty with that in bylaw standard, traditional bylaw and in golden bylaw or fundamental bylaw.

We call of the entire board to act removal of one board member. There is no problem at all in that work.

So the problem arises when we have the budget and we have this. And now this membership would create or have created considerable questions.

First of all I have raised this question that it might be the case that one or two or several AC in particular would not wish to be a member. What would be the situation of those ACs?

They will not have any share in the future arrangements of the - of the transitions. What is the situation of them?

I ask the question whether those who would not wish to be a member could they participate in an unincorporated associations with those who are a member and with that they have the possibility to participate exercising their rights?

No answer was given to that since three weeks ago at least. We would like to know this answer. And we would like also to know that any AC who does not

designate any board member would not have the right to recall or to remove that (more) board member. We would like to have a confirmation of that.

With respect to the recall of the board, entire board we don't know whether those AC who do not designate any board member have the right to participate in the removal of the entire board.

If that is the case then would be a difference, a distinction between those who are members and those designating director and those not designating director. They have the same right. They need the confirmation of that.

With respect to the bylaws we also we need confirmation if an AC does not want to be these membership could have the right to exercise its empowerment with respect to these traditional or a standard bylaw and fundamental bylaw.

And we need all of that in a written form to really be clear what we have to do because that is a situation.

And after that we also need the situations of the Independent Review Panel. And see with that we also would like to know whether it has a difference between the membership model and designator model. If it has the difference what is the difference between that.

And we have heard that many people they don't want to go to the court. They want to have just finished with the IE Independent Review Panel. And that decision would be binding.

That would create considerable difficulty for the following reasons. I give one reason for that.

Suppose that ICANN board make a decision fully consistent with the bylaw, fully consistent with the Articles of Corporation and fully consistent with the mission of the board.

And supposed that community object to that and send it to the ICANN board, the ICANN board consume that and then send it back to the community. Community send it to the Independent Review Panel.

And Independent Review Panel by mistake support reviews of the community whereas the ICANN did make its decision fully confirmative with the bylaw and with its core mandate and with its Articles of Incorporations then in that case what would happen?

We say that the final result of the IRP, Independent Review Panel is binding. That means the (wrong) decision of the community was strongly approved by the Independent Review Panel would be binding. That means ICANN was put in the difficult position.

In that case I believe that ICANN could go to the court saying that my decision was made based on the bylaw, based on the mission, the core mission and so on so forth.

But some people they say that they don't want to go to the court and they want just to finish it today in the Independent Review Panel.

These are the question has not been answered. Leon, a distinguished college, the issue is now quite complex, very, very complex. And we need to have doctors and PhDs or laws and legal aspects understand all of these.

And the simple issue is that how many cases you have that ICANN board has not complied with this duty? And for one of two cases among 100 we have to create such a very, very complex procedures.

These are the answers that we would like to have. We are not against a membership but we would like to have clear way by having the worst, worst conservative and conservative situation for one casing to 1000 and devising something that no one understand and we will get stuck in the middle of nowhere.

I'm sorry to be very (upsetful) but that is my view. Thank you very much.

Leon Sanchez: Thank you very much ~~(Cavose)~~Kavouss. I believe that many of the questions that we have raised have been already addressed either by council in writing of course or by my co-chair Mathieu Weill,~~(Michael Turmati)~~ which I remember having replaying to by email with very precise answers to all your questions.

But and I'd like to turn to my co-chair, Mathieu~~(Michael Turmati)~~. But before doing that I would like to note that there is a question from (org) council in the chat box. And I would like to ask council to take a look at this question with regards to liability that I remember that has been also answered if as far as I can tell.

But I would like to call later in this call for council to clarity whether there is any doubt with regards the reply to this question raised by (org) council and other members of the Governmental Advisory Committee.

And now I'd like to turn to ~~(Matthew)~~Mathieu to react on ~~(Cavose)~~Kavouss's questions. ~~(Matthew)~~Mathieu could you please take the floor?

~~(Matthew Ray)~~Mathieu Weill: Thank you very much Leon. This is ~~(Matthew Ray)~~Mathieu Weill speaking.

I think ~~(Cavose)~~Kavouss you corrected and gathered together a significant number of the key feedbacks we were receiving during the public comment period. And I'm hopeful that we'll get those questions laid out in the submissions we get very clearly by tomorrow.

And of course we will need to precisely answer. Some of these questions we have answered already or at least we have legal advice on and we can definitely quote this legal advice on.

Others we might lead us to consider alternatives to the current setup. And that includes the case which is not in our reference scenario so far or in any of our scenarios where some SOs or AC would agree to create a legal person to become a member or designator - doesn't matter - and other would not.

And if the public comment confirms that this is a valid option - and I fully appreciate that we get such feedback from for instance in the GAC but not only - I mean whatever the reasons don't matter. That may be a scenario we might have to consider.

I think we will thank have to redraft some requirements and then go to the lawyers and then explain the consequences of this scenario.

So most of these questions are very relevant ~~(Cavose)~~Kavouss. And we just need to make sure we're not duplicating what we're going to be doing in the analysis of the public comment and then the response we're getting to this.

And I want to thank you for putting them in writing privately to the co-chairs.
I think that's going to be useful going forward. Thank you.

Leon Sanchez: Thank you very much for that ~~(Matthew)~~Mathieu. Now I have in the queue Steve DelBianco. Steve could you please take the floor?

Steve DelBianco Thank you Leon. Sebastien you asked where there was an agenda at work here. And let me own it and say there is an agenda.

We want the community to have enforceable powers that have been under discussion for several months, some as long as a year. And those are the primary CP or Community Powers in our documents.

It's our belief and my belief especially that these need to be powers that we can enforce using California law in a court that would require ICANN to follow if the community followed all the procedures in the bylaws it would simply require that ICANN follow the community's will.

And that enforceability is what drives us to membership. The membership structure according to our council is the only way to truly have all of those powers be enforceable.

And within the membership I think ~~(Cavose)~~Kavouss needs to understand that whether you're an unincorporated association or simply your chair is your member, either way it's still a membership structure and it can accommodate a combination of some ACs and SOs that create an unincorporated association and others that decide they just want their chair to be the member.

And they could change their mind over time. There's no need for that to be resolved or to go out and figure out how everybody wants to do it. The GAC could start one way and change later on.

And finally as one of the primary authors of the stress test I can assure you that of the 26 stress tests most of them will probably fail if we do not have enforceable community powers to question the corporation's decision in reacting to a stress or a scenario to re-evaluate the board's actions to block what the board may want to do if it's outside of the community's bylaws.

So the stress test will not answer very well if we sacrifice enforceability of power to get something that's well, something else that has the illusion of somehow being simpler.

So forgive us but we continue to think that given the only way we can get enforceable powers and membership you keep pushing hard on explaining that it isn't as complex as you may have originally thought and we are trying to make it more understandable so that it becomes more acceptable to all.

Because ultimately I only think membership gives us the enforceable powers we need. Thank you.

Leon Sanchez: Thank you very much for this Steve. Next in the queue I have Thomas Rickert. Thomas could you please take the floor?

Thomas Rickert: Thank you very much Leon. Let me go back to one point that Sebastien mentioned. And that is whether we are biased towards one solution.

Setting aside the facts for the moment this group has chosen to tag the membership model as our reference model for the report.

In this phase of our activity we are trying as good as we can to react to questions that we have received during the public comment period.

And it turned out that there were a lot of questions in terms of implementation of the membership model, a lot of questions surrounding the unincorporated association.

And we would like to make sure as much as we can that prior to this group doing a consensus call that everybody has sufficient information to make an informed decision.

So should there be any questions for other models that we've been discussing by all means please to ask them. Should we receive them in comments we will go through them.

We will certainly speak to all the questions that we are receiving in order to make it easier for the community and our group to understand what the options are that are on the table.

Leon Sanchez: Thank you very much Thomas. Next on the floor I have ~~(Roeloff Myer)~~Roelof Meijer. ~~(Roeloff)~~Roelof could you please take the floor?

~~(Roeloff Myer)~~Roelof Meijer: Thank you Leon. You look nice for the record. Yes if you are still missing from my approach on the email list as well. I'm getting more and more doubts as this is really the way which we want to proceed.

And Steve all our - I think you're going a bit too fast in this and setting the (unintelligible) solutions to the problems that we foresee.

And I think at one point in time and it should be not too far away we should really take a step back and ask ourselves if we really wanted did we really need this and we - if we really think it will work?

And because I think we will introduce (unintelligible) as new accountability issues. And to me and possibility doesn't automatically mean the possibility take someone or somebody or something to court.

I think in the end if the ICANN would really go haywire and ignore its own bias it will become isolated and that will render the board completely ineffective.

Is the board against a community and it will simply not work and the board will have to resign. We would not need a court to force a decision even if it is a very, very unlikely scenario.

And I'm also wondering if in the end for instance if that situation needed to really have the contact with ICANN we as I say again we are legal entity. We could take ICANN to court because it really justified it.

The bottom line is I'm beginning to see that we are way overcomplicating matters with this. It is a solution that the community will find very hard to understand and to implement.

And we are now focusing on a situation that will never occur. And it overcomplicates our proposal.

Leon Sanchez: Thank you very much (unintelligible). On my side there is somewhat a little bit deprecated. So I'm not sure if I got all what you said. But certainly I will read the transcript.

Next on the queue I have Sebastien Bachollet. So (unintelligible) what you said before.

Sebastien Bachollet: Yes, I think we are at the very crucial moment in our discussion. Either we are able to listen that there are concern about the way we are going with the membership system or we don't.

And if - I don't if everybody's laughing about what I am saying but, anyhow it's not very nice way to go.

And I was - I agree with ~~(Roeloff)~~Roelof and I really think that we need to take a step back and to look if we don't have solution.

I don't want to put my red (hats) here but, I am not sure that how I will say that to be - I don't want to be go to court with our legal account adviser our council because I'm - I don't have money and I can't (unintelligible) that.

But I am not sure that there are really how to say that there are really neutral or I have the impression that sometime they push one solution against another.

Then I don't know when we can have this time to step back and to discuss it. But it's very important. I understand fully the people who push for the solutions they wish. I have no problem.

It's from this discussion that we can find hopefully the best solution. But please accept that maybe your solution it's not yet the best solution for ICANN. And if we can answer in discussion in that way it will be beneficial for this working group but for the whole community and intimately for ICANN as a group. Thank you very much.

Leon Sanchez: Thank you very much for that Sebastien. As we have said definitely we'll need to consider the different options.

I wouldn't (unintelligible) the exception as our proposal rather than one of the different proposals that are on the discussion. But yes I definitely agree that the more comments we receive and the more views that we have on the different proposals the better conclusion we can get to.

So next on the queue I have Jordan Carter. Jordan could you please take the floor?

Jordan Carter: Thanks Leon. Can you all hear me? Making sure this sounds...

Leon Sanchez: Yes we can hear you.

Sebastien Bachollet: Yes.

Jordan Carter: Great. Thank you. Look, this is a very complicated conversation because three different things are swirling around I think.

There's the issue of whether we are looking at membership or a designator model for the powers that we want. There's the issue of the unincorporated associations or UAs and how they fit into that. And there's the kind of issue or the importance of enforceability.

So if I could untangle those. One the enforceability question which is probably the easiest at the moment ICANN is subject to an enforceable accountability framework because there's a contract with US government.

And when that contract comes to an end there needs to be a legally enforceable accountability framework that replaces it.

I'm 99% sure that if there isn't a legally enforceable model there isn't going to be an IANA stewardship transition.

So if people want to back away from that kind of model then whatever it looks like that I think that they're just basically saying they don't want this stewardship transition to happen.

And that's a baseline that needs to be deal with in the CWG and in our thinking as well. So that's the enforceability point. It's relatively straightforward. Either there's enforces around accountability or there isn't. If there isn't we're just relying on goodwill for ICANN to be well-governed and the domain (unintelligible) is much too important for goodwill to be the governing factor.

The second point is about membership or designators. I agree that we haven't settled on the preferred model there. And the -the - and we don't need to at this point because whether you have designators or members you need a according to our council have legal persons. And that's the third point. That's what the unincorporated associations are about.

These are not complicated bodies. People who keep saying this is complicated are - and are not reading the material or are listening to chatter about this approach. That doesn't bear any relationship to reality I'm afraid.

If you look at the words that are in front of you on the screen with the sample Articles of Association all these things do is to provide a legal envelope for an SO or an AC.

You do not need to join the unincorporated association. If there was a ccTLD one from the ccNSO someone said my organization would not need to joint it.

You know, only two people need to join it. And it doesn't matter who they are because as you can see from the way it's drafted it doesn't make any decisions. All the decisions are made by the SO or AC bodies through their usual processes. And this is like the envelope that that decision gets put in.

So there aren't any new accountability concerns created by these associations because they're totally captured, controlled and actually dealt with by their own SOs and ACs.

There may be consequential accountability questions need to be answered for those SOs and ACs. Are you making sure our ccNSO example again that GNSO members can remove the chair of the ccNSO if required.

But in all of this all that the proposal has talked about that we've dealt with so far is about creating a set of powers for the community that are real, that aren't fake, that aren't make believe powers.

And to do that council has advised us that membership is the preferred approach. And we've all agreed we don't individuals becoming members of ICANN.

And so the model that we've come up with is one that is internally coherent, simple and easy to implement.

So, I would just urge people to kind of keep that in mind. And I guess the last one I'd like to make is that I don't understand ~~(Roeloff)~~Roelof's discussion about court enforcement of rights comes from.

We're not trying to build a system that leads people running to the courts every five minutes. We don't have one now. We're not planning to build one in the future.

The fact that rights might be legally enforceable in courts is just the status quo. It's there today. It'll be there tomorrow unless we somehow break ICANN's accountability and remove it.

No one should be worried about that. It's just a part of the status quo. Anyway, that's all I had to say.

Leon Sanchez: Thank you very much Jordan. Thank you very much for that Jordan.

Next on the queue I have Alan Greenberg. Alan could you please take the floor?

Alan Greenberg: Thank you very much. The downside or the upside of having your hand up for so long is you accumulate a lot of points to address.

To reiterate something from the last meeting no one is claiming that UAs are complex to create or complex legal entities.

It's making them part of ICANN which makes it exceedingly difficult to explain to people how - just how ICANN works.

The ALAC as you'll see when you receive our comment is taking a pretty strong position that we are supporting the kinds of things that ~~(Roeloff)~~Roelof was saying.

Yes we understand we could do all of those other things. We do not see the need for the level of enforceability that we're talking about.

The references being made continually to the IANA to the NTIA contract, yes that will go away. There's never been any sign that the NTIA was planning to use that contract to force other things in ICANN. Maybe I read the signs differently than other people.

~~(Becky)~~ has made the point that we need membership so that we can overrule the board because the board has a fiduciary duty to do what they think is best. And only through membership can we have the right to tell them no you're wrong. And she's correct. There's no question about that.

But At-Large is generally believed that if we have the ability to remove individual directors and selectively remove directors and if we have the ability in the extreme case to remove the whole board although we find that a mechanism that really should never be used then ultimately we have the way to control the board.

Yes we cannot overrule them on a specific decision but we can simply replace them with someone who will be more amenable to listening to what we're saying.

So that gives us the ultimately control. And to quote a ~~(Rosemary)~~ in a thing that I think may have rolled off the screen already is removal of directors and

removal of the entire board are powerful accountability measure and generally would not require resort to a court to effect under the bylaws.

So that one should be enough to convince any board rogue or otherwise that they should listen carefully or will be replaced. It's not clear we need all of the other mechanisms. Thank you.

Leon Sanchez: Thank you very much for this Alan. Net in the queue I have Greg Shatan. Greg could you please take the floor?

Greg Shatan: Thanks. This is Greg Shatan for the record.

First I would like to actually hear ~~(Rosemary)~~ respond to what Alan said because I don't think she was stating it for the purpose of saying that the right to remove the board, you know, but without the ability to enforce that right is adequate.

I think she was saying what - more what along the lines what Jordan was saying which is that we're not going to be running to court all the time just because we have enforceable rights.

That idea that basically there's this pent-up desire of the multi-stakeholder community to go to court constantly and the only thing that prevents us from doing it is the lack of, you know, legal personhood is I think, you know, fundamentally misplaced.

I think also what's important to recognize, and I think this is a corollary to what ~~(Becky)~~ just wrote in the chat which is that members have a fundamentally different relationship to a board in a corporation than the board

has to any other kind of constituent in a non-profit corporation that does not have members.

Members essentially get to sit at the top of the totem pole. And that is if we want to have a situation where we have rights that in essence, you know, can conceivably trump the board or more importantly a situation where the board owes a fiduciary duty to the members of the class or to the stakeholders as a class, membership is the legally clear way to do it.

Any other system tends to exist more at the pleasure of the board. And that's not to indicate that I necessarily destruct the board but systems that rely solely on trust and that have no teeth when there is a reason, you know, to want to move beyond what the person holding all of the cards says you can do leave me feeling very, very scared. I just don't think that's what we've been commissioned to do is to design a system where the only force for enforceability is the board's desire to agree with us and nothing more than that.

Finally I think that we have to, you know, I don't think that there is any intent to push any particular solution. I - certainly I came to this with an open mind. I think at this point I certainly believe that membership is the best solution and that even with the designator model first we would lose I think the right to have anything to say in a definitive fashion, you know, beyond how we - as we normally act now with regard to budgets and strategic plans.

We would still have to form some sort of a legal person. So everyone's concerns about unincorporated associations I think still tend to exist.

So I think there as Jordan said there's - there are a bunch of things swirling around there, portably a lot better to talk about them separately than together.

But in any case, you know, as I see it we would all be far better off under the membership model. Thanks.

Leon Sanchez: Thank you very much for this Greg.

I'd like to have ~~(Rosemary)~~ or ~~(Holly)~~ to get in the queue. So if we can listen to of course what they have to say about the discussion that we are holding at the moment.

I would like to close the queue with them. And before that I'll go to next in the queue who is ~~(Matthew Ray)~~Mathieu Weill. ~~(Matthew)~~Mathieu would you please take the floor?

~~(Matthew Ray)~~Mathieu Weill: Thank you very much Leon.

The first thing I'd like to say and I'm trying to capture the discussions here is it is a very good thing that we're spending a lot of time on this important discussion.

We - there are different views on the options. So there are several options that we must remember where we are in the process.

We are currently in the public current process. So obviously the public comments we will receive will help us get more clarity about which options are getting traction, which are the concerns raised by each options and so on. So no option is off the table.

I am confident the option described by ~~(Roeloff)~~Roelof or Alan is going to be on the table and is going to get back from the public comments. And that is good.

We will need two things. We will need to describe very clearly what happens if we go down that - those pass.

And clearly the unincorporated associations pass needed more work, needed more explanation. And we need to remember this is the option that we get independent legal advice say this is the most credible option.

It does not mean it's the final choice but for an external observer it may be a little peculiar if we just dismiss this without following it through.

And I guess from a group's perspective if we don't take this option we have to demonstrate very clearly why we're not taking it. Because the legal advice is pushing us there and we need to be transparent about this legal advice.

So we need to describe this in our (unintelligible) number one. We also need to stress test them. We need - because the stress tests are the one exercise that's going to get us clarity about what's - what is going to be different in terms of risk management in each scenario.

And we're build - trying to build this accountability framework for the future for the next 20, 25 years. Those contingencies we're talking about may happen across those times. And we need to be very clear for the community to say you can pick this one but it's not as good in this case. Or you can pick this one. It's a little more elaborate or complex or whatever you call it, let's you get a better protection or get a better protection on this but not on that. And that is our job.

And then it's the public comments and the community inputs that we need to listen to to get the final decisions.

So I think let's keep the scenarios open but obviously not ten or 20, just two or three. But first we need to listen to the public comment to see which ones get traction. And then we'll get to work and we'll have significant work to do to get through this discussion. Thank you.

Leon Sanchez: Thank you very much ~~(Matthew)~~Mathieu. Next on the queue I have ~~(Roeloff Myer)~~Roelof Meijer. ~~(Roeloff)~~Roelof would you please take the floor?

~~(Roeloff Myer)~~Roelof Meijer: Thank you Leon. This is ~~(Roeloff Myer)~~Roelof Meijer for the record.

Yes first of all I think and I want to remind us all that we once promised each other to be respectful of different opinions. And I think that kind of offensive Jordan's viewpoint that - and I think I literally quote him that if you don't want to have a legally enforceable solution then you actually don't want to have an IANA stewardship transition.

I don't think that's true. And I could counter that by saying that if you want a very complex solution you probably don't want this transition to happen either.

I do want this transition to happen. And I think the best answer would be successful is to come up with the solution that is as simple as possible but that will work.

And it will probably not work in every situation that we can think up. But it should be a solution that can work in those situations that we think might occur.

I don't know where this notion comes from that ultimately every program can be solved through a court. I'm not a legal expert at all. And if you had asked me for advice instead of asking legal experts for advice that of course come with a legal solution I probably have come up with a solution that we talk about gears and volt meters and current and hydraulics or something.

And so I just want to warn us against the fact that if we ask a certain profession for advice the solution that that advice they will propose will be in line with his or her profession. But it doesn't have to be the only solution.

I'm not worried about the status quo. I disagree with Jordan that the status quo is actually what we are proposing with the membership structure.

It means that we now have legally enforceable system that is true. But my point is that we probably don't need a membership structure to get the legal enforcement that (unintelligible) whether we might one day (do).

And I'm really amazed by the fact that Alan quoted ~~(Rosemary)~~Rosemary and she's (back) in the queue. I think so. She will come back to it I open and saying that we don't need the membership structure for certain - for the most important powers that we foresee. And nobody reacts to that. We just ignore it and we go down the road for promoting this membership structure.

And I'm a bit worried about what is happening in this process. Thank you.

Leon Sanchez: Thank you very much for this ~~(Roeloff)~~Roelof. Next on the queue I have Sebastien Bachollet. Sebastien could you please take the floor?

Sebastien Bachollet: Yes. I agree with ~~(Roeloff)~~Roelof. And I would like to add that maybe from the community feedback we will not get the support of one or the other

solution but some mixed or something with what may be different from the solution we suggest.

I - you know, I don't think it's because three months ago we came with two or three solution. And I was agreed to put that on the public comment even if I disagree with that solution who has put into the frontline.

But we're in it to be open to the other. And once again I understand the position of Steve of unintelligible(~~Vieky~~) of Jordan. But, I hope that they can - I am sure that they will be open to listen to other solutions.

The problem today is that if I start to suggest something I know and it's why I will not do it. I know that I will get fired or I will be in the...

((Foreign Language Spoken 0:47:01))

...as we say in French in two seconds. I have lived with that during my four year in the board. As soon as while I was talking I was having this agreement for at least three board members.

And I don't think it's a good way to behave but I was (approached) to leave with that. And I don't want to do that in this working group.

And if we agree that you leave me some time to build a proposal it will not be ten days but like it's two, two or three I will be - I will come with some ideas.

I'm not saying that I will come with the solution but hopefully some way to go in another solution where we will not need membership or at least not the way we are thinking about it today.

And as soon as we are a UA - I saw that ~~(Vicky)~~Becky say it will not be for (open). Just I don't know what she wrote and I will have to check, sorry where it is.

It's not to be a house for our litigation. But if we are a legal entity then we can be have a legal issue with the other one, not just with the board.

And my last point it's please don't forget that we as a community we by different means select the board. We select the board.

If you want that we select the board each two weeks let's do it if it's the only way you think that this will be enforceable.

But I think we elect or select it three years it's maybe a good time to think about that. It's not a group again the community. It's a group coming from the community.

We need to improve the board, yes definitely. But I don't think we need to build all that what we are trying to build just because we are unable to change the organization of the board today. It would be a good way to go. Thank you very much.

And sorry I am not able to read the chat to listen to the discussion and to be able to put my ideas together to speak. Sorry about that. Thank you.

Leon Sanchez: Thank you very much for this Sebastien. And I anything I see this disagreement that's good. I mean we need to remember that this is an (unintelligible). We are going through the different options taking one another into consideration. We are discussing and we have been discussing this membership model for many calls.

I do believe that this is of course not the final option that we chose of course. We will need to wait for comments in the wider community. We will need to weigh those common theme also.

And once we do that we will need also to make a couple of stresses and see what happens if the model that we are trying to build here supports or resists those stresses and see how it goes.

So if anything I (unintelligible) that the disagreement that we have in the discussion I think it's something good for the work that we're doing here.

And now I would like to turn to ~~(Holly)Holly~~ to get more information on what we've been discussing. So ~~(Holly)Holly~~ could you please take the floor?

~~(Holly)Holly Gregory~~: Hi everybody. You know, I want to think - I've been sitting here thinking about how we can best help. And it seems to me that we're going back to some of the very fundamental discussions and that the group hasn't yet found a clear consensus.

When I go back to the sort of early days I heard clear consensus about the status quo needed improvement and that ICANN and in particular the ICANN board needed to be held more accountable to the community.

I want to emphasize at the outset that when we started this and now as they say down south we the lawyers have no dogs in this hunt. We're your independent counsel and we're here to help you work through and think through things.

That being said of course when you do ask a lawyer a question about whether you can do something and how it will work and what the pros or cons are we very necessarily put it through a legal lens which asks the fundamental question if everything at the end of the day went wrong and we needed to enforce what we're trying to create would we have enforceable rights?

That's really fundamentally what you're asking for when you ask a lawyer a question. So I just that is a bias we tend to have. And I will admit it.

I think when you step back and think about, you know, from the community's perspective and this group's perspective you need to think about what you want to accomplish. If you tell us what you want to accomplish we will try to find ways to accomplish it.

You've certified a number of questions to us about whether something could work. And we've responded with our best judgment from a legal perspective around what we see as some of the pros and cons again from this enforceability perspective.

You're free to throw that out and to say we're happy to go with trust. And when you - I have to say I do wonder about that a bit because as people have pointed out you have a board that is selected by the community.

And for a whole host of reasons there's a lack of trust in that board. And so the question is how to fix that.

So I looked at the sort of trust answer to at the end of the day we'll just all trust one another as somehow inconsistent with the fundamental premise that the status quo needs improving on the accountability side.

Now we are say we, the community the CCWG is creating some fairly complex mechanisms and some fairly simple mechanisms.

To my mind the notion of being able to select directors and get rid of directors is a fairly simply kind of accountability mechanism.

The difficulty is if you want to enforce that mechanism as we've said you need legal persons to be able to enforce that. And that means whether they're members or designators to be - to have enforceable rights there needs to be some legal personhood. And that's either an individual or an unincorporated association or a partnership or a corporation or something that's recognized in court.

I could go on along these lines. But it seems to me that, you know, I question whether it's really truly productive.

I think fundamentally this isn't so much a question about the legal advice as it is about what do you want to accomplish.

I think when you come to agreement about what you want to accomplish then it's about the mechanisms and understanding the pros and cons of the mechanisms.

And yes, some mechanisms will have advantages and they'll have disadvantages. And sometimes the disadvantages are that they're difficult to sell because they sound complicated and it's a new way of thinking about constructs that we've had for a long time.

But, you know, if that's the hurdle and there's a way to put some energy into overcoming it we should do so. If it's insurmountable then though we need to find other solutions and maybe start back and rethink goals.

The membership was a very clear way to provide the community with what we understood that you wanted in terms of both the ability to select directors, get rid of directors, spill the entire Board, have a say on things like bylaws and budget and strategy.

But if, you know, if those goals given the hurdles of implementation are no longer as appealing, we can certainly step back and think about how to re-craft the goals.

So those are my thoughts (Leon).

~~(Leon Sanchez)~~: Thank you very much for (this) ~~(Holly)Holly~~. I'd like to turn now to ~~(Rosemary)Rosemary~~. ~~(Rosemary)Rosemary~~, could you please take the floor?

~~(Rosemary)Rosemary Fei~~: Thanks. I think ~~(Holly)Holly~~ I certainly agree with ~~(Holly)Holly~~'s points very much that if you tell us that you want something to be enforceable, we're going to look for ways to make it enforceable. If you tell us no, we're satisfied with some level of trust, then more options become available because they have lower enforceability.

You need to answer that for us. If you tell us to take it all the way to one extreme, you know, as enforceable as possible, then we will. And if you tell us no, we don't need that, then we can design something - as I said, we'd have more flexibility in the design.

But I don't think that's a decision we can make for you. That's a decision you have to give us what you want. So what level of trust versus what level of enforceability are you comfortable with is one it seems to me ongoing issue that I haven't heard resolution of.

And the other that I haven't heard resolution of is whether reliance on the ability to change who's on the Board through removal of individual directors or recall of the entire Board.

Whether you believe that's enough of a mechanism or whether you want direct ability to take decisions away from the Board on things like strategy and budget because that is the biggest difference between membership and designator in some ways.

Membership gives the membership these much more power than we could ever give a designator. But we can give designators the power to remove individual directors and through a contract we should be able to give them the power to recall the entire Board.

Again, I wouldn't really see the recall of the entire Board being used very much. And either membership or designator if you - if enforceability is key, which we've heard from some of you, then you're going to need persons in either of them - legal persons who can go to court and enforce rules if everything else fails as an absolute last resort.

But I will tell you I have been practicing non-profit law for about 23 years. I have represented literally I think thousands of non-profits. And a lot of my work is in governance and conflicts internal to an organization.

And in all those years I've only had to go to court maybe three times because the vast majority of situations if you tell someone, you know, you've got (warring) parties in front of you and you say look, here's the provision in your bylaws that you all signed up for that says this is how it's going to work, people are typically going to say okay, I see it. It's there in black and white. That's what it says. That's how it works.

And you don't go to court. And sometimes instead of telling them it's in their bylaws because sometimes their bylaws are wrong, you say well this is what the California corporate law tells you.

So - and they say oh, okay. I realize I don't have the right I thought I had or I do have some mechanism I can - whatever; and they don't go to court. So court is very, very much a last, last ultimate resort. But I do think it's important to back up ultimately if - if nobody could go to court, if there's no person to have standing to go to court and all else fails and the whole thing is - maybe that's just the doomsday scenario that lawyers worry about.

And maybe you're going to say, you know what, we're not worried about the doomsday scenario. We're confident that if it's clear in the bylaws or in the law we'll do the right thing. And that's - as I said, in my practice I've maybe only been in court three times.

So I don't want - while we do talk a lot about enforceability and going to court, that's really just the backstop in knowing that someone has the power to do that. Can be very helpful in getting people to say here, let's follow the bylaws or let's follow the law.

But - and you have to decide how important it is to have that backstop. Whether it's just going to be enough for everyone to say look, it's in the

bylaws. We all agree and we have non-court ways -- peer pressure, embarrassment, shaming, I don't know what you've got -- ways of making people do what the bylaws say and what California corporate law says.

So I - that's a decision - as I said, I think you have to decide what trust - whether trust is enough or you want ultimate enforceability and whether removal is enough or whether you also want to be able to reject a budget or reject a strategic plan.

And if you told us the answers to that, we would design a system based on what the law permits us to do that achieves those goals or we could design a system if you asked us to. I don't know if that's helpful, but that's what I have to say.

~~(Leon):~~Leon Sanchez: Thank you very much ~~(Rosemary):~~Rosemary. Next in the queue I have (Sebastian) and then Alan Greenberg and with that we're closing the queue on this. So please (Sebastian), will you please take the floor?

~~(Sebastian):~~Sebastien Bachollet: Yes. Thank you very much ~~(Rosemary):~~Rosemary. It's very helpful. I hope that what you say will be - will help to go in the right direction. I think what you say that if things are (so far) in the bylaws or are in the corporate California law as ICANN is incorporate in California is - could be enough.

My point of view is that if it's not enough, if we need to go to court, whoever need to go to court, is (the end) of ICANN. And if it's just to say that let's do it and we will go and ICANN will go away and we as community would go away also, then we don't need it.

Let's try to find what we need to do to have the best solution without going to membership and without asking the court in California to decide within ICANN what is right and what is wrong.

We must be one organization with different points of view, with different people, with different responsibilities. And I don't think that it's good to have between us and I say between us, it's not just between the Board and the community. It's between us - courts will possibly decide for us what is the right way to go for ICANN. Thank you.

~~(Leon):~~ Leon Sanchez: Thank you very much for that (Sebastian). And in the queue I have Alan Greenberg. Alan, could you please take the floor?

Alan Greenberg: Thank you very much. I've rarely been accused of being a Pollyanna; only looking at the bright side of things. I'm very much a pragmatic person. I cannot imagine a scenario that if we have in the bylaws that ACs and SOs can remove directors and through some mechanism, and I proposed one but we could use others, we can remove the NomCom directors.

And we have pre-signed letters from these directors saying if the appropriate ACs and SOs so decide they will resign. Whether these terms are legally enforceable or not I cannot imagine the majority of directors not resigning.

Yes, they may be able to stand their ground and say sue me, I'm not leaving. But given that within three years their term is up anyway, I just can't imagine that happening. And for some of them the term is going to be up within a year. It just isn't a scenario that I find realistic.

And my belief is that the threat of that happening especially if we can selectively remove the directors who are reticent, we have effectively the

powers we want. Yes, we cannot tell them what their fiduciary duty is if they think otherwise. But ultimately we can replace them with people who might have other opinions. Thank you.

~~(Leon)~~:Leon Sanchez: Thank you very much Alan. And I think mindful of the time I'd like to go into the next agenda item, which is a follow up on input received regarding membership. I think we have widely discussed about membership and the feedback received already.

But we still need to address a couple of questions on a couple of subjects that have been discussed in the list. And I believe that (Becky) (unintelligible) made some (word comments). So I'd like to turn to (Becky) so you can explain those - (what you need) what you did on the subject.

~~(Becky)~~:Becky Burr: Okay. Great. Are we going to bring the slides up - I guess Alice~~(Allison)~~ i's not on. But ~~(Alice)~~ is not on but ~~(Adam)~~. Given all of the conversation that we have had on the chat and then emails and exchanges about litigation and about the role of California courts, I thought it would be useful to try to capture as simply as possible sort of what the facts are.

And to do that I did a little research myself but I also spoke informally with (Josh) and (Ed) at Sidley. So I am not presenting their legal advice. I'm presenting very high level preliminary findings they are working on sort of crossing the Ts and dotting the Is.

But just to get a few of the sort of - to kind of clear the air on what we're really talking about when we talk about litigation. There are some things that members of a corporation - the public benefit incorporated have the right to enforce.

You know, they would have the right to enforce the powers that are granted to the members in the bylaws like removal and the budget and strategic plan and stuff.

They also have the right to enforce compliance with the sort of fiduciary obligation and the public benefit obligations. And those are both legal terms and mean a slightly different thing so I'm going to kind of (ally) them.

But basically, you know, they could be taken to court for failing to act in furtherance of the public benefit that the corporation is formed for for breaching its fiduciary duties for misappropriating or wasting, you know, assets of the (truck). But those are very, you know, those are very fundamental things.

But members don't have, unless they are given them, the right to, you know, enforce every (tit) and (jottle) of every aspect of the bylaws. And so that was one misimpression that we were hearing. Can we go to the next slide?

The other question, and I think Alan specifically asked this a couple of weeks ago, is can we effectively limit the forum in which disputes are resolved. In other words, can we for example require members to go first to the independent review panel and to go to the - and to the independent review panel as opposed to a court in California?

Now the qualified answer to that is yes but the courts will enforce bylaws provisions regarding, you know, forum for dispute resolution so long as people - the members really truly do have an ability to exercise their authority and the Board is not engaging in some unfair act to be like, you know, unilaterally amending the bylaws retroactively to require arbitration when a dispute is already under way.

But as, you know, except in unusual circumstances, if it is the desire of this, you know, of the community, we can say no, we are going to turn to a - we're going to turn to arbitration - international arbitration, our standing panel as opposed to a California court to resolve disputes.

The other thing is that the bylaws provisions clearly can specify the circumstances under which a claim can be brought. So for example, we could say, you know, a community IRP has to be exercised by the consensus of the committee. One member simply can't bring a community IRP and for purposes of delay an obfuscation.

Even if we didn't put the IRP as the forum selection clause in the bylaws, the California code itself says basically you can't bring challenges if you don't participate in the decision making process that led up to the thing that you're objecting to.

And it provides the ability - require a bond when that thing - when those things are being misused. So I mean even the California law standing on its own is conscious of the potential for abuse and provides some tools for that. Next slide.

So then the other question is, okay, we have successfully said you need to go to the independent review panel. That's a binding decision. And so then the next question is will courts in California defer to the IRP? Well they follow that or will they try to second guess it?

And the answer is that courts in California are - have been extremely deferential. So much so I was very surprised to see that even in employment situations they're deferring to arbitration provisions.

And that to the extent that a court feels it must be involved because the provisions are just unconscionable or unfair or deprive people of a forum or whatever, they're, you know, they're breaking off the parts that are unconscionable and deferring rather than just simply saying no, we reject the arbitration panel's findings altogether.

But parties to an arbitration can go to a court to seek to enforce their rights under an arbitral decision. So there is a backup if for example there really was, you know, loggerheads with the Board saying it wasn't going to follow a binding arbitration decision. Next slide.

So just, you know, all of the - I know this is not the only question that we're discussing. But yes we can avoid having a California court resolve substantive disputes between ICANN's members if that's what the community wants to do and so long as we follow the rules and we actually give people real enforcement rights or members real enforcement rights and we don't make this, you know, an artificial process. Next slide.

So I just want to reiterate the fine print. These are high-level conversations. They reflect my conversation and they confirm the research that I did but they're not final answers. And the lawyers are working on closing any open loops there.

Obviously you need to get the details right and we need to have a conversation about what we want the IRP to do and what we would not do. And obviously we would have to have stress tests directly on these issues.

But I just want to - in this conversation that we're having about unincorporated associations and all of that, I want to try to simplify the issues on the table by

getting some facts on the ground regarding the sort of the litigation anxiety that I've been hearing.

So that's my presentation. As I said, you know, (Ed) and (Josh) are looking at these things in closer detail. But, you know, we're not creating a monster where, you know, courts in (crazy) California, although I think the courts in California are pretty good, do insane things and impose their will on the ICANN community. So questions?

((Crosstalk))

~~(Becky)~~Becky Burr: I see ~~(Cahoos)~~Kavouss' hand is up.

~~(Cahoos)~~Kavouss Arasteh: I want to thank you for all the hard work you have done. There is an example - the (unintelligible) thing that even one that no one understands the things makes the issue quite complex.

If the issue quite complex we (don't) understand, then we cannot raise any question and we cannot dispute because it is so complex. It is designed to be complex not to allow the people to comment and not to allow the people to raise any questions.

That has not been only here; in everywhere of every constitution, in every convention the legislator or the people that doing that there are particular group of lawyers; they make it quite complex that no one else except them they understand the situation. So everybody else will be hostage to these lawyers.

I'm not criticizing anybody. I'm just giving the fact of the experience that I have in all other constitution and convention. It is designed to be so complex

that very few limited people understand them. Then it could be interpreted that the way it wanted. So it is very difficult to discuss. Thank you very much.

The only question that I have here - we have the members - your colleague members. I suggest - just suggest for your consideration those members in the member model we call them with capital M but the community - (the might be) individual who is by definition a member of the community but it is not part of the direct membership of the membership model.

If any decision of ICANN Board affect and individual, that individual without being part of that particular SO or AC could raise its questions, problems, difficulties and so on so forth, then in that case could that (seize) the court to judge the issue, should that person go to the independent review panel directly or should go through the general member with capital M and through them ask about the situation.

Just I want to give one example. The booking (com) is one example. The issue has been raised and there are difficulty with that. Could that take it directly with the court against ICANN Board or could that directly take it with independent review panel without going to the SO or AC or GNSO or ccNSO and so on so forth? That is one question that I have.

Then I have general question for the three co-Chairs that I raise after - you kindly if possible reply that. Once again, I very much appreciate all the hard work that you are doing.

And I suggest that all of the reply that you mention should be provided by the legal advisor in the (retail manner) that we take it, we study it, examine it to see to what extent we understand and whether we have any comment to make

the comment during the - if not the first comment do in the second public comment period. Thank you.

~~(Becky)~~Becky Burr: Okay. So let me just try to respond ~~(Cahoos)~~Kavouss to the - some of the questions that you asked and some stuff that I'm seeing in the charter. What I was talking about was the rights of members with a capital M.

Obviously to the extent that the bylaws provide an independent review for people who are directly or who are, you know, materially harmed by an action or an inaction of the Board and violate - and in contravention of ICANN's mission or in a manner that is inconsistent with established policies or that - commitments and core values.

Those affected parties have the right under the bylaws to go - to seek an IRP. What I was saying about constraining, you know, for super majorities or any of that does not apply to individuals or groups that are harmed materially by an action or inaction of ICANN. That always exists.

Now what you're talking about ~~Kavouss(Cahoos)~~ I think is the notion that what can we do to prevent, you know, sort of an endless cycle of IRPs in these situations where, you know, somebody disagrees and then it's an IRP and then they go to court and it's now IRP and all that. That's really a separate question. I think it's a very important question.

And as I said the other day, I think that, you know, a critical part of the IRP and probably the thing on which we have to do the most hard thinking as we move forward on it is how do we strike that balance between sort of access and preventing abuse correctly so that it is an efficient and fair and accessible dispute resolution mechanism that doesn't, you know, trample on rights or make it impossible for, you know, folks to run a business.

So that question - those questions are very much on the table in terms of our continued work stream but they're not the subject of this. This was really sort of - it - by creating a membership structure, are we creating this monster litigation machine?

The other thing that I want to say is just to reinforce the notion that, you know, when people talk about the endless litigation, you know, sinkhole, what they're assuming, which I do not assume at all quite to the contrary, is that the Board might be lawless and fail to recognize or abide by its obligations, which are only obligations if there's a membership or a designator structure in place.

I believe that that - that, you know, having those clear rules and the fact that they are enforceable reduces the likelihood or the frequency of dispute. Sure there may be disputes about very important issues from time to time. But that's the nature of the beast and we want that. Want to have the place to resolve those disputes.

Okay. I...

~~(Cahoes):~~Kavouss Arasteh: Thank you very much (unintelligible).

~~(Becky):~~Becky Burr: ...(guess) left everybody speechless.

~~(Leon):~~Leon Sanchez: You have that affect ~~(Becky)~~. Okay. So...

~~(Becky):~~Becky Burr: Okay. I'm going to turn it back over to you.

~~(Leon):~~Leon Sanchez: Thank you very much ~~(Becky)~~. One thing we need to remember, as I said previously, is that we need to discuss of course all the (unintelligible) that we

have so far in discussing in the group. And we should need to stress test on the different scenarios. So far the stress tests that have been run by the Stress Test Working Party assume that the powers are in fact enforceable.

So if we change the scenario into one that in which we don't have enforceability, then the results of the stress testing might of course vary. So maybe we should be looking at - during this - running the stress tests again but in the scenario which not all powers are enforceable. And maybe in a third scenario which none of the powers are enforceable of course.

So with this, I'd like to turn to my co-Chair Mathieu Weill for the next agenda item, which is our work plan after (unintelligible). So Mathieu, would you please take the floor?

Mathieu Weill: Thank you very much (Leon). Is ~~(Caheos)~~Kavouss hand an old hand before we start?

~~(Caheos)~~Kavouss Arasteh: Yes. No it is not old hand. Is new hand. Before you going to next agenda item, first of all I would like to mention that if you raise any question, it should be understood is a friendly question. We don't want to create any atmosphere of animosity or a difficulty or hostility. We have question and we raise the question and I admire the way that we work and I did mention that in the (WSRS) that these are very constructive environment in CWG.

So please do not kindly interpret the question that we raise as sort of criticism. It's just question raised for finding answer in order to be able to implement what we planning.

Now I come back to the early question I made. Would it be possible that our distinguished respectful legal advisor provide a table? In that table they put all

SO and AC and they put all the six environment or area that we have for bylaw and budget and so on so forth and say that everyone becomes a member, which one of these empowerments should be - could be exercised?

And then make another table. If any of the SO or AC does not wish to be a member or it cannot be - which cannot be a member, which of the six area could be exercised. Then that would help considerably with respect to the future discussion.

And in the last case that if a member can have an unincorporated association with a non-member in order to involve that non-member in some decision making whether in all six are or whether in some of the six areas. This is still not clear.

We would appreciate the legal advisor - they made a lot of good things - many, many good legal assessment they make it is very helpful and would like if possibly consider to provide a table considering or indicating that who and under what condition could exercise which of the six powers. Thank you.

Mathieu Weill: Thank you ~~(Cahoes)~~Kavouss. I think this point is taken onboard. Our time so far was to try and capture exactly what kind of questions - what kind of scenarios you would ask the lawyers to fill into this table because you presented this question last time as well.

And once we can brief the lawyers and we're trying to set up a call soon with them, then obviously they will be tasked with that. So I mean it's a very good suggestion. ~~(Holly)~~Holly, would you like to add anything?

~~(Holly)~~Holly: Yes. I just wanted to say (look), I think we've provided a lot of this information and it's a matter of cutting and pasting it out of the places. It's

certainly not new research. So we're happy to do it at the point at which the CWG certifies the task to us.

Mathieu Weill: Thank you ~~(Holly)~~Holly. That's I think the rules of engagement we agreed on and we'll certainly discussing on this in the next few days.

So I think after this discussion moving to Item 4. If you have any doubts that we will need to have some serious conversations about the way to proceed, I hope there are no - these doubts are now removed.

So it is important that we can (well) ahead - even ahead of Buenos Aires. Just a reminder before that that our work is going to take a new turn in the next few days.

The public comment period ends tomorrow. By the weekend we will get input from the public comment tool filled in by staff and we will review this in our call next Tuesday. And in the meantime the working parties organize themselves to work this out and analyze the inputs.

But our goal in Buenos Aires is to have a sole discussion with the community on the items that we feel get consensus, the items that we feel are raising concerns and the items that we feel are getting diverging views. You can speculate about this based on our discussion today but we may have (surprises) as well.

We need to be ready for after BA because the planning requirements - the planning requirements - I'm reminded there are also items about which we can have - we can have public feedback that there is confusion or not clarity enough.

So the requirements we'll have after Buenos Aires and I think we've agreed on that I just want to remember is - so that everyone remembers. We are aiming for the submission to the SOs and ACs of the Workstream 1 set of proposals in Dublin. That's the goal. It's synchronized with the other tracks of the transition process. So that's the goal we're using for setting up our agenda.

Number 2. We need to submit to the SO/AC sufficiently in advance for them to consider this in Dublin so that's at least 15 days in advance. Number 3. We need to have the second public comment period of the duration of 40 days between Buenos Aires and Dublin.

Number 4. We want to have the process of elaborating the public comment and finalizing the proposal to be as inclusive of everyone in the group as possible. That's criteria Number 1. And are very well prepared to be efficient when we work.

And that's what is leading us to considering a meeting in July, a meeting that should be very substantive based on the substance we got from the public comment as well as from Buenos Aires and based obviously on our further thinking about options and stress tests and proposals as we discussed earlier today.

So it's really a comprehensive meeting we need. That is the reason why there is a preference that we are voicing for a face-to-face meeting as opposed to a remote participation meeting, which - that of course we acknowledged there's a cost factor at play as well as more disruption to everyone's agenda. So that's a preference at this point.

And that's also why we run the doodle on dates and did enable us to have the 40-day public comment period and then the finalization of the proposal in time for Dublin meeting. And that leads us to basically around mid-July.

And the doodle poll we've so far had - let me go to this. A certain number of responses from something around 39 - yes, 39 responses. And there is one option that is currently getting 30 favorable answers; July 17 and 18. And the second best is July 20 and 21, which gets 26 availabilities.

So it's important that we discuss on this (for a plan). We want to hear all voices on this. And we will not necessarily all agree on the first dates but it's a decision we need to make fairly quickly because there are arrangements to make both for ICANN to prepare but also on everyone's side agendas to be prepared and conflict managed.

We are aware of the conflicts with the IGF-USA at some point. Aware of the conflict with the IETF. There may be others we've been missing. But it's important that we open these discussions.

And ~~(Cahoes)~~Kavouss, I see your hand is back up.

~~(Cahoes)~~Kavouss Arasteh: Yes. I have one suggestion and one comment. The suggestion is that would it be possible that the comments that we have received be categorized corresponding to the slides or a PowerPoint that you co-Chair have provided some time ago with respect to three main chapters; Chapter 1, community empowerment, the six different areas; Chapter 2, (unintelligible) address; and Chapter 3 is the stress test or so on so forth.

Then you categorize the comments received under these three chapters and if again possible under each chapter to the sub chapter. That is all comments (or

anything), the removal of the Board members in total or removal of individual Board members or budget or so on so forth. That would facilitate the examination and review of the comments by the people. That is the suggestion that you kindly - are kindly requested to consider.

Second, let me once again mention that and I explained that in the WSIS, CCWG is a very efficient, effective and productive and really a high level arrangement that you very, very kindly and very nicely cover all questions, replies to the questions because someone mentioned that only member could take the floor and make a comment.

And I mentioned to WSIS that it is (that) to every participant has the right and has been welcome to raise the question and has been properly answered and I hope that that will be continued and I congratulate you three co-Chairs. Thank you.

Mathieu Weill: Thank you ~~(Chaos)~~Kavouss. Regarding your point on the comment analysis, it will be segmented even further than the description you gave question by question. So yes, it has been agreed as such and I know staff has started filling out the tool in that regard. So rest assured this will be the case to facilitate our analysis. And regarding the way our group is considering all participants and members, I'm not aware of any plans to change this.

Regarding a question that was raised by (Robin) about whether there is a rationale for preferring a face-to-face versus a remote and intense remote marathon. I think this feeling we are open to any feedback of that that for a substantive meeting with a comprehensive approach of the Workstream 1 proposals, a face-to-face meeting would be more productive.

It would enable more flexibility to address any outstanding items on this part of - within the facility organized, whatever, than the remote participation meeting. And that was so far our rationale for preference to a face-to-face meeting.

Any feedback on those - obviously (Robin)'s feedback is clear. So based on this, we would be going - oh no, I have (Sebastian).

~~(Sebastian)~~Sebastien Bachollet: Yes. Just to say that even if it's very good tools to be able to have Adobe Connect, it's I feel very difficult to (unintelligible) for me for language purposes. It's very difficult to follow five things at the same time. And I think when you see people, you see not just what (other world) but also what they really feel.

And I think it will be a good time to have a face-to-face meeting and to try to go to the right direction. I guess it will be one of the last time where we will be able to set up the - the right direction for the various groups. And I would like - I prefer to have a face-to-face meeting even if it's - it takes time and so on. Thank you very much.

Mathieu Weill: Thank you (Sebastian). ~~(Cahoes)~~Kavouss.

~~(Cahoes)~~Kavouss Arasteh: No. No. I have no - sorry. I...

Mathieu Weill: Okay.

~~(Cahoes)~~Kavouss Arasteh: ...it's a old hand. Thank you.

Mathieu Weill: Okay. So may I test the group for objections to a face-to-face? We would rather take 17, 18 of July for the face-to-face given the doodle poll results at

this point. Would there be any objections? I see ~~(Everett)~~Eberhard suggesting and ~~(Everett)~~Eberhard hand is up so probably ~~(Everett)~~Eberhard you'll be explaining your position much better. Go ahead.

~~(Everett)~~Eberhard Lisse: Can't we do it one week later, around the 27th? We have over a - shorten the comment period, what - why do we have to do 40 days when we can do with let's say 35?

Mathieu Weill: Thank you ~~(Everett)~~Eberhard. I - we had definitely worked on the assumption that a 40 day public comment period was a strong requirement and I think it was voiced very strongly in the - when we should defer to public comment. So that was the assumption that it was to stay the 27th of July was a little late.

And I think it's going to be - it may be the last public comment we issue before submission to the SO/ACs. ~~(Cahoos)~~Kavouss.

~~(Cahoos)~~Kavouss Arasteh: Yes. Did you check with the ICG because ICG also planned to have a meeting during that period? And I think there are some people that are involved in both areas and it will be difficult or maybe not fair to exclude these people to participate in the CCWG.

Couldn't we make it one day instead of two days and couldn't we try not to have any conflict with the ICG because ICG has a very, very difficult task now and they have to also come up with some exercise and some conclusion? So I would request you kindly to check with the ICG Chair and the co-Chairs and try to avoid any conflict with them.

And by the way, some people like me have already booked their ticket and so on so forth. So if we have to change it, we have to change it. We have to pay extra money for that. Thank you. And if - even if the ticket is provided by

ICANN, even if for us they would not pay the extra money unless they accept that. Thank you.

Mathieu Weill: ~~(Cahoes):~~Kavouss, are you saying there are meetings of the ICG planned 17th and 18th of July? I wasn't aware of this actually.

~~(Cahoes):~~Kavouss Arasteh: I'm just asking you please check again because...

Mathieu Weill: Okay.

~~(Cahoes):~~Kavouss Arasteh: ...they are...

Mathieu Weill: We will check.

~~(Cahoes):~~Kavouss Arasteh: ...(changing) in ICG. Please kindly check with the Chairman and the Vice Chair of the ICGO not to have any conflict. Thank you.

Mathieu Weill: Okay. So we'll work - we'll check this out. So we need - we'll need to - I think we'll need two days of meeting anyway. That's going to be needed with the lot of substance we'll have to deal with to have proper deliberations.

We'll need - we'll check with ICG. If you haven't responded to the doodle poll, now is still the time. And we'll certainly try and set those dates so that we can give a go to the ICANN meetings team but also get those dates in our own agendas by the end of this week.

And we'll be trying to find a - obviously times that are as convenient as possible for transfers based on what ICANN meetings (has addresses on) because obviously they're very busy also at the moment.

So (Adam), could you point out to the venues that would be looked at?

~~(Adam Peake)~~: Hi everybody. If you can hear me, we're looking at European hub locations given the time available and the urgency that people have mentioned with travel. And Europe is the easiest location for everybody.

As I mentioned in email, we would have preferred some diversity but it does look like Europe and the hub location for example I think the primary - the possibilities are for example Paris, Amsterdam and Frankfurt; those being the airports that are easiest.

Europe is also important for these, as we know that most people will find it easiest to get to European locations. People have Schengen visas and those that don't, ICANN will make sure that we can get them as easily as possible. So it has its advantages. Thank you.

Mathieu Weill: Thank you ~~(Adam)~~. Thank you all for your participation to this item. I would now turn to Thomas for any other business; any concluding remarks. Thomas.

Thomas Rickert: Thank you very much Mathieu. I think I can keep this very brief. Is there any wish to discuss any other business? I'm not sure whether this is an old hand or a new hand. So if it's a new hand, please do speak up.

Man: It's a new hand. It's a new hand.

Thomas Rickert: Okay. Fire away.

~~Eberhard LisseMan~~: And I just noticed yesterday that three questions were added to the public comment period. Can somebody explain to me how on earth this happened?

Thomas Rickert: Well I guess the explanation is quite easy. Been a drafting omission. So they're - it's not like the questions are not there at all but they are not in two places. Next in line is ~~(David)~~; the~~nn~~ ~~(Marie)~~.

~~(David~~ McAuley): That's (unintelligible).

Thomas Rickert: Okay. (Unintelligible) you had a follow up question?

Eberhard Lisse~~Man~~: What does this mean in terms of the comment period?

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Thomas Rickert: But so far we have received I think five comments. The public comment Web site has been updated accordingly with the additions highlighted. So we do expect that those commenting will also respond to the other points. And I guess what we might consider doing is actually reaching out to the ones that have comment already to ask them whether they saw the questions that have been added.

But if they actually went through the whole report, they should have seen all the questions anyway.

~~Man~~Eberhard Lisse: And that doesn't answer my question. My question is that does not require 40 days or additional 30 days.

Thomas Rickert: Well I guess technically since we do have a second public comment period and I think this needs further discussion amongst co-Chairs as well as the group, you know, should we see that people have not responded appropriately to this point.

The second public comment period is meant for new items or additional items. So we might then deem that additional item and highlight it for the second

public comment period so that everybody has a fair opportunity to respond to that point.

But there are no plans to extend the public comment period that we - that is about to close tomorrow. Nonetheless this group has the (accessibility) as for example we would do with the translated documents to take into account comments that come in beyond the end of the public comment period.
(David).

~~(David~~ [McAuley](#)): Thank you Thomas. You can probably tell from my mail earlier what this will be about. But in a recent call we talked about the cost of legal support. And I just want to say that the discussions now are becoming quite crisp and constructive on the - for example, the membership model.

And so my hope is that as between support and cost at least for the meeting in Buenos Aires, the balance will tip in favor of support. And I'm just urging you and your co-Chairs to discuss this with counsel and make sure that counsel are satisfied.

I saw from ~~(Leon)~~'s response that ~~(Holly)~~[Holly](#) and ~~(Rosemary)~~[Rosemary](#) will be there and ~~(Josh)~~ will be online. But just make sure that the counsel are comfortable that the right level of support will be offered. Thank you.

Thomas Rickert: Thanks ~~(David)~~. I guess a point that's well noted. Any other comments under A or B? Okay. So with that, I think we can even close the meeting a little bit earlier than planned for. That gives you another eight minutes of the day. So with that, I'd like to adjourn the meeting and have a great day everybody. Bye bye.

Woman: Bye all.

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