
TERRI AGNEW:

...At-Large Ad Hoc Working Group on IANA Transition and ICANN Accountability Call on Wednesday, 27th May 2015 at 14:00 UTC. On the call today we have Alan Greenberg, Olivier Crépin-Leblond, Cheryl Langdon-Orr, Jean-Jacques Subrenat, Maureen Hilyard, Tomohiro Fujisaki, Gordon Chillcott, Sébastien Bachollet, Avri Doria and Alberto Soto. We have listed apologies from Seun Ojedeji, Tijani Ben Jemaa, Barrack Otieno, and Leon Sanchez.

From staff we have Heidi Ullrich and myself, Terri Agnew. Our Spanish interpreters are Veronica and David. I'd like to remind all participants to please state your names before speaking, not only for transcription purposes but also for our interpreters. Thank you very much, and back over to you, Olivier.

OLIVIER CRÉPIN-LEBLOND:

Thank you very much Terri. Have we missed anyone on the roll call? Hearing no one shout their name out, the work today is going to look primarily at the CWG IANA - several issues in there; the ongoing work in the CWG, any issues to be flagged. There is also the CWG tool for comment analysis that's been published, the first draft. That will be shared with the community soon, so it might be interesting pointing this out to you. I don't know whether we'll have time to go through it. There are dozens and dozens of pages for all the comments we received.

Then we really need to look at the issues to resolve... There was a call yesterday of the CWG, and still no consensus on these points. Then on the accountability side, Alan will take us through that. he'll take us

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through an update on the work and no doubt ask for our input on what's going on at the moment. Let's first start if there are any additional items anyone wants to add to the Agenda? Seeing no one put their hands up, the AIs are quite straightforward. They're all completed, and we don't need to go through them with a fine comb. Let's move to Item #3 - review of the IANA Coordination Group progress. For that we have Jean-Jacques Subrenat.

JEAN-JACQUES SUBRENAT:

Hello. There was a conference call of the ICG, which unfortunately I wasn't able to attend, so I might have missed something. The thing the ICG has been working on for some time now is on a reply to the letter that the NTIA, Under Secretary Strickling, sent to the ICG and to others as well. We've been coordinating the Chairs of the ICG to see what would be the reply of the ICG. AS a result of this discussion we're sending a letter or message to various parts of the community to ask them for elements that would allow the ICG to reply to the NTIA about the timescale, or the timeline for producing a plan for transition of the stewardship.

Now, in this discussion what I found important was that the use of the word "implementation" in the letter from the NTIA was, at least as I thought, somewhat ambiguous. On the one hand we can imagine implementation means what time it would take for the various elements - the names community, the numbers community, et cetera - to actually come up with a plan which could be implemented. That's one thing. And the other, definition of implementation is a much wider, perhaps even more important aspect, which is how much time it would then take

for the US Government side, meaning NTIA, plus toing and froing with the Congress, plus the final approval before implementation - and that of course, the second aspect, is completely out of the hands of the ICG and its components.

So as a result of this discussion, a message is being sent out to especially the operational communities for operational elements within the ICG, to have an answer on how they see the timeline. This may result in an offset of a few weeks, but we're waiting for the reply before commenting on that. Another thing I'd like to point out about the ICG is - you know this already - we will be meeting in BA before the ICANN 53 Meeting, and there's some discussion about having a wrap-up session at the end, maybe on the last day of the ICANN 53 Meeting, in order to better interact with our communities. Olivier, I think that's all I have to report to this Meeting at this time. Is Mohamed on the call?

OLIVIER CRÉPIN-LEBLOND: Thank you. I understand Mohamed has joined us. I don't know whether he has the ability to speak. Mohamed El Bashir? We cannot hear Mohamed at the moment. Let's open the floor for questions on the ICG, and definitely the question of the timing is particularly important too. I don't see anyone.

JEAN-JACQUES SUBRENAT: In the meantime, I see there's a comment by Avri on the chat: "Don't be fooled by a letter asking how much we need to delay. They still think that to make this happen it had better happen on schedule, otherwise it will have to [read 00:07:45] the US election out." Yes, I agree, but that's

exactly one of the elements I was pointing out in my presentation; is that there are some things of a material nature, which is linked to how long it will take the various elements of our community, especially the operational elements, to give all the input necessary for the ICG to send a thorough plan. That's one thing. We can deal with that.

The other thing is exactly what Avri is pointing out; that there will be political elements, and I don't think it's the role of the ICG to fill in that slot. That will be done by the US Governments and its agencies on the one hand, including NTIA, and Congress on the other hand. Thanks.

OLIVIER CRÉPIN-LEBLOND: Thanks very much for this. I see Mohamed has joined the audio. Mohamed, if you'd like to comment or add on what Jean-Jacques has told us, you have the floor.

MOHAMED EL BASHIR: Thank you very much Olivier, and thanks Jean-Jacques for the update. If I may add to what Jean-Jacques said, after receiving the NTIA letter requesting the community to provide guidance in the timeframe required to finish their work, the ICG, after discussion decided to request the operational community to provide feedback on what they foresee in terms of implementation timeframe. AS Jean-Jacques said, we had a debate about the use of the word "implementation" and what it means.

I think maybe at least the conclusion was that this is from our side, it's from the community side. Definitely NTIA will factor any time that they have in terms of their governmental process or consultation with other

agencies, or the time that they take, and in the end I think that will contribute to their decision, in terms of how long they're going to renew the contract for. There are many ICG Members who share the view that we need to have a shorter renewal period for the contracts, and the target is to finish the transition, so a period of two years is not considered to be in favor. But multiple periods of six months for example has been discussed on the previous call.

One of the also latest points discussed today on the teleconference was a request from an ICANN Board Liaison to as well include ICANN as a community, and request the same from ICANN. It was agreed in the call today that the same letter that was going to be submitted to the operational community is going to be submitted to ICANN, asking ICANN to identify also their dependency and timeframe of [unclear 00:12:23]. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks very much Mohamed. The floor is open for questions and comments. I think that as far as the CWG IANA is concerned, I certainly have not seen any discussion on timings, and I believe that probably is something which the Co Chairs are working on. I'm not quite sure really where to go from here. Cheryl, you're interfacing with the Co Chairs on some of the work that they're doing. Has there been any discussion among the different leaders?

CHERYL LANGDON-ORR: Not at the moment, no. Perhaps after the intensive work couple of days at the end of this week there may be more on that, because of that

intensive work program for the CWG, the Leadership Call between the Chairs of the CWG and the CCWG is [a handful 00:13:44], and it's not the thing that would normally be on their Agenda.

OLIVIER CRÉPIN-LEBLOND: Okay, thanks for this Cheryl. Any other comments? it doesn't look as if we have any answer on this. I guess it's something to be aware of, and we'll have to see what the response is going to be. Certainly there is going to be a real important moment at the end of this week. Tomorrow and the day after the CWG will have two intensive days of discussion - six hours of calls on each day. I gather it's only after those 12 hours of conference calls that the Co Chairs of the CWG will be able to make a better estimate as to whether we will be delayed with the proposal or not - that's a better picture, probably not a full picture.

CHERYL LANGDON-ORR: Exactly. That's correct - as far as I can ascertain, that is the case.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks very much for this. With no other questions on the topic of the ICG, let's move onto the CWG IANA. We have several items here for your study and input. The first of the topics is pointed to the new CWG tool for comment analysis. That's a Word document. I'm sorry it was distributed like this - we didn't have time to make it into a PDF. That's a document that's a table of all of the input that was received during the second public comment that includes eight late submissions

for a total of 53 submissions. It's a fairly long document. It's 249 pages. Yes, fairly long is probably an understatement.

It does take each one of the topics and cuts and pastes them into the different boxes, and that certainly shows the various points of view that are currently held by the wider community. The Working Group is no doubt going to be looking at all of these comments, but as Alan Greenberg mentioned - and I forget unfortunately when he mentioned that - even with six hours of calls, I'm not quite sure whether we'll be able to go through 249 pages.

There are some concerns I certainly have, having read through some of the contributions - and I haven't read the 249 pages yet, I must admit, but there certainly are some that are still sticking to a contract co model or reiterating points that they disagree with the process that was pursued or used so far. There are some comments which mention that the process was not open enough, and I'm not quite sure how much more open we could have made it.

At the same time there are also some comments which are being supportive of what's being proposed now. The comments in the fourth column, the one that says, "CWG Stewardship response, which may include new information as a result of the continued discussion and recommended action," those are, at the moment, just draft comments. They have been suggested by staff with now the input of the CWG, and so please don't take this as a response that's cast in stone.

Some of the comments say, "The CWG appreciates your feedback," which means we've read it and taken it into account. That often is in

response to a supportive comment. In some, the comments actually do require an active discussion in the Working Group, and that discussion will take place in the next couple of days, to be able to see whether we reach consensus on an appropriate response. I see Alan has put his hand up. Perhaps Alan has read the 249 pages. Alan?

ALAN GREENBERG:

Thank you Olivier. I've not only read them, I've memorized them, and if you believe that, I think I have a bridge and a few other things to sell you. I'll note not only the 249 pages, but the 384 items - that means if we spend an average of two minutes each on them, we'll get through the process. I don't know how it's going to turn out. The good part is I went through the document and searched for the term "ALAC" in the column of comments, and all of our substantive comments where we're essentially saying, "We need change," the staff response was, "The CWG will need to discuss this."

Although staff have tried to put answers in where the answers were somewhat obvious, for that I think we should be grateful because knowing the people who did this, they're probably close to spot-on, and we should be able to eliminate a fair number of the responses, as long as we don't talk about them for five minutes, all agreeing that we like the answer. Hopefully we'll home in on the ones that do require some substantive discussion. It's not quite as bad as it seems, but there's going to be an awful lot of work to do.

There are still people who are suggesting we add more things to the plate, and the .int situation is one of those. So I'm not quite sure where

it's going, but by the end of the week we'll know better. That's all I can say. Some of us will be in hospital beds because of it, but nevertheless... There are a number of issues that we have raised, and we'd need guidance from this group. We talked about it in the ALAC Meeting yesterday, for those of you who may have been on it, and I think we also need guidance from this group as to how far we need to go.

What are the issues that essentially we may ultimately refuse to approve the report, if it comes to us without these things being resolved? And what are the things we want to see changed, but we're willing to live with a variety of answers for? We obviously don't have to come to closure on this right now, but the more guidance we can give the people who will be on these meetings, the more likely we're going to come up with an alternative we can live with. We really don't want to be the only group that doesn't approve this report, if it goes to the ACs and SOs, but if we have to, we have to.

OLIVIER CRÉPIN-LEBLOND: Thank you Alan. Certainly one of the points I think was quite well understood yesterday, with regards to the comments, was that not only are the comments from ALAC are really taken as very important, and will have to be discussed by the Working Group, but obviously comments from other ACs and SOs are taken as being particularly important, for the simple matter that the SOs and ACs will have to ratify this proposal before it gets sent to the ICG, and that of course is important. You mentioned perhaps the ALAC not signing on at the end.

That would definitely be a last resort, and we're hoping we don't have to cross that bridge. So that will put a lot of weight on the comments we've made there. Obviously, if one SO is saying yes and another is saying no, and each one are very entrenched in their positions, that will make it pretty hard for the Chairs to find consensus, but as you said, we have marathon calls coming up on that. Alan, back to you.

ALAN GREENBERG:

Just for the record - it's not obvious from the Charter that a single AC or SO not agreeing on some points stops it from going forward. It will put the ringer in the process, in that it will have to go back to the CWG for discussion. That will change the timeline, if indeed we end up saying no. I did bring to the attention of the group something they apparently hadn't thought of or at least hadn't made public.

That is that although all comments are important, and perhaps comments from large groups are more important than comments from individuals - comments from chartering organizations that are indicating this is a really serious problem have an import greater than perhaps the other comments, because of the kind of issue we're talking about. So the group is aware of it, and we'll see how it goes forward. But I think perhaps we have to stop talking about the generalities and talk about the specific issues at this point, so we have some guidance to the people on the calls.

OLIVIER CRÉPIN-LEBLOND:

Thanks very much for this Alan. Any other comments on the process? I'm looking at other Members of the CWG - what their reflections are on

this. I'm not going to name names, so not to put you on the spot at all, but...

ALAN GREENBERG: Why not?

OLIVIER CRÉPIN-LEBLOND: What shall we start with? Shall we start with the Z names first? Let's see... Obviously, it's a big question mark at the moment and no one really knows where we're going on this, and it would be premature, I think, to jump to conclusions. Perhaps now we've alerted you all to the comments, the few comments that I have read are not show-stoppers in my view, although there are some countries that are rejecting the whole process. There's a question as to whether GAC will be able to push things through, will be able to agree to this document.

The informal feedback that I've gotten is that the GAC is going to try to find a broad consensus to not object. But most of the discussions around the GAC will take place in BA, and I have a feeling there might be some further discussions in BA in all the communities involved. It might well be that the Saturday after these two days of work of the CWG, there will still be some discussion, and still be some open times.

I do note a flurry of additional calls has been scheduled for the forthcoming weeks as well, so it might well be that we'll continue the calls until no one stands anymore. Well, we're not going to go through the whole document here. This was just to alert you to this document. It's connected to your Agenda, so please, when you do have the time, skip through this, read through it - bedtime reading. Put it on an auto-reader when you drive to work or on your cistern or whatever, and we'll

discuss some of these points with an update when we meet next week again.

Ongoing work in the CWG - there are still issues to be flagged. The input from the DTA Service Level Expectations is still awaited. I kind of missed that, but I'm not quite sure where the sticky issue is - whether they wanted to add SLEs or whether there was... I thought it was only going to be a transferring of the current Service Level Agreement into Service Level Expectations. Alan?

ALAN GREENBERG:

I think there are a few things. First of all, some of the current SLEs are way, way under what we are normally getting. There were certainly some discussions on whether we should have numbers that are closer to the current reality than what was formally committed before. The larger issue is that we've only recently received from IANA the full list of the work that they do. Some of the things were not particularly public before and were not fully understood, and the group is still working their way through that list to try and make sure that the SLEs do in fact map all of the work that's being done.

At this point they're claiming there's no real problem that they were expecting, but the work is not done. It's been pointed out to them that this is not a job that can go on forever, if indeed we want to make some deadlines.

OLIVIER CRÉPIN-LEBLOND: Yes, thanks for this Alan. I don't think that at this point... These are SLEs that the CSC is going to work from. It probably is highly registry influenced in a way, and I know we haven't really taken part into the discussions for the SLEs, so there's not really any input we can add, especially at this late point in time.

ALAN GREENBERG: Nor do I think we need to.

OLIVIER CRÉPIN-LEBLOND: DTM is the escalation process with a number of escalation flowcharts. I wonder if... Avri, do you wish to say a few words on this?

AVRI DORIA: I am a Member of that group, and we are continually fine-tuning it, but I'm not really in a position to give a detailed report on that one, as I tend to focus more on the [two 00:29:24] that I'm responsible for.

OLIVIER CRÉPIN-LEBLOND: Thanks for this. Let's see with Alan?

ALAN GREENBERG: I'm not a member of that group and I have not focused on it, but a telling comment was made, and it does have some relevance to the discussions that we've been having in this group. The comment yesterday was pointing out that all of the work of this design team was done, presuming that there was no one in IANA who you could talk to

other than the operational people - that is, it was done in the absence of any discussion about the PTI Board. In my opinion, if a PTI Board is to have responsibility for the operation it's running, which I think is what a Board does, then they are part of the escalation process.

They were not mentioned in this process, so that has to be re-thought in light of what we're now talking about, about the PTI Board, which isn't settled yet, but there seems to be a conviction that there should be something like that. I think there's going to have to be some revision for it, and as this group knows, we've strenuously objected to the GNSO and the ccNSO being key parts of the escalation process, because they are policy organizations and we're supposed to be separating the two.

OLIVIER CRÉPIN-LEBLOND: Thanks for this Alan. Certainly, the discussions I've had recently regarding this appear to point out that the GNSO and ccNSO were willing to take that on. I'm not quite sure how that will play out. Avi?

AVRI DORIA: Thank you. Every so often, [unclear 00:31:24] Alan, thank you very much for [unclear]. In terms of the [unclear], there's very much a reflection of the privacy of registry, in that they really do believe that they are the customers of record, the customers that matter, as they say - the direct customers. Others have tried to argue against that notion, but haven't, but anyhow, as a compromise in a sense they're saying, "Since the GNSO is somewhat mostly stakeholder, we can [stand 00:32:02] it a little by not making it just for registries, that decide whether there's escalation."

They have this incredible fear that the rest of us will grab an IANA that they think works from under them, and do foolish things. So they're very, very defensive of that. Part of the contention has been does the CSC have to escalate to the stuff I'm working on, the review function? Or, does it first have to go through the GNSO and ccNSO? Likewise, the whole PTI Board issue is bound up, ranging from those who want a sock puppet board that does exactly what the ICANN Board and staff tell them to do, to those that are interested in a multistakeholder board, to those that are saying it could be somewhat multistakeholder but it still has to be mostly sock puppets.

By sock puppets I mean controlled by ICANN completely. In the discussions of the function, we range all the way from no function to the regular functions that you'd consider a company as having to do, plus dealing with any escalation issues, as was just being discussed, or exception management - things go wrong that we cannot forgive. There's a real resistance again to giving the PTI Board any say over that within the group. So I think that discussion has a long way to go yet, and part of what figures that into that is how is that board picked, how big is it, and everything else. Thanks.

OLIVIER CRÉPIN-LEBLOND: Thanks for this Avri. The floor is open for responses and input. Alan?

ALAN GREENBERG: I think you can see the real substantive, philosophical difference between Avri and I. She refers to sock puppets and I refer to marionettes with strings. You can read into that whatever you well

choose. I think Avri is right - a lot of discussion is still happening. To be honest, I'm not sure how much of it matters. The whole issue of the PTI Board, assuming the PTI Board has the authority to actually take action over the organization it's the Board for - and I think anything else makes it a complete sham, and let's just bring it back as an internal department, if we're not going to have a board that can actually take action over it.

I think anything else, in terms of the whole gamut, from internal versus external, multistakeholder versus not-multistakeholder, all of that is moot, as long as everything is working and the PTI Board doesn't have very much to do other than to appoint auditors and accountants. When the something hits the fan, and things start breaking, if that ever happens, that's when it's going to matter which board we picked. By then of course the decision is long passed, and we may suffer from the results of having picked the wrong board.

But ultimately, if things keep on working, certainly in our lifetimes, or lifetimes in ICANN, which are somewhat limited perhaps, it doesn't really matter. That doesn't mean we shouldn't try and do it properly, but I think these discussions are more emotional than they are practical. In any case, I think that going forward I'd like to talk about a couple of specific questions, Olivier, if we could, on to what extent are ALAC and At-Large people adamant. The only person we have who is participating actively in the group, on this call, is Cheryl at this point. I'm not sure if Sébastien is actively participating in the CWG. I can't actually remember. But can I ask the questions that I think we need answers to?

OLIVIER CRÉPIN-LEBLOND: Thanks Alan. We were going to just touch on separation, but I think all of these issues are somewhat connected. We've got the issues to resolve as listed in the Agenda - the public benefit [unclear 00:37:10] liability company, the board duties and entities costs - which I think we've put on the side now, although the board duties are important, and so we haven't put them on the side. But certainly PTI Board composition and stress tests, and the issues you wanted to bring up. We're right at the center of them, so let's dig into these and let's see if we can come to some agreement.

I tend to agree with you that we're spending so much time - and we, as in the people in the CWG - are all spending so much time, and some of it is probably I guess emotional, in thinking, "Well, who has the ultimate authority to ask for an RFP process to start? Or a separation? Who has that button?" There is one concern that I do have. I've been asking for a while for a diagram of the escalation path and of the path for separation and so on. I don't know if that's been shared with anyone.

But whether we have more stages or less stages, one of the concerns I have with more stages, I've seen criticism that there are so many stages to this that it will never happen. With not enough stages and not enough of the community being asked, I've heard concerns that this can be captured by a small group of stakeholders on the one hand - the communities that are not direct customers of IANA making a mess of the whole thing, for whatever reason.

Then on the other hand, the communities that are direct customers of IANA deciding that they want to get ICANN to do something, and to raise the IANA stewardship thing as a sword, as a threat, "If you don't do what

we want policy wise, then we're going to make a mess of IANA operations." I don't know really. It's a tough one. Let's open the floor to these questions. Alan?

ALAN GREENBERG:

First, to answer your question, I don't think we have a real worry. The current escalation path, as it goes to the GNSOR and/or ccNSO - it's not clear if it goes in parallel or singly - the only power they have, if you read the current proposal, is to then enlist the community in a mechanism to take some action. They don't have any power themselves in this point. Why it's going to them when they don't have any power to do anything, other than to enlist the community, is what I don't understand. And I think it violates the edict that we shouldn't mix policy and operation of IANA, when these are very explicitly the policy bodies.

So I think we have a real problem, but ultimately it's the community that's going to have to take action. It's the community that will be on a review board, on a review group, and it's the community that's going to have to take action to force "separation" if it were to happen, and to be honest, if separation happens it doesn't matter. All we're saying is it's moving away from the exact structure we're settling now, that we're debating at infinitum, and we're going to go to a new operation which is still under contract to ICANN. That will have to be a suitable operation at that point.

We've now moved past the point of separation being contract co, and separation now is picking who the staff are and what building do they live in, and I don't think it's of crucial import. The people who have

worked on the Separation Group - and Avri is clearly a significant part of that - have done what I believe is a good job; the stewardship thing with ICANN, period, even though some people still try to bring that up. I don't think we really have a problem on separation. Avri is next in the queue, but at some point before the two hours is up, we need to actually discuss the issue. Thank you.

OLIVIER CRÉPIN-LEBLOND: Let's hear from Avri.

AVRI DORIA: I'll go quite quickly on answering your question about the diagram of escalation. I think everything that Alan said is essentially something I agree with. I think it goes through from the CSC - and its both SOs have to have a super majority on it - before going to the IANA Function Review. That step was because the CSC specifically said it did not want that job of escalating to separation - that basically it wanted to get as far as it could get with [unclear 00:42:24] something, and then when it could go no further send the issue to the SOs saying, "Help us, we don't know what else to do."

Now, one of the solutions the SOs had was to bring up, at that point, say, "Yes, there's an issue here. We want an IANA function review." So they have the ability to initiate that. Now, once they initiate that, that is a full community effort. We still have a lot of discussions to have about the degree of representation on that functional review. That functional review is the one that, at the end, either recommends fixes and says, "Yes, there are problems here, but they're not serious. They can be

fixed by doing X, Y and Z.” And that’s their recommendation that goes to the ICANN Board.

Or, it could say, “No, something’s really rotten here. we want separation,” at which point that also goes to the ICANN Board, like any recommendation from a Review Committee. The ICANN Board either accepts it, or we go into incident escalation procedures. That’s [unclear 00:43:37] CCWG work, and a separation CCWG is created, once again, a [multistakeholder 00:43:49]. They’re the ones that do an RFP, et cetera. I don’t see any way for that process to get captured. Some people say it’s too arduous. I personally end up, as the coordinator of the group, doing that work. I would say this.

But I think it’s hard enough, but not too hard, that if there is a crisis spawned, it will go. If there’s no real crisis but some group feels itchy, it won’t go. At least that’s sort of the approach I’ve been taking. That was hopefully quick. Thanks.

OLIVIER CRÉPIN-LEBLOND: Thanks for this Avri. That’s very helpful. I have one question, because you mentioned that the CSC would forward things to the IANA Function Review, and then you spoke about the SOs?

AVRI DORIA: That’s [unclear 00:44:55] not want to be the ones to initiate a functions review. [unclear 00:45:02] all they can, and then pass the issue onto the SOs [unclear]. One of the SOs next steps is to recommend an IFR.

OLIVIER CRÉPIN-LEBLOND: Thanks for this Avri. I understand now. So the CSC would escalate it to the SOs, the SOs would escalate it to the IFR, the IFR would initiate the review and the separation by creating a separation CCWG. I think I've got it right now. The question I have been asked is where the multistakeholder components are. Because Alan certainly pointed out the question of the SOs not being geared for operational work, and this appears to be somehow operational - it would need to happen quickly. Would that mean there would need to be Working Groups created?

Then one of my questions is that I thought that somewhere along the line there was going to be a vote of the SOs and ACs on this. The end customers or direct customers are not the only customers of this. Every end user actually makes use of the root, at some point. When you type the details in your browser, or you send an email out, the system behind the scenes interrogates the root servers. So if things are not done correctly, that will affect everyone. I hear no one else answering. Alan?

ALAN GREENBERG: I can answer. Ultimately, if users can't get to their websites and to their other things because the DNS is not working, they're not going to be the only ones who are upset. The ISPs are going to be rather upset, because this is where they're revenue's coming from - keeping people happy -, the registries will not be able to have any of their users get to their websites, and the registrants won't be particularly happy. If it breaks, there's going to be a lot of unhappy people, and generally we're all going to be unhappy at the same time.

At some level, having a surrogate, unhappy entity to wave the flag is not particularly problematic. I know there are edge cases, you can imagine, where one group is unhappy and the others are ecstatic, but if we're looking across the G and the CC overall community, we've got a problem if someone is happy and the others are unhappy. It's hard to come up with scenarios like that. It's hard to come up with scenarios where the CCs and the Gs both want the same thing out of ICANN and are using it as bargaining. So operationally, I don't think we have a great problem.

Philosophically, I think we do, in that the current escalation process favors some stakeholders over others. It favors the GNSO in the G space, which excludes some participants. The GNSO specifically does not have any input from the ACs, and the ACs such as the SSAC may well have valid input, and I think they should be given a say, not only an opportunity to talk, which they may or may not have in the GNSO. That's why we've raised the issue of the SOs being in the escalation path being problematic, aside from the fact that they are policy bodies and are not designed to, or are not supposed to, be involved in IANA operation.

But this is one of the issues we've raised. I don't think we need to wave the flag a lot more. We do need to have some closure about how much change do we need to make us happy.

OLIVIER CRÉPIN-LEBLOND: Thanks very much for this Alan. I note in the chat that Avri has mentioned that the multistakeholder component is the IFR Team and the separation CCWG. Two questions - first, on the IFR Team, has the

composition of the IFR Team now been agreed by the CWG? Second question is whether the Separation CCWG have been accepted by Members of the CWG? I certainly heard some parts of the CWG that were cringing at the time - actually bone of contention on both? Avri, you may speak as well.

AVRI DORIA: [unclear 00:50:15].

OLIVIER CRÉPIN-LEBLOND: You're breaking up, Avri, I'm afraid. It sounded fine earlier, but very choppy.

AVRI DORIA: Never mind.

OLIVIER CRÉPIN-LEBLOND: Unfortunately we can't hear you.

AVRI DORIA: I'm not speaking.

OLIVIER CRÉPIN-LEBLOND: You're not speaking? That's why we can't hear you.

AVRI DORIA: No. It was choppy, so I stopped speaking.

OLIVIER CRÉPIN-LEBLOND: Okay, but now we can hear you.

AVRI DORIA: The populations, and mix of stakeholder groups in each of these is still a bone of contention. Whether this Separation CCWG is the same team as the IFR, or is a different team as the IFR, was a bone of contention, but I believe that's sort of evaporating. Thanks,

OLIVIER CRÉPIN-LEBLOND: Thanks for this Avri. Let's hope we can find some consensus in the next few days. Alan, you had other points you wanted to bring up and discuss?

ALAN GREENBERG: Yes. I wanted to make sure that we understand the issues that I see as bones of contention, and let me go through them and state where I think we are, and ask for disagreement. On the issue of LLC limited liability company versus public benefit corporation, I don't think we're going to die on our sword either way. I personally have a small preference to the public benefit corporation, just because it may provide some level of bankruptcy protection. The LLC has the advantage of we can avoid the whole board concept and maybe solve that problem. I don't think it's an issue to die on our sword over. Is there anyone who disagrees?

Seeing no hands, no comments, Olivier, do you believe we have a ruling here? Christopher is on the line.

OLIVIER CRÉPIN-LEBLOND: We have Christopher Wilkinson. Christopher, you have the floor. Christopher is typing. Christopher writes in the chat, “I’m concerned that the Delaware registration would facilitate not only separation but also complete IANA independence.” Alan, do you wish to comment on this?

ALAN GREENBERG: Yes. I just do not see that at all; where a company that’s registered has nothing to do with its overall capabilities. Complete IANA independence is still going to be dependent on... An LLC is essentially a wholly owned subsidiary, so it doesn’t even exist from a tax point of view. I don’t see how that implies any level of independence. In fact, it makes it more dependent on ICANN than the public benefit corporation. The public benefit corporation in ICANN would likely be the sole member, and therefore is ultimately in control, if we write the bylaws properly, and I have no doubt we will be careful on that. So I don’t really see an issue there at all. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks very much for this. Christopher, I’ll let you follow up on that. We’ll go over to Sébastien.

SÉBASTIAN BACHOLLET: Thank you Olivier. I have trouble with the Delaware corporation because it's already difficult to have everything staying in the US, but if we go to the place where it's the easiest way to do a company, with in fact no control and no tax, nothing at all, Delaware is really the worst place to go. I think we need to take into account the image of all that. If I have an advice, if it's good to stay in the US, let's leave it in California and not try to go elsewhere in the US. Because if we are moving from California to Delaware, why not go to Switzerland or any place in the world that would like to accept this company. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks very much Sébastien. Any feedback on Sébastien's thoughts? Alan?

ALAN GREENBERG: One picks Delaware because they have a flexible corporate law, which allows people to set up a company to meet their specific needs - number one. Number two, because so many companies are registered in Delaware there's an immense amount of case law, which makes litigation easier, should something actually happen. It's still within the US.

Remember, we're going to have to pass US Congress vetting of this, and there's no question there's a big difference from their point of view of Delaware corporation versus Swiss corporation, so let's not muddy the water. As I said, I personally favor the California public benefit. We could also do an LLC under California law, if it comes down to that. I'm hearing one voice saying Delaware as a jurisdiction is bad, and

Christopher is worried about whether it makes separation earlier. I think we have a general tendency to say the two don't particularly matter, although we favor a public benefit corporation in California.

Is that...? Olivier, do you think, as Chair, that's a reasonable summary of the positions being taken?

OLIVIER CRÉPIN-LEBLOND: Thank you very much Alan. I think you're quite right. My very limited knowledge of US corporate law - and I'm not a lawyer, far from it, but I have had some experiences at actual... [Deserving 00:57:49] a company in Delaware law is probably easier. There are some things with regards to accounting, et cetera, which makes it quite flexible. That said, I would be surprised - and of course there are always hidden things - but I'd be surprised if there would be any significant difference between having a company registered in Delaware or California, when it comes down to IANA itself, or the function itself.

Let's remind ourselves, this is not a shell company but it's certainly the placeholder - it's the thing that's wholly owned by ICANN, and if ICANN is going to do something with it, it will do it whether it's based in Delaware or California or Hawaii. It would just be more or less costly, I guess. That's the view that I have on that.

ALAN GREENBERG: Ultimately, Olivier, if this wasn't a function on which the whole worldwide Internet depended, this would be what would be referred to as a Mom and Pop nine-person operation. It's not particularly onerous.

The issues are not particularly complex - except that the whole Internet hinges on it and therefore it is the center-pin on which the whole worldwide economy depends right now. It's an interesting combination, but the corporate law under which it works I think is the least of our problems.

OLIVIER CRÉPIN-LEBLOND: Okay, thanks very much for this Alan. Any comments or questions on this? Let's go with the next issue Alan.

ALAN GREENBERG: The next issue is the PTI Board. If I can summarize, we have multiple opinions of those who believe it should be a puppet of one form or another operation, simply relying on ICANN. Curiously, people are talking about the ICANN Board making the decisions. The ICANN Board doesn't make many operational decisions now, and wants to get out of them. Why the ICANN Board would be involved in the PTI decisions just boggles my mind. I can imagine other people, operational staff, being involved in such decisions and therefore controlling the PTI Board.

I made a comment on the list saying if this Board is simply a puppet that has to follow other ones' operations, yet has fiduciary responsibility for the company, I wouldn't want to be on the Board. Jonathan came back and said, "It's not supposed to be attractive to be on the Board." Yes, it's not supposed to be attractive, but it should be something that's possible and legally viable, and not something that you're going to have to go to jail over because you're not honoring your own fiduciary responsibility, but taking someone else's instructions.

So I believe strongly that this should be a Board that has the capability of doing things properly. I personally believe that it should not be a multistakeholder board, because we don't need a multistakeholder board to arbitrate between parts of the community. It's a small operational entity, a small business, and we need to manage that business intelligently and properly. On the other hand, to be quite honest, if we put in a huge 12-person multistakeholder board, or we put in a puppet board that follows ICANN's instructions and someone at ICANN pulls the strings or moves the sock puppet, I don't really care at this point.

I can try and do it intelligently so we're proud of the outcome, but I'm not sure it really matters in the short-term. It may matter in a specific situation, but I'm willing to not die on my sword over this one, to be quite honest.

OLIVIER CRÉPIN-LEBLOND: Thanks very much for this Alan. Avri?

AVRI DORIA: This time I'm using the AC. I hope it's better. My middle name has been Hybrid all the way through this function, and I very much agree with Alan that a soft puppet board is not good. I also believe that a multistakeholder large board is as not good. What I have argued for - though I admit it hasn't gotten much traction at all - is to use a multistakeholder method, like the NomCom, to pick the one or three people that go on this board from the communities, so that it's got a

multistakeholder consideration in its formation, though it would specialize in accountants, operational people, what have you. Thanks.

OLIVIER CRÉPIN-LEBLOND: Thanks for this Avri. Alan?

ALAN GREENBERG: Since I said I'm not dying on my sword over any almost any option here, I could certainly accept that. I don't see that it makes a lot of sense, to be quite honest. I think we should be actually not picking these people out of not a random selection, but those who apply, but I think we should be identifying people who we know will have the right skills. The effective owner - whether ICANN is the owner or not under legal terms - the effective owner has a vested interest in putting the people on the board who can do the job properly.

We have objective measures through the CSC to determine whether they are doing the job properly. So I don't see the need for going through a multistakeholder process to do it. I will not object if that's where it goes, although as Avri said, that hasn't gotten a lot of traction. I can argue for something that is rationale, but the question is does anyone care enough to die on their sword on this one?

OLIVIER CRÉPIN-LEBLOND: Thanks for this. There certainly are some questions on there. I have discussed the issue with a couple of people here at the WSIS Forum - both people in the process and others who are just observing what's going on. There are many different points of view on there. Obviously

some are saying, “Open it up to the wider community out there.” And I’ve heard exactly what you’ve mentioned regarding the NomCom selecting people from outside. There is of course the issue of whether one wants to have Board Members from ICANN - ICANN Board Members on the PTI Board - or whether it wants to have ICANN staff on the PTI Board.

One suggestion that was made, that I have heard, was to have the Chief Technical Officer, David Conrad, on there, and also have Elise Gerich on this as the two ICANN staffers, because they’re technically minded, operational, et cetera, and then another three seats being occupied by people that were selected using this NomCom process. Just one of the many suggestions out there. Alan?

ALAN GREENBERG:

Thank you Olivier. Several things - Elise almost certainly has to be on the Board, not as an ICANN staffer but as a senior IANA staff person, as long as she’s in that position. It would be unusual for the effective CEO, regardless of what title we end up giving the person in the new PTI, it would be unusual for the CEO or Executive Director to not be on the Board, just as Fadi is on our Board. You can debate whether it’s a voting position or not, but not being on the Board would be highly unusual. It would also be relatively unusual to have an effective wholly owned subsidiary and not have a Board Member of the parent on the Board of the subsidiary

I don’t think one could argue against those. They are absolutely typical in any environment. Who you fill the rest of it with, whether it’s ICANN

staff members, which some people have objected to... I was arguing that makes some sense, because they are the ones who are playing that role right now, with IANA as an internal department. We could use the NomCom's suggestion that Avri has suggested. We could have the ICANN Board nominate people... There's a plethora of alternatives. I don't think it makes an awful lot of difference going forward.

It does make a difference, however, based on who does the appointment, whether they're deemed to be insider Board or outsider Board. Because if they're outsider Board that are not under the control of ICANN Board ultimately, then you have to consider accountability measures. The accountability measure may simply be the ICANN Board can pull the whole PTI Board and scrap it if it doesn't like what they're doing, but there needs to be some level of accountability in that process, because otherwise you have a Board controlled by people who could go off in different directions from what the community wants at any given moment.

That becomes the real issue - that it's a Board that cannot go rogue and do things that could damage... A Board has been known to fire half the people in a corporation, unilaterally, with no one complaining. We could not allow that to happen if those people were in fact the key people to make IANA functional. So a rogue Board is a problem that one has to consider, and therefore accountability of that Board is something that is relevant. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks for this Alan. Next we have Jean-Jacques Subrenat.

JEAN-JACQUES SUBRENAT: Thank you Olivier. I'd like to continue the points made by Alan in a slightly different way. We had an exchange of emails a few days ago, and Alan was asking me to stipulate some of the content of my remarks about how a Board would be populated in the case of PTI. Apart from the fact that I've been calling all along for a PTI Board, if possible, incorporated in a jurisdiction other than in the US, which is a separate problem I recognize - I had made the point that putting staff members on a Board was not my view, or most people's view, of proper accountability.

Now, there is a solution, and we are having this already in the ICG, for instance, of which I'm a Member. There we have two Liaisons - one from the Board, who is [unclear 01:09:57], and the other from the IANA/ICANN staff, who is Elise Gerich. These two nominations, as Liaisons, answers Alan's question very well about we do need in-house comparatives on such a Board to avoid people getting carried away with principles or whatever, and not being down to earth.

So I think this is working quite well, actually, and in this way we ensure that whatever intentions or orientations are taken by an independent Board, our effectively reflected [in the 01:10:47] discussions on the parent company, if that's the case, or whatever the relationship will be with the ICANN Board, and at the same time it makes clear to the community that the PTI Board is not under the domination or the control of the ICANN Board. Otherwise, why even bother to have a PTI Board?

My second point is about another aspect, which has been mentioned in the past few minutes, is the mode of designation of PTI Board Members. I think among the two or three formulas which have been suggested, I would prefer a Nominating Committee procedure, rather than direct nomination by the ICANN Board, or by a body which is already party to the decisions. Thanks.

OLIVIER CRÉPIN-LEBLOND: Thanks very much for this Jean-Jacques. Are there any responses to Jean-Jacques points here? Alan?

ALAN GREENBERG: No, it's not a specific response. I've put something in the chat. I don't really care if we call someone a Liaison or a non-voting Member. The net result is the same. Lots of nomenclatures can be used. At this point, anyone who chooses to participate in the CWG - and I'm not sure if you can still sign up for the mailing list now, but you certainly could until relatively recently, and maybe you still can - and you want to participate in the 12 hours of grueling meetings tomorrow and Friday, you're welcome to.

At this point, each of us on the group can passionately argue for what we believe is correct and, as Avri says, until we're blue in the face, that may or may not impact the outcome depending on what you're arguing for, and how long you can stay blue in the face before you die. But what we need to be clear on - and I think we're clear on this one - is do we need to flag this issue as something that the ALAC may well refuse to

approve? What I'm hearing is a number of voices who feel strongly about this.

I do not hear a community uprising saying that it if doesn't go their way - and I don't know which way it's going to go - if it doesn't go their way, it's something that we should be prepared to essentially not approve the report over. Again, I'm asking is that a reasonable summary of where we are? And if so, can we go onto the next item? Yes, Avri, the step typically after blue in the face is passing out, not death. Correct.

OLIVIER CRÉPIN-LEBLOND: Not death, okay. Thank you. I don't see anyone putting their hand up, so we can move onto the next item.

ALAN GREENBERG: The next item I have on my list - and the last item - and since we're approaching the hour and a half mark, that's probably good - is the issue of escalation, which we have already talked about exhaustively. I believe strongly that the GNSO or the ccNSO should not be given the privileged position of being in the escalation path - that they are stakeholders in this process, but they are not the only stakeholders.

I believe it should be the multistakeholder advisory body, or whatever we end up calling it, that should make a decision on whether to escalation or not escalate, or in fact to speak on behalf of ICANN to the PTI Board and try to convince the PTI Board of the error in their ways. Because ultimately, if we don't, we're going to start looking at a review and possibly separation. This is one that I feel we may want to stick to

our guns over, because we are essentially agreeing that we don't have to have a multistakeholder Board, or perhaps shouldn't have a multistakeholder Board.

We have agreed the CSC is not multistakeholder, and I believe in not only the exceptional circumstance of a review and separation, but in the normal process there should be a multistakeholder component, and the multistakeholder should not be limited to those who are privileged to be on the GNSO or the ccTLDs on the ccNSO. I believe it has to be a wider body, and this one I think is important. I'm not sure whether we would ultimately refuse to agree to a report, but I personally think this one is an important one. We've been arguing all along that a multistakeholder component in the overall management is important, and I think this is it. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks for this Alan. By "wider body", could you hone in a little bit on what you mean by "wider body"?

ALAN GREENBERG: Well, the accountability group has not yet defined "the body". We are talking about each AC and SO have a weighted number of votes. We are talking about the members in the unincorporated associations or the members appointed by the ACs and SOs to be the human legal persons. I think those people, the ones who essentially have the right to vote out the Board, the ones who are providing the mix of community input, which critical situations must have, should be the body, or an equivalent

body - but I don't see a reason to invent a new one - that these kinds of things go to.

I think that body is going to have to have staff associated with it, and the kind of thing we're looking at here may well need a staff component. It should not be explicitly a policy body associated with any particular type of policy within the organization. So I think its equivalent to the IFR in that - although we haven't specified its composition exactly - it is a mix of all of the communities that have an interest in IANA, will take part in a decision of whether to escalate or not.

OLIVIER CRÉPIN-LEBLOND: Thanks for this Alan. I can certainly see a red flag on the horizon if the GAC was not included in such a discussion. It's just one of these things where leaving it to the GNSO and ccNSO I believe it's a super-majority vote that would be required in those. There certainly isn't any details of how the process or the discussions would take place. It might take place according to their standard procedures, but as we know, the procedures between the CCs and the Gs are different as well.

ALAN GREENBERG: Well, right now there are no procedures. I'll also point out that right now...

OLIVIER CRÉPIN-LEBLOND: Procedures for decision, as far as voting for specific actions of the GNSO Council.

ALAN GREENBERG:

The case goes farther than that. What if the complaint doesn't come from the CSC but comes from the IETF? Right now, we are looking at managing post-transition IANA. IANA has multiple functions. How do we envision that being addressed? I know we're not supposed to be looking specifically at the other communities, but implicitly the problem may be identified by those other communities. If it's identified by the RIRs then we have the ASO, which is part of our community and shouldn't be excluded from a decision. I believe we have a strong argument for saying it's got to be more multistakeholder than the ones who buy a result of GNSO review seven years ago happen to be on the GNSO. Some of us, we know, have disagreed with how that was done.

OLIVIER CRÉPIN-LEBLOND:

Thanks for this Alan. Alberto Soto has put his hand up?

ALBERTO SOTO:

We also need to take into account that one of the conditions of the NTIA for the transition is to maintain and reinforce the multistakeholder model. What will this imply then? Well, the whole proposal, evidently the NTIA will review what the participation of the multistakeholder model is like. I believe that not only in terms of the generation of policies, but also in decision making, the multistakeholder model can actually be represented whenever necessary. We also need to consider that as well. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much for this Alberto. Alan?

ALAN GREENBERG: I'm not sure we can quote the NTIA proposal, in that it specifies a multistakeholder group to make the recommendations on how the transition will be made, but the overall philosophy we're working on in defending the multistakeholder model throughout the world, I believe it should also have an operational component, as Alberto said. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks for this Alan. Alberto, you still have your hand up? Was this for a response?

ALBERTO SOTO: I just left my hand up.

OLIVIER CRÉPIN-LEBLOND: I see also in the chat the comments from Christopher Wilkinson about trusting the GNSO for the new gTLD Program. I take it that we are going to have to touch on this, and I personally have equal concerns to the ones Alberto has expressed with regards to the multistakeholder component and aspect of this. The GNSO and ccNSO, in my view, are probably not equipped to do this at the moment - the operational component side of things - and I certainly have concerns that it might politicize the whole process.

My concern is if fewer people have the ability to put input into a process, the more likely it is that it would be politicized or used in some way. The larger the number of people that have the ability to put their input into that process, the more the input will be diluted among the larger mass and therefore you'll get a better consensus. Better might not be the word, but anyway... Alan, are these responses okay with you? I guess it's not going to be a case of, "Well, we're going to say no if we don't get this, and block the whole process and not vote for it."

But at the same time, these provide us Members in the Working Group with a song sheet as to how far we can go with this, and what direction we need to row.

ALAN GREENBERG:

A decision to block is going to be an ALAC decision at the time in BA, or whenever it actually comes to us. We're not in a position to say we will block, but this sounds like this is the only issue been identified, that we have particularly strong feelings that we really do need to see change. The decision whether we block or not is not... We can't pass judgment on. But this is clearly something which we would consider a pause. What the outcome would be, I don't know. This is the last of the multistakeholder things - the rest of which we've essentially waived, and I believe this is an important one.

I'm hearing general agreement. Again, I'm not trying to get unanimity, but I sense this is something we want to push on. I find it particularly inappropriate that we treat some stakeholders very different from others. It's not clear the Intellectual Property Committee or the ISPs -

well, the ISPs are in a special situation - but should be in a privileged position with respect to this, and not regular users. Just to fine-tune that point.

OLIVIER CRÉPIN-LEBLOND: Okay Alan. Thank you. Any other points on this? I don't see anyone putting their hand up. I think that we are pretty much set for the next couple of days and the calls in the next couple of days. We can now move onto the CCWG on Accountability. We have only half an hour left for that, but obviously the comment period for this is open. We're probably going to focus on that, but this is a process where we will have ample time in the future to be more active on. Alan?

ALAN GREENBERG: Yes, we will have more time, but we do have a public comment we have to answer, so we do need some direction and clarity at this point on that also. In my recollection - and I'm working purely out of memory - there are two substantive issues that are being discussed, that we are far from closure on. One of them is the mechanism by which we get enforceability - that is to have true enforceability, and we'll get to the question of whether we need it or not in a moment, because that's the other issue - we need, under Californian Law, to have legal entities. That could be a human being, a corporation, an unincorporated association.

They should take the role of making the decisions; of being the members or designators, for that matter, if we choose that model, and the model that's being put forward is unincorporated associations. That essentially would be a shadow organization that goes along with every AC/SO,

which the AC/SO could name people to, that would then act on their behalf in terms of any formal decisions that are taken.

The alternative that's being discussed is, instead of having this shadow body, the AC/SO simply name people to be the members or be the designators of ICANN. So in the case of ALAC, you could choose to say the Chair exercises all five votes. You could choose to say the ALT, a group that has been appointed by the ALAC to play a role in its management and is therefore implicitly trusted at some level, can be the members. Then we have regional representation. There's a number of other alternatives, and we don't need to debate which of those we'd pick right now.

There are a number of issues of alternates, in case someone can't exercise those roles. All of that will have to be covered in our detail. The question is, do we want to bypass the unincorporated association and use people directly? The upside of that is we don't have to explain to people how this unincorporated association works and how it comes into the overall governance. That's a bit thing in my mind. ICANN itself and At-Large is complex enough that there are many people around for a bunch of years who never understand it. Adding a layer of complexity makes it even more challenging.

The downside is there's a level under Californian Law of protection from actually registering as unincorporated association - a liability protection. So that's number one. And it's felt it may be easier to effect the change. It's possible that each group could be given the choice of whether it forms an unincorporated association, or has individual people named to the capacity. In terms of how we'd write our rules in At-Large, there's

not much difference whether we name them to the association, or name them as the people who can actually take the actions.

In all cases we'd have to be pretty explicit that these people can only act on direction from the community, that the removal provisions are explicitly stated with respect to them, and perhaps even that they have to come back and get approval, or ask the community before taking any action. There are a number of things we'd have to do, but they're probably the same for both of them. My current position is I think it would be simpler without the unincorporated associations.

On the other hand, the concept of not having as much liability because of it is attractive as well. I don't think this is one I want to go to the wall over. Whether we need them at all - and that's the second question - is a separate issue altogether. But in terms of if we decide we need a legal persona, which way we go, I don't have a really strong feeling. I have two different things pulling me in the two different directions, and that's where I come down right now. I'd like to hear from others however.

OLIVIER CRÉPIN-LEBLOND: Actually, you're running this part of the call. Maybe I should let you run it the full length. Sorry for that, about jumping in.

ALAN GREENBERG: I don't mind if you run the queue, but there is no queue at this point.

ALAN GREENBERG: Sébastian?

SÉBASTIAN BACHOLLET:

Thank you both, Olivier and Alan. As you know, I don't think we need to go into that direction to have whatever type of membership designator. In the current document there are three possibilities about members. We talk about designators and we talk about the current situation. In fact, we spend more time discussing the membership solution than the other, and I don't think it's fair for where we are with this Working Group. But I'd like to argue against the membership.

First of all, yes, I agree with you Alan - if we go to unincorporated association the ICANN organization is already very complex, there is more than one level of complexity, and to understand one other position of the people; where they are, why they are elected, where and what they do, what their powers are, it's becoming much more complex. My second point is that as soon as we'll do that, we'll create a new layer with difficulty if we need or want to change the conditions; to add one SO, to change one AC, to have more constituencies, and so on and so forth.

It will be much more difficult to close one unincorporated association and to open a new one at the same time in moving the things in life within ICANN. We already see it's difficult in the current situation - for example the new constituency within the GNSO, wanted to have a seat in the NomCom, and the Board needed to agree on that. It's already complex. I don't think it's a good idea.

My third point is that I would like to suggest once again that if all that we ask for as a power for the community is included in the current Bylaw by

the Board, and the Board votes for all those changes; for example that they can't be able any more after this last change to change a part of the Bylaw that's important, before asking and agreeing with the community on those changes, they will not be able to change it by themselves. And I can go along with the other proposal to give power to the community. I think if it's embedded within the Bylaw then it will work, and if it's not, yes, let's go to the solution proposed today with membership.

But if we don't need to - and I guess the Board could accept the change we suggest - it would be an easier way to go, and less costly, and quicker I guess. Thank you very much.

ALAN GREENBERG:

Thank you Sébastien. I'm going to treat that comment as a comment on the subject we haven't introduced yet, because whether we need formal, legal accountability is number two on this Agenda. This discussion was if we need formal legal accountability, and if we need a legal persona for the ALAC, do we want unincorporated associations or are we willing to have the individual people be represented? I don't think you were addressing that issue. We'll take all of what you just said under advisement, and at this point I'd like to know whether we have closure. I see Olivier's hand is up not on the issue of whether we need formal accountability, and enforceability or not, but whether if we do, what path do we use; of unincorporated association or individuals?

OLIVIER CRÉPIN-LEBLOND:

Yes, thank you very much Alan. I do have concerns about a membership system.

ALAN GREENBERG: Are you talking about the second subject also?

OLIVIER CRÉPIN-LEBLOND: I mixed the two together, so that's why.

ALAN GREENBERG: No. The first one is assuming we will have either membership or designators, do we care whether we use unincorporated associations, or name individuals or positions to carry out those powers, without the intermediary unincorporated association being created? That's the question we're looking at right now. There are others that we will be going to.

OLIVIER CRÉPIN-LEBLOND: Thank you Alan. I would certainly prefer the unincorporated association path, but having not followed the process so closely, I think the differences between the two don't appear particularly obvious, and perhaps the differences are obvious but the actual consequences of those differences are not particularly obvious.

ALAN GREENBERG: Until a week ago we weren't discussing any option to unincorporated associations. The option was introduced initially by me, and then separately by Bruce Tonkin. The differences effectively are, in the case of unincorporated association... Now, if the individual people, as Avri

said, the RALO Chairs, or the ALT, or the ALAC Chair carrying all the votes, are the members or designators for ICANN, they implicitly, under Californian Law, are freed from liability, but anyone can sue anyone.

If we have an unincorporated association, there's an extra level of protection in that members of an unincorporated association are, under Californian Law, at some level, freed from liability of decisions of the unincorporated association. So the unincorporated association has an extra level of liability protection, but has the complexity of having to explain it. Now, there was a long discussion on the Accountability Meeting yesterday that it's not really hard to form an association, and one of the Co Chairs was going to go ahead and do it, just to demonstrate how easy it could be, and to pay the \$10 to do it. That's not the issue. The issue is not how complex it is to do. The issue is how complex it is to explain to people later.

So the pro and con are complexity, versus an extra level of protection. At least, that's what our lawyers have told us so far.

OLIVIER CRÉPIN-LEBLOND: Thanks for this explanation Alan. I am concerned about personal liability when it comes down to these issues. Certainly in ICANN everyone acting in ICANN processes, as such, that involve a matter of official action in some way - so I've been told by the General Council - is covered in general by the ICANN liability insurance. In order to have a level playing field between participants that are sponsored by their companies, and other participants such as end users, who are not sponsored but are

actually volunteers - and there is a difference between a participant and a volunteer.

But the volunteers are not actually on any payroll, or don't hold any official paid or unpaid position, as such, on behalf of another organization, I would say having the matter into an unincorporated association would level the playing field for everyone to be covered. Whilst I do have concerns if some are not covered, and are basically liable personally, and others would be covered by their company.

ALAN GREENBERG:

May I intervene? All of the statements, mine and Bruce's, have the added caveat, which I didn't mention here for lack of going into details. Regardless of whether they're unincorporated associations or individuals, ICANN has to formally extend liability coverage. Right now, as you said, it might be implied that if you're acting on behalf of ICANN and following rules, you are covered. But according to the bylaws, the directors' insurance covers directors. ICANN has said that ICANN as an organization is not indemnifying anyone else. When push comes to shove, they might, but it's not guaranteed.

In any of these scenarios we would have to get formal indemnification, regardless of which of the paths we take. That's my opinion, and has been stated by a number of other people. Sébastien, is that a new hand up?

SÉBASTIAN BACHOLLET:

Yes, it is.

ALAN GREENBERG: Then please go ahead, if you have some wisdom on unincorporated association versus individuals. Please go ahead.

SÉBASTIAN BACHOLLET: I guess in my first answer it was included, but I want to be more precise. I think the lighter it is, the better it will be, if that's the choice, and therefore I'm not going for having an unincorporated association. If I can add, if we are going to unincorporated association then we have to think about the possibility to do that at the regional level and not at the global level at once. That's my input for this question now. Thank you.

ALAN GREENBERG: I think it would be difficult to do it below the level of AC or SO, but I'll refrain from comment because I really don't know that. What I'm hearing is Olivier said he has a somewhat preference to unincorporated associations. Sébastien has said he has a preference to individuals. I said I'm wavering because I haven't really balanced the two, and nobody else has given a strong feeling one way or another. If I've missed someone, please speak up. Otherwise we'll take that as the direction going forward. Not hearing or seeing anyone, okay. The next item is again, if...

OLIVIER CRÉPIN-LEBLOND: Sorry for jumping in. You said that I favor one direction and Sébastien favors another direction and you're not favoring any direction. Does that mean there's no consensus yet on this?

ALAN GREENBERG: And no one else has chosen to say anything. I think that there's no strong direction.

OLIVIER CRÉPIN-LEBLOND: Thanks.

ALAN GREENBERG: I haven't heard that this is a go-to-the-wall situation.

OLIVIER CRÉPIN-LEBLOND: Definitely not for me. Yes, that's fine.

ALAN GREENBERG: Next Item is again, if we need to have a legal persona, do we want members versus designators? The difference is that either of them can retract Board Members. Only members can essentially veto a Bylaw or a budget approval. Members have the right to overrule the Board. They essentially take on the fiduciary responsibility of the Board. Designators are designated by the Board effectively to take on some decisions that the Board will make.

One of the things the Board cannot delegate is fiduciary responsibility. So for instance, changing or approving of Bylaws, approving budgets, and a number of other decisions like that, are not powers that could be given to designators. They are powers that could be given to Board Members. If we choose designators then essentially what we are ending

up with is all of the empowerment things we're talking about on the majority of them, we cannot legally enforce them - as Sébastien's pointed out. That doesn't mean we can't talk about it and come to closure, but we do not have the ultimate clout.

So the only remedy we have, if we have a defiant Board, is ultimately to remove either the entire Board or the Board Members, but we have no granularity below removing Board Members to address a specific problem such as a budget. This question is, if we're going to have either the legal persona - either individuals or unincorporated associations - how important is it that we can granularly tell the Board not to approve a budget, as opposed to sending them a message saying, "We don't like it," but the only remedial action we have is to actually after the fact remove Board Members?

I personally think if we're going to go to designators we may as well go to members. It does change the characteristics of the organization into a membership organization from a Board-driven one, and that changes the character of ICANN at some level. I'm not sure it really makes a big difference, since the members are effectively the representatives of the component parts of ICANN. But I guess I find removing Board Members as too much of a huge hammer when all we're trying to do is say, "We don't like your budget," for instance.

I have a slight preference to members. It's not a large preference, but I'm a little worried about changing the characteristic of the organization, but my personal one is a slight preference. Again, it's not a go-to-the-wall issue, and I will say that within the CCWG overall I think there's a very strong preference for membership versus designators. That's my

reading of it. I'm not sure that's accurate, but the public comment will give us some indication of that. All right, I'll open the floor. Christopher asks in the chat, "Who are going to be the members?"

The members are effectively the ACs and SOs, in a weight proportional to what's being decided - and there's a number of different models on the floor. It will likely either be five members for the SOs and the GAC and the ALAC, and two for the other ACs, or five across the Board of the two models that are most likely to be selected among those. The people who are either named to the unincorporated association or are named as individuals are the members. Any strong feelings? We have Sébastien on membership versus designator. If we're picking one of those, the question is not whether we need it at all, but which way do we go. Sébastien?

SÉBASTIAN BACHOLLET:

I guess this time I agree with both your feeling and your summary. I have the impression that the group, the current CCWG on Accountability is more willing to go to membership. My problem with this group is that we're very, very pushed by the lawyers - not just people who are a professional lawyer within the group, or within the participants, but also by the two legal firms who are supposed to advise us, but who are pushing in one direction more than the other. I have no strong feeling about what to do.

As you say, membership will change [unclear 01:50:41], and I am not sure whether that's for the better. Designator, it will be an interesting

mix if they are designated by the Board and not by the community. It will be a strange way to go. But yes, that's my input. Thank you Alan.

ALAN GREENBERG:

Thank you Sébastien. Just for clarity - when I say "designated by the Board", it is the responsibility of the Board, which is transferred to the designators who are picked by other people. So the designators are not selected by the Board, but the designators that exist as a concept, their responsibility is transferred to them by the Board. It's a really funny construct. So they're not named by the Board, but they're given responsibility by the Board. So it is indeed a rather funny concept.

I'm seeing a couple of things, people saying they have a preference to members. As I said, I think the chances of changing the CWG on this are rather moot, are rather far-fetched. But nevertheless, if there was a very strong push here for designators, we could certainly try. I'm not seeing it. To be honest, although the unincorporated associations add a level of complexity, the new word, "designator," which no one understands at all, will add an even larger level of complexity, I think, and confusion to people. I suspect if we're going to go the legal entity route, it's going to be members, not designators. I don't think I'm hearing a great objection here.

Seeing nothing, hearing nothing. Sébastien also made an interesting comment saying we're being led by the lawyers that we have contracted with. By the way, for those that haven't been watching, at this point the bill for the two groups combined is something over \$1.5 million - \$1 million on the Accountability Group and \$500,000 on the CWG, and

rising, which is about what some of us estimated. I think that what Sébastien said is very true - we are being led to some extent by the lawyers, and lawyers have a tendency to want to see things that are enforceable and that you can go to court over.

We have been repeatedly told that we're not likely to go to court, but if you want to be able to say, "You must do something, Board," you also have the right to go to court. I think I did get tentative agreement from the group yesterday that although any member, for instance, can individually sue ICANN once they're a member, that we put a provision in place that we couldn't go to court over the accountability measures unless there was widespread agreement. So one single AC or SO or one member could not force a court case on a substantive accountability issue, and therefore something that could end up with the courts interpreting ICANN's mission in a legally binding way.

I think that may soften the whole thing and make it more acceptable to those who had a real problem. What I'm hearing is there's not a lot of strong feeling for designators, and it's probably moving against the tide in any case, if we were to try to push for that. But most people seem as comfortable with members as we are with any of this. Am I misreading anything? Sébastien, do you want to speak?

SÉBASTIAN BACHOLLET:

I agree with you Alan. I think in explaining what we are doing, members is a word that's understandable in every place in the world. Designator is something that could be difficult to understand, to explain. Even if I would like to have the duty of a designator, not member, I think it would

not be easy to speak about. Let's go to member, if we have to go to member.

ALAN GREENBERG:

Okay. I think we're all agreeing on that. Therefore we have two minutes left, and one very substantive issue. I can stay a little bit longer. I'm not sure if our interpreters can, or other people can, but I can't make it very much longer. The last issue we have is the one Sébastien already spoke at length on, and that is do we need enforceability? There are some people in the community - and I must admit, I tend to agree with them - that yes, the Board right now could have changed the Bylaws unilaterally to say none of the ACs and SOs have Board Members, for instance, but the Board will self-perpetuate itself and each Board will pick its successor.

I'm giving the most extreme example of what the Board could have done. We've never had a Board do that. There was a change in 2002 to move from individual membership, where the individual people around the world selected a significant number of the Board Members and moved to the NomCom model, which was vehemently objected to by the then At-Large community - a very different At-Large community than it is today. But I suspect if we had the proposed accountability measures in place, that motion would have gone through, because the vast majority of the other parts of ICANN supported it.

There were other changes that were done at the same time - the DNSO changing to the GNSO and ccNSO and a number of things like that. So it's not clear that we have ever had a Board so radical that it has done

something completely opposed to the community. When the Board imposed remunerations there were some of us - I was among them - that objected to it. But the vast majority of the community supported it. So in every case we have typically had Boards that did not go against the vast majority of the community. They went against individual parts of the community.

So it's not clear that a Board ever has really gone against the community in a major way where the community was unified or close to unified. Therefore there is a strong case to be made that if we continued with that - if we put some new Bylaws in that said the Board could not do things without the approval of the community, they could, because the community might not have standing to go to court over it. But the chances of the Board actually doing that is pretty small - at least based on past history and based on how we select Board Members.

But there are strong parts of the CCWG who feel adamant that we need accountability against a truly rogue Board. In fact, the NTIA has said they want to see accountability against the Board that the members have lost faith in; that is simply working at odds with the community. Again, this is an issue where it's not clear we're likely to change the CCWG on, but should we be trying? I personally believe that if we put in place the processes that we want, but which are not ultimately accountable, we would work just fine.

Chris Disspain, representing auDA, not as a Board Member, has strongly supported that. I'm sure a large number of Board Members would support that - one could interpret either because of their own personal feelings, or because they are simply defending the power of the Board.

Regardless, there would probably be support for that. It's not clear there's a lot of support in the community, and I'm getting the feeling that all of the Board does not want to see full accountability and membership, that they're probably willing to accept it. It will change the nature of ICANN to some extent.

The question for this group is - and I see some hands up already - how do you feel? Number one. Would you prefer the trust model? Right now the Board does not have the trust of the community, but they don't have the distrust in a major sense either, in that there's no evidence they've ever done anything major against the overall community. Or, do we accept the fact that the path has been designated - excuse the express - and we simply have to make sure the implementation is as good as possible? I open the floor to Sébastien and then Jean-Jacques. I note we're three minutes over time right now, and we really can't go too much over, so please try to be concise.

SÉBASTIAN BACHOLLET:

Thank you Alan. I agree with you that there is a question of trust. I just want to remind you that each community selects five new Board Members. That means that at any given time, if we want to fire the whole Board, we just have elected five of them, and I feel very strange about that, because the problem will not arise like that, it will take time. If we are really worrying, the community can change the way they select the people for the Board.

My second point is that if we ask to include some of our requests about the budget or other within the Bylaw now, and that it must be followed

by the Board, I don't see why we need to stand up to the court. If we have to stand up to the court, from my point of view, ICANN is dead. Thank you.

ALAN GREENBERG: I think you're agreeing with me - that you'd prefer to go on a trust model, because although there is not enforceability you have a warm feeling in your stomach that in most or all cases the community would be heard?

SÉBASTIAN BACHOLLET: Yes.

ALAN GREENBERG: Jean-Jacques, go ahead, and then we have Olivier. As we're speaking, please indicate whether this is something that you think the ALAC should ultimately veto if we don't get our way, or not. Jean-Jacques has put his hand down. Olivier, you're up then.

SÉBASTIAN BACHOLLET: I guess he's trying to speak but he's muted, Alan.

JEAN-JACQUES SUBRENAT: Thanks. I was about to say that this has really been the question on the Board itself for years and years, because many of us on the Board, to feel that we should have not only the nuclear option - or that the community should dispose of a nuclear option of dismissing the whole

Board - but that there should be a variety of steps, an escalation process, without only having the nuclear option.

So my answer to your specific question, Alan, is that I'm not a Member of the ALAC, but as a former Member I would say I'd especially like to see a system of trust, but in which there is the ultimate option of dismissing the whole Board, but also measures in-between doing nothing and dismissing the whole Board. Thanks.

ALAN GREENBERG:

I think what you're saying is you're supporting the legal enforceability requirement? Because ultimately, without that we can't even dismiss Members of the Board - they could refuse to stand down. By the way, the nuclear option of rejecting the whole Board I find anathema of objectionable at several levels. There's a good chance that on any given controversial decision not everyone on the Board agrees on it, and therefore the critical thing would be to remove the people who are opposing the community, and leave enough Board to keep on managing ICANN without having to constitute a Board, and therefore an interim Board.

So I feel very strongly that we need the mechanism of selectively removing people. But that's not the discussion today. But Jean-Jacques, I think what you're saying is that ultimately, if we want to be able to enforce that in the extreme, then we do need legal enforceability.

JEAN-JACQUES SUBRENAT: Yes, I confirm.

ALAN GREENBERG: Okay. Thank you. Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you Alan. I would be intent on being inclined to think that having a trust model, a case where there is trust involved, would obviously be the ideal way forward, without starting to bring all of this legal liability in, et cetera. The concern I do have though is that there has been - I can't say occasions - but I certainly have lived through some moments when the Board did take an action that the ALAC felt was not the right action to take, and not because it was just waking up in the morning and feeling, "We are going to object to this action being taken," but because we felt that there were still significant concerns and things had to be fixed before things were going to be launched.

That decision was not a small decision. It was the actual start of the new gTLD process - saying, "Well, the Applicant Guidebook is ready, let's proceed forward." The ALAC was on record just three months earlier saying, "At the moment there are so many problems, this is simply not acceptable." This caused all sorts of headaches. If at the time the ALAC had had the ability to go down the route of recalling Board Members and things like that, things might have been a little bit different, because Board Members would have probably listened more to the community at the time.

That's just one example. I hope that things have improved since. But until we have an ICANN that you really believe is going to act in the

public interest, I'm afraid we're going to have to remain probably with this legal side. Sorry about the music in the background.

ALAN GREENBERG: It's the encouragement for you to be concise, Olivier.

OLIVIER CRÉPIN-LEBLOND: There you go. Very enjoyable, thank you.

ALAN GREENBERG: Okay.

OLIVIER CRÉPIN-LEBLOND: It is tango, might I add, which puts us into the mood of going over to BA.

ALAN GREENBERG: Thank you. I guess I have to comment on that, Olivier. When the vote on the New gTLD Program was taken, my recollection is that there was only one dissenting vote. Everyone else, including the At-Large appointed Member supported it, and when the motion was passed there was enormous cheering in the audience, including some At-Large Members, I'll note. So yes, the ALAC or parts of the ALAC may have felt that it was not appropriate, but there's no way that the current accountability measures would have changed anything. I think there's a note of caution.

I personally have said that I cannot imagine our accountability measures almost ever being used, because it's very rare that all of the ACs and SOs, or even most of them, get together and agree on something - enough to actually take action on it. So one has to look at that. So I'm sensing - and see Sébastien's hand is up, but let me try to summarize first - I'm sensing a general tone that there's some division. There are some people who would prefer a trust model, but not enough to veto the report over it, because the likelihood is we're not going to move to a trust model at this point.

That doesn't mean we should stop arguing for it, but I think the outcome is probably pre-destined at this point. Yes, we should try to move to the trust model, but if we don't we will accept the enforceability model, and therefore the discussions we've had in our earlier points are relevant. Sébastien?

SÉBASTIAN BACHOLLET:

It was just to say one word about the thought about the New gTLDs, as I was one appointed by At-Large, and I voted for. I just want to remind you that I explained my vote, and it was not the full yes, but as George said no with an explanation, I said yes with a lot of caveats, but I think it was the best way to go. But I can understand that people disagree with that. Thank you. I really feel that the trust model will be better. We must trust each other, even if we disagree sometimes. Thank you.

ALAN GREENBERG:

Thank you. Sébastien, I didn't raise the issue of your vote as casting aspersions. As I pointed out, there were a significant number of At-

Large participants, including ALAC Members at the time, who supported the new program being released. There was a very divided community, and moreover, if you look at the issues that have proven to be a problem since then, none of them were on the table for resolution at the time the decision was made.

So all of the problems that were raised by the GAC on sensitive TLDs, on high confidence TLDs, on string confusion, on the community criteria being too stringent that virtually no one would pass it - all of those issues that have since proven to be real problems were not on the table for resolution at the time. So it's not clear that another year or two would have changed the situation. It wasn't until we actually started going through the process that the problems arose. But in any case, the vast majority of the ICANN community supported going forward at that point, so the accountability measures we're talking about would not have been effective, and it's important to remember that.

In any case, are people happy with the summary? That is that yes, many of us would prefer the trust model. There is some recognition it won't likely to forward, and in that case we'll likely be supportive of the end product anyway. Is that a reasonable summary? Again, I'm looking for opposition. I'm one of the ones who prefer the trust model, so I'm not accepting what may be reality easily, but I think that is probably where we're going. I did see a number of people in the chat who spoke who said yes, they would prefer enforceability.

So again, it's not a position that we are unanimous on. All right. I think we're done. Thank you all.

OLIVIER CRÉPIN-LEBLOND: Thanks very much Alan. We still have Any Other Business, and there's one item of Any Other Business I wanted to tell you about. That's the WSIS Forum Session that will take place tomorrow, about the multistakeholder process in the NTIA stewardship transition. There is a link to the session that's appearing in the AC chat right now. There's also going to be a presentation that will be done. We're looking only at the process. This is a workshop that's being prepared by the CCWG on Internet Governance. The presentation slides, which are hot off the press, and we were speaking about in the past ten minutes or so, are available here and you'll be able to see what we will be talking about.

We will have representatives from the CRISP - that's the RIR community - and also from the IANA Plan Working Group - that's the IETF -, plus of course people from the ICG, who are all present here in Geneva at WSIS Forum. With this, any other Other Business? Next week, Doodle. One more thing we need to check. Another two-hour call?

ALAN GREENBERG: Yes. Olivier, before you hang up, I'll just note my last comment. Avri has said she prefers the trust model as well, but agrees with my overall assessment. I have to wonder what percentage of the CCWG does prefer the trust model but is willing to go ahead with the group thing? It's an interesting question that maybe needs to be raised on the call. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks Alan. Good point, and with all of these issues of course we can follow up on the email. Next week's call, Doodle as usual? Or are we using rotation? What are the suggestions here?

ALAN GREENBERG: No one has a strong opinion? Olivier, your call, you decide. We'll trust you.

OLIVIER CRÉPIN-LEBLOND: We'll do a Doodle for the earlier part of the week - Monday, Tuesday, Wednesday. Thursday, Friday, I am at the EURODIG in Sofia and likely to be particularly busy there. I note that the earlier part of the week, maybe Monday, Tuesday, Wednesday. Are you okay with that? We'll have a Doodle for that. We are Wednesday today, so we have a chance on having a Doodle. We'll close by the end of this week. With this, I'd like to thank everyone for this long call but very productive indeed, and to hopefully see you tomorrow as remote participants for this WSIS Forum Session.

Thank you very much. Thanks to both of our interpreters, Veronica and David. They've given us added amount of time today for this call. Good morning, good afternoon, good night. Goodbye. Bye-bye. Call adjourned.

[END OF TRANSCRIPTION]