MATHIEU WEILL:	Okay, it's being recorded. Thank you very much Josh. My name is Mathieu Weill, I'm the chief executive of AFINIC, the ccTLD for [inaudible] in France, and I'm one of the three co-chairs of the cross community working group accountability.
	Welcome to this webinar of introduction of our initial draft proposals, which have been published for public comment on May the 4th, 2015. I'd like to emphasize that this webinar, we're here to listen to you, however we have a significant amount of substance to share, obviously. So we will try and be swift, probably go fast through some items. Please bear with us and ask any question you have.
	It is extremely important for us to listen to what you feel about the proposals we're sharing now, and that obviously it is clear what we are trying to achieve. I'd like to stress as well that the proposal for public comment are not consensus recommendations yet. However, we are asking the community to provide guidance on those various items.
	And aside from the slides that are, you have a link in the notes that is providing reference to the slides, you can also find, obviously, the public comment announcement, a draft report, and I encourage you to read it, as well as graphics which are mainly in the slides, but some additional ones are also available.
	Can we get to the next slide please?
	Thank you. So as a reminder, the cross community working group accountability is one of the groups stemming from the IANA

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

stewardship process. I won't go into much detail here, just to say that obviously we have a link very close with the CWG stewardship for the naming part of the stewardship transition. And of course that the proposal of the accountability group once finalized, will move to the, approved by the chartering organizations, then the Board, and then will be forwarded in one single package with the ICG proposal to the NTIA.

Can we move to the next slide please?

And second reminder, as an introduction, that the CCWG accountability scope is focused on enhancing ICANN's accountability, ICANN's accountability to all stakeholders, and there are two work streams. Work stream number one is our core focus at this point, and it is focused on mechanisms that enhance ICANN's accountability that must be in place or committed to within the timeframe of the IANA stewardship transition, and work stream two, items will be in place after this transition takes place.

So this is an important distinction, and you'll see the initial proposals are very much focused on work stream one, but we start referring to work stream two as well.

Next slide please.

The CCWG accountability is quite a large group. You see they have, there are 154 participants, a number of regions, I've stopped counting, [inaudible] changes, and the working hours as well. But I see more important on this slide is the understanding that our work has proceeded with checking the status quo, analyzing the current status of accountability within ICANN, and also all the various inputs from the

community that was asking for enhancements to ICANN's accountability.

And it is on that basis that we have built our work, which is leading to a certain number of recommendations that will move forward in a minute. In terms of organizing this call, we have agreed with, to share the burden of presentations between the three co-chairs: myself, Thomas Rickert, León Sanchez. For those, the [reporters] of our working parties, who have been tremendously productive at working at the recommendations, and so we will present a few slides each, then pause for questions to ensure that there is understanding on the slides, so we will be taking questions.

And we will try and keep an open slot at the end of this webinar for a discussion on the whole concept and more general discussions can be taken later on. And of course, as usual, for these kind of calls, if you are on the phone and please mute your mic when you're not speaking, and we will try and use Adobe to manage the queue of questions during this call.

And with that, I am closing this very short introductory remarks, and would like to check whether there are any questions about how the call is going to be organized, or the scope of the group.

I am seeing none so far. And so without further ado, I would like to handover to Thomas Rickert for the next slot of the presentation. Thomas?

EN

THOMAS RICKERT: Thank you very much Mathieu. And welcome everybody. My name is Thomas Rickert.   I'm the GNSO appointed co-chair to the cross community working group, and I'm working with [inaudible], which is an Internet industry [inaudible] based in Germany, which has more than 800 members from over 60 countries.

And I would like to give you a little bit of background of what we did, and in order to do so, I would like to have the next slide please, which is on the screen now.   Now, I will briefly you to the accountability architecture that our group has been working on over the last couple of months. And when we started our work, we saw that there was quite a bit to build our work on in ICANN.

So what we did was, to create an inventory of ICANN's existing accountability mechanisms, to ensure that we do not reinvent the wheel, and that we preferably use mechanisms that are already in place, and only enhance those to fit for our purposes when discussing enhanced accountability. Also, we've been listening to you, to the community, by going through the outcome of a public comment period that was held by ICANN.

Following the announcement by the US government last year in March. So we looked at what request the community had, what areas of improvement the community had already identified, and then analyzed that in order to determine what we would need in order to provide for a better accountability architecture.   And our group came to the conclusion, and you will find this during the next couple of slides, as well during our talk as well, that we could build all we need from four building blocks which you see on the slide.

EN

We also looked at role models for accountability architecture, to provide for the additional powers for checks and balances. And we thought that it would be a good idea to use an analogy of a state, where you have the people, the legislative, which would be the ICANN community, and that you find on the upper left section of the slide.

Then you would have the ICANN Board, which would be the executive in a state, would have ICANN's principles or mission, which are enshrined in the bylaws, which would be analogous to a constitution. And we would have the judiciary, which would be an independent review mechanism. So, you know, these four building blocks you know, and we thought that by arranging those building blocks, we would be able to provide for all accountability mechanisms and powers that we need in order to improve ICANN's accountability. Next slide please.

Now you might say that, even if we come up with accountability mechanisms, and even if we think of new ways to empower the community, who ensures that the ICANN Board will not revert them a few months after we've done all of this? So we needed to think of ways to perpetuate the ideas and principles in order to ensure that these are not reversed subsequently.

So we came up with the idea of so-called fundamental bylaws, which would be bylaws that can't easily be changed. So you need a very high voting threshold to change fundamental bylaws. And that is what's needed to give, number one, the ICANN community the flexibility to shape the organization, to change if needed, because we're working in a dynamic environment. But secondly, it makes the bylaws robust enough so that they can't be easily changed.

EN

You will see in a moment that we have established two different sets of bylaws. We will have normal bylaws, where ICANN Board would just need to make its own decision, and then the community would have the opportunity to veto those changes. But for fundamental bylaws, in case they shall be changed, the community will need to explicitly approve those bylaw changes.

And by doing so, we think we have established a robust system that prevents the ICANN Board from changing those very, very fundamental ideas. Next slide please.

So we just learned that we're going to have fundamental bylaws, and these fundamental bylaws would be the ICANN mission, and its core values, it would be the existence of an independent review panel, it would be certain regular reviews such as the review requested by the CWG on the IANA functions. It would be the right to prove and veto certain bylaw changes, as well as the opportunity for the community to record the Board and individual directors.

But these powers all need to have a mechanism behind them. So there needs to be a procedure that needs to be invoked in order to exercise certain powers. And this is why we came up with number one, a list of community powers that we thought would be inevitably needed at the outset of working on the accountability architecture. And then we would need to spell the niceties of each of those mechanisms.

So as you well remember, we make a distinction between work stream one and work stream two. Work stream one being those accountability mechanisms that either need to be implemented, or committed to prior

EN

to the transition. And with the powers that I'm going to enumerate to you in a moment, we think the community has all the powers at its fingertips, in order to shape the organization according to its wishes.

And the community powers are, number one, the possibility to reconsider or reject budget strategic plans and operating plans. The possibility to reconsider or reject changes to ICANN's standard bylaws. The possibility to improve changes to fundamental bylaws. The possibility to remove individual directors. And finally, to record the entire ICANN Board.

Now we will hear about each of those mechanisms in a moment, but then the question remains as to what the [inaudible] vehicle for empowering the community would be, and we're going to hear that after we've heard about the individual mechanisms. And so before moving to our [inaudible] Jordon Carter, I would like to pause for a moment and hear whether there are any questions on this.

I don't hear any, nor do I see hands raised in the chat. And with that, I would like to hand it over to Jordan Carter.

Jordan you might be muted.

MATHIEU WEILL: Thomas, I think we don't have Jordan on the call.

THOMAS RICKERT: I would suggest that we then skip the community part for a moment. Let León discuss the legal mechanisms, and see whether we can get

EN

Jordan back on the call to do his part. In the absence of that, somebody else can present that part. So León, if you're ready to go, maybe we can move to the respective slide and have León speak to the legal implementation that we're suggesting for enabling the community to exercise the powers that I have briefly outlined.

LEÓN SANCHEZ: Thank you very much Thomas. Yes, I am ready. And let's hope that we have Jordan back soon. And the powers that Jordan is about to describe on his slides, need a legal [inaudible] in order to, for the community to enforce the different rights and achieve the different goals that we are proposing in this scheme.

So in order to have these different powers, or enforceable by the community, we need to have, as I said, a legal [vehicle]. This legal [vehicle] can be either a membership model or a designator model. So the different SOs and ACs would be able, not be required to form unincorporated association under California law, in order to become members of ICANN in this structure.

And one thing that I would like to clarify is that when I say that all SOs and ACs may, but are not required, that means exactly that. And what I mean by that is that while each SO and AC could, in fact, form an unincorporated association, it would not be a requirement to continue to act within the ICANN structure. However, there would be the need to either form an unincorporated association, or any other kind of legal entity, in order for those choosing not to form an unincorporated

EN

association, to enforce their rights and to carry out the powers that we are trying to provide the community with.

So how would this work? This would work in the sense that, essentially those SOs and ACs that currently designate directors to the Board, would be best if they conform or they formed these unincorporated associations. What are the requirements for forming an unincorporated association? Well, the requirements are really easy. They do not require any complex formulas or any complex arrangements.

It is as easy as filing an application with the Department of State in California, as far as I understand. And of course, the way in which these unincorporated associations would work, would be left to the will of each and any SO and AC that would decide to form this unincorporated association. So we have a very free and flexible scheme for those who choose to, in fact, form an unincorporated association. That would in turn, provide membership within this model, and would enable those members, now members of the community, to enforce their rights and of course, to vote within the different mechanisms that Jordon is going to describe a little bit later.

So when we have some kind of requirement or need to trigger any mechanisms, each SO or AC would set up an addition to action, then we would see, by we I mean the community council, would check to see if the position meets the required threshold. If that is true, then voting will be conducted, and if the voting threshold for that voting gets met, then there would be a follow through and create this position.

EN

This mechanism would essentially be based on 29 votes, with the different distribution that you can see on your screen. And of course, those who chose not to form an unincorporated association, or any other legal entity, would be left out of this voting capabilities. So I would now like to turn to the next slide.

I'm sorry. So what are the unincorporated associations? As I was trying to explain before, the unincorporated association is just legal vehicle, so the community can have legal personality, required to be a member, in this new structure. And in this way if they formed an unincorporated association, it would be able to carry, to exercise the power and enforce the right that we're trying to provide them with. And one thing that is very important to state is that, by forming unincorporated association, this doesn't mean that the whole SO or AC would be the unincorporated association, but rather they can have, maybe, a set of two delegates that would be designated to form this unincorporated association.

And then, within their governance structure, they could set the conditions, so any action that the unincorporated association takes with regards to representing their associates, would be linked to, of course, the will of the larger SO or AC. But the practicality is that we all need two delegates with the function, I mean, two at least, but of course, the SO and AC would be able to set a higher number of delegates.

So this would imply no change to the individual ICANN volunteer. There would be no need for individuals, or [inaudible] to change the ways they actually interact within the ICANN community. The only thing is that they would have another layer of protection against liability. Because, of course, in any case only the unincorporated association could be

liable, but individual members would not be liable for the acts of the unincorporated association.

And this is the way that members could exercise the different powers, and of course, the different rights that we are trying to provide the community with in this proposal. So, I think that we can open the floor for questions with regards to this legal structure. I see that Steve Metalitz has a question. Would the persons be addressing the allocation of votes [inaudible] threshold and the current threshold shown on previous slide?

Yes, Steve. This question will be answered, of course, when we go through the different mechanisms, as soon as we have Jordan for presenting the slides. And just another point to clarify, the structure of unincorporated associations and the way that the different members of the community could enforce their rights and exercise their powers that we are proposing.

The unincorporated association is, so far, one of the many structures, or the many models, that we have been discussing. And the reason for it to be in the proposal is because, according to legal advice, it is the easiest way and less burdensome way to be able to provide the community with an enforceable set of powers and rights. And there, of course, other ways that could be implemented, but these other ways would be more complex, and would require a higher…

Well I think more work and more arrangements to be made in the different structure within ICANN. So I see another question here. As the provision for changes in the makeup of the participants SO AC

EN

organization, are there any qualifying requirements for general governance of SO ACs?

Well requirements are left to each SO AC, so they decide to in fact form any unincorporated association. This is one of the benefits that we see in this model, that all the requirements and all of the qualifications, etc. would be set by each SO and AC. So it would be pretty much respecting the way that each SO and AC works. And this, of course, would favor the bottom up process that we carry in ICANN.

I don't know if there is any other questions. I don't see any other hands up so far. Well, what would happen if any SO or AC should decide not to form an unincorporated association or to form any other kind of legal entity to serve as the legal personhood in order to exercise their powers? Well, they would, of course, be left out of these powers and the different mechanisms we are proposing.

And it's, of course, very important that each member, or each SO or AC, considers, of course, either fully an unincorporated association, or any other kind of legal entity that could be a member of this structure. So I don't see any other questions at this point, nor in the chat or any hands up. So I would like to turn it back to Mathieu, or if we have Jordan already back in the call. Can we have Jordan back?

MATHIEU WEILL: Thank you León. This is Mathieu Weill speaking, one of the three co-chairs. Jordan is missing so far. He probably has another engagement, so I will take you through the various powers. And I think that will lead to addressing Steve Metalitz's questions.

EN

So Thomas already introduced the various powers. I will describe, quickly, how each of them works. Can we go to the next slide please? So number one is the power to reconsider/reject the budget, or strategy plan, or an operating plan. And you see on the slide how it works.

There is the regular consultation process that takes place with the community, and it ends with, it goes to the Board for approval of, for instance, the strategic plan. And in case a SO or AC would object to the approved budget or strategic plan, it can bring the objection to the empowered community mechanism, would in turn, make a decision by a vote. And I will go to the members a little bit later.

And in case the decisions threshold is met, then the Board would be directed to reconsider the budget. So that's the main process, which would take place pretty fast. We are considering a 15 days period for objection, after the approval of the budget plan, because obviously, you don't want to be adding extra delays to the budget or strategic plan process.

The voting of the broader community would be, and that's the circle on the bottom right of the slide, would be shared among SOs and ACs, and what you see here is basically the reference option. And there are other options in the group being discussed, but this is the reference option, which involves five votes for each of the supporting organizations, five votes for At-Large, five votes for the GAC, two votes for ISOC and SSAC, basically because those two committees are appointed directly by the Board, and therefore can be felt as having a different status from the other groups.

EN

So among the 29 members of these group, in this reference option, on the first objection over specific strategic plan, for instance, you would require 66% of the votes to meet the decision threshold. And it was going for a second round of objection on the same strategic plan, then you would need a 75% vote. So that's the kind of process we're speaking about in terms of the consideration and reject the budget or strategic plans.

If we go to the next slide. So the second power is the reconsider, reject changes to ICANN bylaws. So this is a very similar process. So this very similar process described here. I won't go on to all the details, but that's basically for bylaws that are not fundamental, and where a SO or AC would have the ability to object before the bylaw was actually coming into force.

And there would be a threshold for rejection, I think [inaudible] on the slide here, which we'll have to address because it's mentioning budget as well. So if we go to the next slide, it's basically the same process, same kind of process. Next slide is the approval of changes to the fundamental bylaws. So the fundamental bylaws as described by Thomas Rickert earlier, are those bylaws that are, meets specific protection.

So instead of the ability for a SO or AC to object to the change in the fundamental bylaw, this time will have to present the change of fundamental bylaws to the community group. I've been describing earlier. And they would have to be a positive vote of 75% in favor for the fundamental bylaw change to come into force. And until this is met, no change is made.

So that's an important distinction.   Next power is the removal of individual Board directors. So this slide is about Board directors that are appointed by supporting organizations, or advisory committees.   So basically the idea here is that the appointing body would be handing a process that could lead to the removal of their own directors. There are still a number of parameters here open for comments and guidance.

There is discussion within the group how to best achieve that. There will probably be a petitioning side of the supporting organization or advisory committee. And a voting by the relevant authorities in the SO or AC with a threshold that is yet to be determined, that would lead the removal and the launch, or reappointment process. So that's the SO AC removal.

If we move to the next slide. So the second slide, this slide here, is about to removal of individual Board of directors. In the case that these directors are appointed by the NomCom. So the overall process here would be in case at least two SO or ACs petition against a specific individual director, the NomCom itself, or a subcommittee of the NomCom, and currently the reference option is that specific set of the NomCom would be installed for that consideration, but would consider the grounds of the petition, would vote on a high level of support, 75%, to decide whether to remove the Board director.

And in case the Board director is removed, obviously it would launch a reappointment process. So that's the NomCom case being discussed. And finally, number five, it is the recall of the entire Board. Obviously, some call it the nuclear option. And so the threshold position is quite

EN

high because three SOs and ACs will have to jointly petition with at least one SO and one AC, for the recall of the entire Board.

There would be a dedicated period of time to deliver it and discuss this, and a decision by each SO/AC about how to vote on the matter, and there would be a need to 75% at least for consensus of support to actually trigger the recall of the entire Board, which would then set up a clear ticker Board, which is currently being implemented but we have legal advice that it shows us that it's visible.

So the caretaker Board would be appointed to ensure continuity, obviously, of operations. I think the next slide is one we've seen already. And so with that, I am, this was the presentation for the various powers of the community. And to answer a question by Holly, which said, "Can one other groups vote to remove an individual from another constituency?" No that is not currently in the proposals, and a specific SO would only have the ability to remove its individual directors, but of course it would also be able to participate of the recall of the entire Board.

I saw a question from Manal as well, which was, "Theoretically speaking, could governments have an unincorporated association?" We've had formal confirmation that it is absolutely possible. There is no legal impossibility here. It might be a critical question obviously. But it is perfectly feasible, and that has been confirmed by the independent lawyers we've been working with.

So it's a political question. And it could be, it's worth considering as well that the need here is for SOs and ACs to constitute legal entities that

would become their subordinate entities, and will in turn, become the members of ICANN, the membership organization, but it is not necessarily a Californian entity for other options. But then, obviously, that would need to be taken into account in the drafting of the proposals.

So it's unincorporated association are just the most flexible way to do that, but obviously there are other options that can be investigated with the GAC for instance if they want to. I am looking at the chat. Okay. I'm seeing a question from Steve Metalitz, "Why is it recommended that only the NomCom can remove a director selected by NomCom? Is there any mechanism for the community to do so?"

A couple of points on this one. I think it's an interesting comment. And we're considering, it is… First of all, in the current proposal, the removal of a director appointed by the NomCom starts with a petition from the community. So at least one SO and AC, if I'm not mistaken. Can we go to the previous slide please, just to check?

So you did it twice. So, move to the right slide. Okay. So we need at least two SO ACs, which means that the community would be initiating the process. But the NomCom, as the appointing body in a membership organization, we understand from legal that appointing bodies nominate or remove their individual directors. And that's the basic principle that we've been working on.

Obviously, there was a requirement coming from the public comment that said that the community wants direct control over the NomCom directors, that would need further legal investigations. But so far

[inaudible] initiated by the community. Hope that answers you question Steve, and if not, please follow up offline and we'll try and provide further details.

I see no other questions. I'm mindful of time. And therefore, I would suggest that we move to the next section of our presentation, which is the independent review process. And for that, I will turn to Becky Burr, from New Star, who has been the leader of the work party to, in our group. And has been leading the drafting of these recommendations. So Becky please, you have the floor.

Becky? I see you in the AC room so you're here. You may be muted.

So I see Becky is typing. She might be experiencing audio issues.

Okay. So Becky is having audio issues. Turning to my fellow [inaudible] and co-chairs, anyone want to take on the IRP and reconsideration?

THOMAS RICKERT: Mathieu, this is Thomas. Since we have Becky on the call, why don't we wait for a few minutes and have Cheryl or Steve talk about AOC incorporations and the stress test first.

MATHIEU WEILL: Perfect.

CHERYL LANGDON-ORR: Yes, let's move and let's get Steve to take us through… It's Cheryl for the record, the IOC… Now we have Becky.

BECKY BURR: Thank you. Sorry about that. I don't know what happened, but for some reason my phone wasn't working. Now it is. We heard, as we were coming together to work on this accountability work, that people were feeling, the community was feeling quite strongly that the independent review process was not accessible in the sense that it was too expensive.

That it had the standard for which it could be invoked with two limited and reasons that a decision of the Board, or lack of decision could be undone with too limited. That they really wanted a substantive standard of review. And there was also a strong feeling that it would be, it should be binding. That decisions of the independent review panel should be binding.

And that it should provide a form of stability and consistency with respect to the decision making. So, we put together a recommendation, again this is, all the details are not binding, that would create a standing panel of seven independent review panelists, striving towards geographic diversity. The panel would be created. They would be identified for six terms, and term limited, with significant expertise in international arbitration and experience over time with ICANN.

They would be compensated by ICANN, and this is intended, in significant part, to ensure a mechanism is available and accessible to those who are harmed by an action or inaction of an ICANN decision maker. And finally, but perhaps most importantly, the panelists would be independent of ICANN, meaning that, you know, they could have

EN

had, for no time prior to their, for some time prior to their appointment, and for some period of time after their appointment, no role or appointed position with ICANN.

So that they could be completely independent of the decisions that they were making. The notion about having a fixed panel of seven, from which a decision making panel of three or one could be created at any one time, was that there was a desire to avoid the kind of decisions all over the place, that we have seen in some of the new gTLD decision making. And so the panel needed to be small enough to have experience, and to be able to create a precedent for ICANN going forward, which means that the decisions of the panel would be available to inform the Board, and the staff, and other ICANN decision makers about their behavior going forward.

The current thinking of the working group is that we would ask international arbiter bodies to dominate candidates with expertise from around the world. That the ICANN Board would then select and propose to the community, that the panel, that a group of seven panelists be confirmed. And then the community, using the voting mechanisms that we've talked about, would confirm the appointments of the independent review panelists.

Do we have… Can we go to the next slide?

Just in terms of filing and who has standing. Anyone who is materially harmed by the action or inaction of an ICANN decision maker, following a good faith effort to resolve the conflict informally, would then be able to file an IRP. The IRP process would be followed, and we are hoping

that there would be time guidelines on timing that would make the process sufficient.

And then ultimately the panel would issue a decision. The decision would not say, "ICANN you must do X, Y, or Z." But it would say, "ICANN the way that you have done this, or the decision that you have arrived at, is not consistent with your mission or your core values and various other commitments that you have made to the community."

And specifically, the goal was to have, at appropriate times, the ability for the community itself to file an independent review. Next slide.

So in terms of reaching decisions, depending on the nature of the conflict, there could either be a one person panel, one member of the standing panel, or three members of the standing panel. In the case of the three member panel, ICANN would select one member, complaining party would select another, and then the third panelists would be selected by the two identified by ICANN and the complaining party.

The decisions that we said would be binding on ICANN and not subject to appeal, except on a very, very limited basis. There would be expectations and requirements for documentation and well reasoned opinions based on applicable standards. There would be reached in a timely fashion, and members, the decisions would be able to serve as president guiding ICANN decision makers actions going forward.

And as I said earlier, the possible decisions would be that an action or inaction was taken in violation of ICANN's articles of incorporation or bylaws, and including specifically commitments spelled out in the proposed statement of mission commitments and core values.

Okay. Next slide. Do you want me to go through this Mathieu? Or…

MATHIEU WEILL: This is Mathieu speaking. I suggest you go through the request for reconsideration, it's only one slide. And then we'll take questions and go the whole independent review mechanism section.

BECKY BURR: Okay. Again, we heard from the community that there was serious concerns about the limited nature of reconsideration. Now reconsideration is a process whereby a member, an affected member of the community, or members of the community, can ask the ICANN Board to reconsider a recent decision, or action, or inaction, either by the Board itself or by ICANN staff.

We sought to address the existing shortcomings of the existing reconsideration process, by expanding the scope of permissible requests, to include not just decisions that were made without access to a particular piece of information, but to include actions or inactions that contradicted established policies, or ICANN's mission commitments or core values. And the goal was to broaden the types of decision and provide more transparency in the process.

The goal was to bring issues to the Board more quickly for their reconsideration. And we propose some transparency requirements, including an ability to rebut statements that are made, and then we've extended, we propose to extend the filing time from 15 days to 30 days.

So that's the reconsideration process. So if we have questions, I see Holly's hand is raised, but we can also take questions from other people. Holly?

HOLLY RAICHE: Thank you. This is Holly Raiche for the transcript. Just a question, will you be defining materially harmed? Because the issue of standing in legal proceedings general means some individual must have suffered as an individual. What you seem to be talking about is harm in the sense that mission or whatever policies, have not been followed.

And I'm not sure whether you could meet the normal standing test that way. So I'm just, how are you going to deal with that?

BECKY BURR: Well I think we will have to define what it means to be materially harmed. It is not because, you know, there will be, first of all, the ability to seek perspective relief as well, in the sense that if a decision is made, somebody would be harmed. So it's not just you have to have experienced harm. But also, we will have to, particularly to give the community standing, we will have to discuss what it means to be harmed in that concept.

Obviously, direct economic damages will narrow the accessibility probably, beyond that which the community desires it.

HOLLY RAICHE: Thank you.

BECKY BURR: Any other questions?

                         Apparently not, so I'll turn it back to the co-chairs.

MATHIEU WEILL: Thanks very much Becky.

BECKY BURR: I did see one other question in the chat. Jim [inaudible] has asked, "Would the findings of the reconsideration request be binding, or would the Board have the opportunity to reject it as it currently does?" I don't think that we propose to change the way the reconsideration process works, recognizing that there are limits, because you are asking, you know, the previous decision makers to overturn their own decision.

                         But hopefully, if the process moves more swiftly, and the grounds for reconsideration are broader, we'll be able to make it a more useful exercise.

MATHIEU WEILL: Thanks very much Becky. And as indicated earlier, we can now move to Cheryl and Steve for introducing the AOC incorporation, as well as the stress test.

CHERYL LANGDON-ORR: Cheryl here. Being mindful of time, let's just move straight to Steve. Steve, over to you.

STEVE DELBIANCO: Thank you. This is Steve DelBianco. I'm in the business constituency, and I'm with Net Choice. We worked, as a group, for several weeks formulating a series of stress tests, one of which leads to the slide in front of you. And it was stress test 14, which was described in our document on page 87. This stress test says that ICANN, while it lives under the affirmation of commitments today, could quit the affirmation with just 120 days notice.

That means that once the IANA contract is no longer a point of leverage in the post transition ICANN, they could quit the affirmation and we would lose some of the key commitments that are in the affirmation, commitments by ICANN. We'd also lose the requirement that ICANN conduct and consider the reviews that the community does, periodically on things like accountability and transparency, the WHOIS reviews which we're about to start another one this year.

Security, stability, and resiliency reviews. And finally there is a review coming up later in 2015 on the new gTLD program, evaluation process, and whether it really promoted consumer trust, consumer choice, and competition. So these are examples of commitments that are in the affirmation, which ICANN could walk away from by simply saying, "We're done with the affirmation."

So that stress test led us to say that as part of this transition, work stream one, let's bring over, into the bylaws of ICANN, key

EN

commitments that are in the affirmation. This makes it such that after transition, the affirmation could go away. And there isn't a need for a special agreement linking only the US government and ICANN, and instead, if it's in the bylaws, it's all about holding ICANN to it.

It turns out that as we brought the affirmation of commitment's reviews over to the bylaws, we first surveyed that lots of input, that the community had provided starting in the summer of 2014, in comments that came into ICANN regarding accountability. We also surveyed comments that came back from previous accountability and transparency review teams. And that gave rise to five explicit improvements we made, as we brought those reviews over to the bylaws.

The first is, we ought to be able to get rid of old reviews that are obsolete, and maybe even add new ones, and this ought to be done in the bylaws. This would be done by the first team, the accountability and transparency review team. We said that community stakeholder groups, those of us on this call, we ought to be able to fix the review team members, without relying upon the GAC chair and ICANN Board chair, to select and approve our team members.

The third is that we ought to give review teams better access to ICANN's internal documents, this is particularly so for the accountability and transparency review team, since document access has been a problem in the past. The fourth was to require the Board to consider approval beginning from implementation of the recommendations that arise from the review team. And keep in mind that the powers that Mathieu described earlier and the ones that Becky talked about, that if the Board

EN

decided not to follow a recommendation from a review team, that was the consensus of the community, we have the ability to challenge that Board's decision, or failure to act, through a reconsideration and an IRP.

So we can challenge and rely upon a binding decision to force implementation of recommendations that the Board might rather not do. So that's the key takeaway there, is that we wanted to strengthen the reviews, and make them a permanent part of our culture, as opposed to just a bilateral agreement with the US government. And give ourselves more control of the reviews, including the ability to sunset or get rid of certain reviews.

So let's go to just one more slide, which is our stress test. This would be slide 22. Thank you. Stress test first surfaced one year ago when the transition was announced. Stress test became sort of a relief valve. A method of testing whether the new accountability mechanisms would give us the accountability and influence that we the community wanted once the IANA contract leverage is gone.

And the stress test enables us to evaluate certain scenarios and determine whether, in the space of that scenario, did the community have enough power to challenge ICANN's decision in how to react to a scenario? And could we hold ICANN accountable for its actions? So we started with about 10 last spring, and over the course of the work in the CCWG it expanded to about 26 different stress tests.

We just discussed number 14 on the previous slide. There are 26 stress tests like that, and there is probably 25 pages of the CCWG draft document, that show you exactly how we took the stress test scenario,

evaluated whether ICANN's existing accountability mechanisms gave the community adequate accountability, and then looked at the proposed measures from the CWG and CCWG to see whether that gave us adequate accountability.

Now we understand that in both cases, the CWG and CCWG are only draft mechanisms. You're only hearing today about draft mechanisms being published for public comment. But nonetheless, the stress test review team did all 26 stress tests against the proposed draft measures, and found that they answered quite well. There were a few cases where stress tests are not ready to be evaluated yet, for instance, the revocation and reassignment of a ccTLD.

That has to wait upon the ccNSO to come up with new policy before we know whether those accountability mechanisms will answer. These stress tests were all over the map. Some of them were external events, like a financial crisis, a lawsuit that cripples ICANN's financial capability. Some were home grown, internal crisis, where an ICANN Board or management team decides to dramatically expand the scope of what ICANN does, in a top down way.

What recourse would the community have to challenge those decisions? In many cases you'll recognize the stress test as a little bit of a look back of the things that have happened over the past few years that gave the community a sense of helplessness, in the ability to overturn a Board decision, to cause them to take a fresh look, and to reassert the notion that ICANN is supposed to serve the community.

And we needed powers to be able to do that. So those stress tests, as I said, they start on page 65 of the document. And we're undoubtedly going to do them all over again, once these proposed powers and mechanisms get final approval. But we welcome input on that, and I'm happy to take some questions.

THOMAS RICKERT: This is Thomas Rickert speaking. Obviously, Steve has done a sterling job in explaining both areas. There don't seem to be any questions for the moment. We will have other opportunities to discuss during the remaining, or the last part of this call.

So with that, thank you very much Steve and Cheryl for your excellent work on these areas. And let's now move to the next slide please.

And that is the linkage with the CWG stewardship, that is the second cross community working group, as you know. We have one of our fellow co-chairs, Jonathan Robinson on this call, and from that you can see we take great interest in each other's work. But we even went much, much further by exchanging thoughts on what we would need those in writing, as well as during regular co-chair calls.

And the CWG has identified various areas where they would like our group to come up with suggestions and ideas for accountability improvements, that they would need to be confident with their work. And those you find listed on this slide. So the CWG is looking for certain information, a certain level of detail, when it comes to the ICANN budget.

So they want to be able to check the allocation of costs regarding the IANA function. And they also want the power to review and reject the ICANN budget. Now this should cause a déjà vu with all of you, because remember that we spoke about the possibility to look at the budget [inaudible] and have the Board change it if the community wishes are not adequately reflected in the budget.

So this is something that we have been working on. So the CWG is also asking for the community empowerment mechanisms. It is looking for review and redress mechanisms, which it finds important. And you will remember that when we spoke about fundamental bylaws, I mentioned that the IANA performance review is one of those reviews that we are going to perpetuate in the fundamental bylaws.

Finally, the CWG has been asking for appeal mechanisms. They think what we did is what they need. But at the same time, they explicitly made clear that they did not want the CCWG to work on these processes relating to the delegation and re-delegation of the ccTLDs. So that will be done elsewhere, i.e. in the ccNSO.

But from this, you will see that we have taken into account the CWG requests, and while certain areas of our report highlight options where we are seeking guidance from the community, whether the community agrees that we are on the right path with our reference model, the CWG can rest assured that none of these points that you find on this slide, have been controversial in our group.

So there is a very high probability that we will not envision issues with the CWG request that you see on this slide. Next slide please.

So this is another quick look at the timeline and the road ahead. I'm going to keep this very short so that we can have the remainder of this call for questions and answers. But what you see here is the first part, which is the part where we develop our recommendations, the left hand section of the slide. So we're going to conduct a second public comment period after having had extensive community engagement during the upcoming ICANN meeting in Buenos Aries.

We will then open up for another public comment period for remaining issues. Subsequently we're going to finalize our recommendations, hopefully have consensus on all of them, deliver them to the chartering organization for approval, and then provide them to the ICANN Board, so that the ICANN Board is hopefully in the position to adopt the recommendations during the ICANN 54 meeting in Dublin.

And what you see then is also quite important. And sometimes these areas are getting confused, which is why I would like to clarify that we have two work areas. One of which is the development of our recommendations, and then the implementation of our recommendations. So certain time is needed for drafting these revised bylaws, for the ICANN Board to listen to the community in more public comment periods on the exact language of proposed bylaw changes, for the unincorporated association, should those make it to our final recommendations, to be setup and implemented, as well as for the other mechanisms that we presented to you previously.

So that we are foreseeing an implementation phase of a couple of months. But as you will remember, for the work stream one recommendation, we are only required to have these implemented, or

committed to. So the implementation phase can go beyond the actual point in time when the transition is taking place.

So with that, I would like to pause for a moment and see whether there are any questions from you.

And I see a question from Olivier Crépin-Leblond. Olivier, please.

OLIVIER CRÉPIN-LEBLOND: …so I understood that whether the CCWG was going to be involved with all of the activities from October 2015 until July 2016.

THOMAS RICKERT: Olivier, I'm afraid that the first half of your intervention has been cut. So could I please ask you to repeat that for me?

OLIVIER CRÉPIN-LEBLOND: Yeah, sorry about that. Can you hear me?

THOMAS RICKERT: Yes we can hear you alright.

OLIVIER CRÉPIN-LEBLOND: Okay. Thank you. Olivier Crépin-Leblond speaking. I was asking whether you foresaw the CCWG being involved in the implementation as well, from October until July, July 2016 next year. And in what sense? If so, what sense? Thank you.

THOMAS RICKERT: Thanks very much Olivier. I think that's an excellent question. And it is actually foreseen that we're going to exercise implementation oversight. We will not be able to define all the glorious detail for what is needed for implementation, but rather to come up with recommendations that are implementable, and that requires us to overlook what the actual implementation is.

And if need be, provide guidance to those that implement, to make sure that the spread of the CCWG recommendations is actually making its way to the final implementation.

So, we can move to the next slide, which basically only shows the Q8A placeholder. So we would very much like to open it up for discussion with the whole group. And we would like to do this part in blocks, where we ask you to comment on or ask questions with respect to the different areas of our webinar.

So firstly, I would like to get some feedback, or questions, on the overall approach that was taken with the community powers, and specific setup with unincorporated applications.

So I see the first hand is up. [Inaudible], I hope that I'm pronouncing your name correctly, and if I don't, please accept my apologies. The floor is yours.

Are you possibly on mute?

So we can't hear you.

So maybe while you're trying to set up the audio, we can have more questions. So if you want to ask questions or comments on the general setup that we're recommending, please let us know.

So we still can't hear you. Maybe you can type your question or intervention in the Adobe Chat, and we will then deal with it.

The next area would be the community powers itself. Mathieu has kindly showed you through the individual powers, [inaudible]. Do you have any questions on those or comments on those?

[KASEY]:   Hello, this is [Kasey] [inaudible], are you able to hear me now?

THOMAS RICKERT: Ah [Kasey], yes we can hear you alright. The floor is yours.

[KASEY]:   Very good. My name is [Kasey] [inaudible], I'm the US Chamber of Commerce. And I just wanted to make one overarching comment about what we heard today. We know that the cross community working group have requested input on the proposed accountability enhancements under work stream one, but we just wanted to underscore that it is important to have adequate notice for response, and also requests for comments.

Here, there is only 30 days able to respond to the comment, and that's not even 30 business days. So while we encourage the work of the

group, we are frustrated with the very short timeframe to respond. Thank you.

THOMAS RICKERT: Thank you very much [Kasey]. That point is well taken. We had to make decisions with respect to the approach. The standard public comment period would be 40 calendar days, not business days. So we have gone below slightly, in order to ensure that we can analyze public comments that we are receiving before we have face to face meeting during the ICANN meeting in Buenos Aries.

So we do know that this is a burden on those that take an interest in this work, and those that want to comment. As you will remember, Mathieu has mentioned earlier that we are trying to make up for the short period of time by making it easier to access the interim work results, through webinars such as through the graphics that we provide with the report, so that people have an easy understanding of the proposed accountability enhancements.

Also, usually the 40 day public comment period that will be the standard for ICANN, would be applicable for final or consensus recommendations. And in this particular case, we have chosen to conduct two public comment periods. The first one which is currently open, shall provide an opportunity for the community to give feedback on our interim work. So that we get reassurance that we're working in the right direction.

And that we don't have to rethink our overall approach. So I hope that, you know, while this does give you more time, I hope that at least you

might be able to better understand why we chose to move forward as we showed in the graphic.

Yes, you're most welcome. Thank you [Kasey]. There is another question. Could you review, to consider what would the impact of abstention or non-voting on meeting the various voting thresholds you described. In the mean time, Jordan Carter, with respect to [inaudible] for this work area, has joined the call.

So Jordan, would you be comfortable speaking to that question?

JORDAN CARTER: I would. Are we talking about the question from Steve in the chat?

THOMAS RICKERT: That's correct, yes.

JORDAN CARTER: Yes. Steve, the only one of the community powers where we've talked about a threshold of abstention or non-voting being relevant, is the, we call it the entire ICANN Board. And that was because we didn't want to see non-participation from the community, moving to a lower effective threshold. For the other powers that have been proposed, there is nothing mentioned about non-participation and what the impact is.

And so I think that they are studying that further is something that we need to do between now and the second comment period, and we welcome input on. The reason we did it for the removal, or the recall of

the whole ICANN Board was that that was such a significant step, whereas with the general powers we're proposing, it's trying to be clear that we're not trying to make them so difficult, set such a high threshold, they become impossible to use, and therefore just paper powers, if you like, that's not good on the books, that nobody could use.

So with the recall of the whole Board, that was imposed rules about abstention. With the rest, we haven't done through or a modeling exercise to examine what might happened in particular with abstention or anything.

THOMAS RICKERT: Thank you Jordan. And Steve, you're certainly encouraged to provide your feedback on what a desire of an outcome of our deliberations on that question would be. So do we have any further questions?

Are there questions with respect to the legal vehicles, the unincorporated associations, the independent review process that Becky outlined, or the reconsideration process?

So there don't seem to be any further questions for the moment. We have put questions into the body of our report. You find all the questions summarized at the end of our report. And there are linked to paragraph numbers in the report. So if you go through the bottom up on our report, you'll find all the questions and then you can easily move to the relevant sections of the report, that should make it easier for you to go through the questions and provide feedback.

And then make it easier for us to analyze the feedback, and then take it into account during deliberations. So there is another question in the chat room. I have a question on independent review. Have we discussed how we can make the penalty independent if they get paid by ICANN? So for this question, I would like to ask Becky Burr to give an answer. Becky.

BECKY BURR: Yes. We have thought carefully about this, and there are a variety of suggestions that we have. First of all, there is a, would be a prohibition on somebody having played a role within ICANN in the, you know, say for example, two or three years in advance of their appointment. Second, they would be appointed for a specific term, and they could not be removed during that term except for cause such as, you know, corruption or something like that taking a bribe.

And then second, they would be precluded from taking any kind of an appointment from ICANN for a number of years following their service as a member of the panel. So typically when people talk about ensuring the independence of the judiciary, the critical characteristics would be, you know, a fixed term, no removal except for very specific cause directly related to the performance of their service, and no ability to reduce their salaries or otherwise make, have an economic impact on them during the term of their service.

THOMAS RICKERT: Thank you very much Becky. I hope that that answers the question. We are reaching the end of this call. And I would like to note that we keep

track of the questions that have been answered, that have been raised by you as well as the answers. And we plan to populate a Q&A on ICANN's website, to make the questions as well as the answers available to the whole community.

So you can provide us with more questions later, and we will make sure to get these answers, or answer them ourselves. So with that, I would like to thank all of you for the questions during this Q&A session. And I would like to hand it over to my co-chair, León Sanchez for the closing remark.

LEÓN SANCHEZ: Thank you very much Thomas. Well, I would like to thank all of the attendees for listening to what we have to say to you. And thank you for your questions as well. And needless to say that this public comment period is essential to the work that we have done so far. And we rely on the community's input and feedback, in order to fine tune the proposal that would, at some point, be handed to the Board for approval, and of course, for a reference to the NTIA.

So it is very important to go through the whole document. And of course, use the tools that have been provided by the different working groups, like for example the graphics that explain the different mechanisms, and the summary of the document as well. But this shouldn't substantive going through the complete document in order to have the full details of the proposal.

So we would be happy to remove the document, provide your feedback, answer the questions that have been in the document for us to have a

EN

better guidance from you. And of course, set the word within their communities. It is very important that, as many people as possible contribute to this effort, in order to have a better feeling and guidance from the larger community.

So with this, I'd like to close the call, just one minute before [inaudible]. So thank you very much everyone for attending. And we remain open for questions and comments in the public comment session. Thanks everyone.

[END OF TRANSCRIPTION]