

ICANN

**Moderator: Brenda Brewer
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4:00 pm CT**

Coordinator: The recordings are starting.

Becky Burr: Thank you. Welcome all. We are beginning together. So let's give it another minute and then we'll get started. Okay, welcome everybody. Thanks for joining yet another call which may be, you know, (Hour) 10 of CCWG accountability this week.

What we've got in front of us today and what I previously circulated is the compilation done by the staff with respect to the many, many comments that came and the sections of those comments that addressed issues that our work party has been working on, including the commitments and core values - mission commitments and core values, the fundamental bylaws issue, the independent review enhancements and the reconsideration process enhancements.

I think it's fair to say that we have gotten a lot of substantive comments. And we have, you know, our work cut out for us compiling these into a comprehensive, understandable document that articulates what we have heard

from the community as part of this process. And that is sort of the fundamental task before us.

And then - and I think in some ways it's secondary because I think we're still going to have a lot of conversation. To the extent that we have answers to questions that people have raised.

For example, you know, questions where there is just confusion in the draft, we can begin to prepare that. But as you'll see on the tool that has been circulated to everybody, there is essentially, you know, comment number, contributor, a summary of the comment from the staff as it relates to the question that's ahead of us.

So Pages 1 through 9 of this tool have comments that were made with respect to the revised mission, commitments and core values. And then summarizes the comments. And then on the right we have an area which is for a response or action by the CCWG.

But I think before we get into sort of filling out the responding and action section, we need to really understand and answer, synthesize and group comments together.

I think some of the questions will be very easy to answer. For example, I think a lot of people did respond that - with support to changes to the mission commitments and core values. They responded positively to the need to clarify the mission. But then there are sort of specific comments.

So our goal is to produce a synthesis document on these four areas. In addition, we have been asked to think more holistically about the whole

question that I think is a kind of central theme about the, you know, to what extent is, you know, are we - to what extent is enforceability a value here.

And, you know, to what extent that the sort of structural issues like membership and all of those things, are they worth it to the community. And I think that, you know, the community sort of put on. There are a variety of views that have been raised quite thoughtfully.

And then the other sort of old for arching issue that is related and related to the IRP is the whole question about whether this structure creates a risk of sort of endless litigation or dispute or, you know, the extent to which the dispute mechanism resolution - dispute resolution mechanisms can be used for stalling or paralysis.

So I previously sent out a, just a request for volunteers on the - for the main drafting projects here. And Paul Rosenzweig and David Post, who are not on the call, have volunteer to work on the independent review section.

I'd like to hear from folks who have, you know, as we'll get through the, like to hear from folks who have interest in working on any of the particular sections. But before we get to that, I'd like to hear from folks on sort of ideas for organizing this and making this work sensible and creating a good work product.

David I see your hand up. So I'm going to recognize you.

David McAuley: Thank you Becky. David McAuley here. The hand went up really as a volunteer. And I've been tied up most of the day and I haven't really given enough thought yet to the organizational thing that you just mentioned.

Let me just say this. You know, I think you asked in the mail if I would be happy to help with the IRP. And I would be if you feel that (Paul) and (David Post) aren't enough to handle that and you need somebody for something else, then I'm happy to do that as well.

I have a pretty strong interest in IRP, but I'm happy to volunteer on other stuff. So I'll give a thought to the organizational bit and comment later on that. Thank you.

Becky Burr: Okay. Well I will note you down as being interested in the IRP as well. But let's see if we get volunteers. Any other thoughts on sort of the organization and what the, you know, the - what we want to do? Malcolm.

Malcolm Huty: Yes, on the organization specifics there are some points that we have asked specifically about. And there were other things in the proposal that really highlighted discussions that we already had within the CCWG that we haven't necessarily reached a consensus on yet, so something like a consensus yet.

I think it would be useful to separate out those comments that speak to those issues, which we've really sort of refined what we're talking about from those which are actually raising new ideas but some of those get lost.

And then we can, without making it a voting matter, we can kind of do a bit of a headcount to say these people are, on this issue, supporting the proposal or wanting to strengthen it. And it these people are, on this issue, opposing the proposal and wanting to weaken it.

And then there are these things which are separate comments about the issue. And then also collect up, these are the new issues that have been raised that the CCWG hasn't even consider yet so that they can separately be identified.

But it's only the people that raised them have really given consideration to those points.

Becky Burr: That's a really good point. I can think of one example on that, which was one of the experts had suggested a sort of accountability roundtable, which was an idea that we really had not discussed. But there are going to be ideas like that.

The question I have is whether the way to organize this is to essentially have teams that are devoted to each of the main sections, and who then will, within that section, do the sort of here's what we put on the table and here's what people agreed with.

And here's the sense of the, you know, shape of the agreement. And here's what people expressed concerns or questions about and didn't - or didn't agree with. And here are the new things that people suggested. Is that kind of what you're proposing Malcolm?

Malcolm Huty: Yes that's right. I was concerned that new ideas would essentially get lost, and therefore almost been a waste of time to raise them. If we don't separately run through it as a path to make sure that's picked out so that they're addressed.

And then while there are people that are going to say I think this is really important, so I want to do more on this. Or I want to be concerned about this and I want to like change that.

They can kind of be sort of group together. Whereas the things with the new ideas need to actually at least be mentioned in their own right so the people notice that they been raised.

Becky Burr: Right. So we have the mapping public comments to questions document that I previously sent out. I think we have to, you know, we have to look at those questions and we have to, you know, get an analysis of it and a response of what people, you know, what people responded to.

But those clearly aren't - that's clearly not the end of the undertaking because the questions are pretty basic and we got quite detailed and nuanced comments in response, some of which were, you know, were really, you know, new ideas as Malcolm has suggested.

Other thoughts on organization or approach? David.

David McAuley: Hi Becky. David McAuley again. As I just mentioned, I hadn't given it enough thought yet. But once we do come up with a schema of whatever it is, my suggestion would be that we just put down a couple bullet points.

So we're all, whichever teams - we're almost like the design teams in the CWG. Or it sounds like we will be almost like design teams. You know, just if we could put it down.

I think Malcolm's idea for instance on not losing the new ideas, that's a good one. If we could just sort of put this down in bullet form and maybe you or Malcolm, whoever does it, it wouldn't be long. It would just, you know, give us instructions who are the volunteers.

It might be very, very helpful because we have our attention drawn, everybody does, in several different directions. Thank you.

Becky Burr: That makes good sense. Steve.

Steve DelBianco: Hey Becky. In the stress test work party we learned that the best design for how to organize our response has to be tested itself. And the way you test that is to take a few questions, a few comments and as a full group, walk through how you would respond to that comment.

When you do that then everybody learns the same method of analyzing their comments, mapping it to what's underneath and figuring out and categorizing it. If you do it that way, then the sub teams that break out and take certain sections will all have a consistent approach because we all have learned it together by going through a few examples.

Becky Burr: Okay. That's a good idea. That is a good idea. David raises the question that do we need to get this done pre-June 19? Yes that is correct. We are supposed to be pens down on this by the 16th of June in order to have our thoughts organized so that we can all read this stuff in route to Buenos Aries. And so that we can be ready to dig in.

I think if we can go back to the summary document, (Alice), then maybe we can take one of the questions. And as Steve suggests, walk through it. So we could just go - I guess I have cruise control here. I'm going to try to pick one of these comments out.

So if we might just start with Comment 98, the registry stakeholder group notes a difference of opinion on language pertaining to ICANN remaining rooted in the public sector.

We support the definition of the public sector proposed in the draft proposal and don't believe the clarifying language is inconsistent with it the multi-stakeholder model.

So this is in the section on do you agree that changes to the mission commitment and core values would enhance ICANN's accountability. Do you agree with the list of requirements for this recommendation? And if not, how would you amend these requirements?

So the language that we're getting here is so that if we go to the approach that Malcolm suggest, the sort of here are the answers to the questions. Here are the differences and here are the new ideas.

I guess we clearly get take away from this that the registry stakeholder group believes that these changes would enhance accountability. So that's a yes to Question 1.

They support the list of requirements provided that the community has the ability to approve or reject any changes initiated or advanced by the board. Now it strikes me as that might be a question that we can at least tentatively answer in the sense that to the extent that we have proposed the mission commitment and core values as fundamental bylaws.

That the community - it is contemplated that the community would have the ability to either approve or reject changes. And then the first part of this is a question about the obligation to avoid capture.

And a recommendation that rather than using specific language in the bylaws, thinking through balancing mechanism in the community empowerment structure that are intended to avoid capture.

I think the latter - I mean at this point - to this point we just had a placeholder in the core values and commitments regarding captures. So Steve, from your experience with the previous calls with the stress test, is that sort of how you

would break out this question? I picked one that was short just to get us warmed up.

Steve DelBianco: Yes Becky, I think that's the right approach. Inevitably you have to let everybody else voice their views. And what happened this morning is that Avri was quick to point out that here we were analyzing one person's, but three other comments spoke to the same issue.

And so it expands the conversation to say while we're on this topic, why don't we deal with what Brazil Government said. Why don't we deal also with what David Post put into his comment.

And so it's so much more efficient to deal with three or four dealing with the same concern at the same time rather than do it in three different threads, which may not even agree.

Becky Burr: So help us a little bit on carrying that out. I agree that ultimately, you know, the - here we have a point where the registry stakeholder group says rely on the mechanisms to avoid capture as opposed to a commitment.

And I'm sure that there are several other commenters who either have specific language. So how do you pull that - how do you pull that together as part of this process?

And Steve if you have a sort of specific input on that we'll go to you and then go to Malcolm.

Steve DelBianco: Yes thank you. The question of individual ACSO capture. Is that what you're talking about? Do I have that right?

Becky Burr: Right. Although I was really much more talking about the how do we capture this as a process comment where we have one, you know, comment from one comment, one group of commenters that say on the question of avoiding capture we propose X.

We know that in these 10 pages of comments there are going to be other commenters either propose why or disagree with something else. So the question I have is it really a process question in terms of how you bring this all back.

Steve DelBianco: Yes it would be best if the work party could arrive at some consensus as to say that philosophically we might see the capture of an ACNSO as something to address at the ACSO level.

And then we need transparency of membership rolls, transparency of voting. We are not going to interfere with how each ACNSO runs. That's a principled approach to the question.

And if the work party agreed with that principled approach, it's much easier to write out a response to that.

Becky Burr: Okay.

Steve DelBianco: That's what happened this morning. We got into the principled disagreements. And if you don't agree on principle with everybody using a work party, it doesn't make any sense to send people off to write actual pros, to write text if we don't agree on the principles behind it.

Becky Burr: Okay. Thank you. Malcolm.

Malcolm Hutter: Becky, I'm worried that - about the time as to whether - what I'm about to we have time for. But if we're really going to honor these inputs, before we start arguing about whether we agree with it and work past the principle, we need to actually analyzing the input that we received as to what that input says on principle.

And the first thing in doing that is to identify what are the principles that are spoken to. So the document that we have before us identifies - lists the comments that have been received essentially by commenter. And that needs to be broken out.

So we really need to go through each of those comments and say okay, this guy is talking about capture. This guy is talking about enforceability, whatever, okay. We have a principle (now). Who else is talking about capture?

And then list all the people that have said something about capture. And then move on. Okay right, we are now talking about enforceability. Whatever they said, which were the comments that referred to enforceability?

And so then we can have - can ensure that when we look at that and have that discussion that Steve was just referring to. Yes, we don't forget the government of Brazil or the IAP or whoever it might be who have may have given some inputs on that.

And so that we can also see which way the feedback is trending, you know. But if we - things in our structured at the moment is it's by commenter, and that's not helpful to moving forward. We need to turn them from a by commenter into a by issue analysis.

Becky Burr: Okay, can you help me a little bit and just in terms of in this, so what we would say is in this comment there's an issue - there's - the issue of capture is addressed. Where else in this group of comments is the issue of capture addressed? Let's pull all of those responses together and sort of look at them holistically.

Malcolm Huty: That's right, yes. If you can pull - if you can say okay, we've identified capture as an issue. It was mentioned several times by several people for example. You know, then you can say all right, we're going to - and then to that for each of them.

And try and identify as many issues as possible which have been, you know, that are being referred to and who has referred to them. And then you can go back and rather than going by person, you can go by issue and say okay, right now I'm going to look the issue of capture.

What were the comments that were made on capture? Here were I don't think it's a problem. Here well I think there's a big problem and we need to do X about it, you know.

And see how that's trending. And then you get some sense of what the broad feeling is on capture, what the percent was and how strong the opinions were on each side. And that way you'll be able to start to give an overall view on each point rather than just summarizing the views of each individual by individual, which isn't really bringing you towards a collective conclusion.

Becky Burr: Okay that's good. That's very helpful. Can I ask the folks who are speaking in the chat to sort of participate in speaking? To me it's quite right that what we want to understand is sort of what people are saying about capture as opposed to simply the, you know, do you support or not support this in general.

But the much more useful thing is to understand what people are saying about those particular issues. My - what I'm looking for is some ideas about how we sort of identify what the themes are or the themes that are trending. Or do we know now what we think those are likely to be.

Malcolm Hutto: I'd say that we need the team working through them and trying to pick out points of commonality between the input that has been given, including where that commonality is with disagreeing about the same points, you know.

Becky Burr: Okay. That's a good - so we need a trending team.

Malcolm Hutto: Yes. The first part is to identify what are the points that people are talking about and what are the new points that only one person's come up with, yes, so that we've identified each of the points that are raised, yes.

So capture being an example of one point that some people might be talking about, you know. And then see okay, well who's talking about this and where were they going on this? Were they broadly, you know, in favor or broadly against or broadly wanting new language or broadly supporting the current language or whatever, you know.

And then - but to do that the first pass is to say what are the issues here. So capture is one example of one issue. You know, and it's probably not even, you know, the major one.

You know, I mean there may be many different ones and you want to go apart through all the comments to pause it looking to identify what those issues are that are coming through.

Becky Burr: Okay. Thank you. That's helpful. David.

David McAuley: Thank you Becky. David McAuley here. I think Malcolm's discussion was very helpful. And my - and so I have a question. And that is once we get this distilled by the number of people that sort of glum on to any one particular issue, what do we do then?

Is that what the document is is sort of an ex location of what these trending things are? Or do we as a work party then put some spin on top of that for the 16th?

Becky Burr: I could be wrong and Leon is on the call and he can help me out. But I - I think that our job is to articulate where people are coming from. And then, you know, that's the first thing. And then begin to understand sort of whether we collectively as a group have - actually have a response to those issues or whether it's something we need to think about or whether the views are divergent, and we have an issue where we need to resolve it.

David McAuley: So then...

Becky Burr: Because we're going to be in all different - all three different places, right?

David McAuley: Right. I'm actually asking that to try and get a better grasp of the timeline. And so it sounds - if we are going to do that which makes sense, then I assume as a working party we'll have a call between now and the end of the 16th...

Becky Burr: Yes.

David McAuley ...to go through the list, whatever the list is that's been compiled. And maybe those who compiled it will lead that discussion as a design team leader or

something like that. But the work party itself will come up with some kind of take on it. Is that a fair statement?

Becky Burr: To the extent that we have agreement on it, yes. I think that there are going to be, you know, I don't want to prejudge sort of the level of agreement about it because I think that we will agree on many things and that there will be things that, you know, are trends that are trending across the entire set of comments. And we're going to need to work on them.

So I see Avri's comments that it's fairly easy to pick some of the trends, get trend volunteers to go through the recommendations and sort of manage the discussion about that, and that makes sense to me. Clearly we've identified capture issues. We've identified sort of enforcement issues. We have identified kind of the litigation dispute context.

There's the question of human rights that has come up in several of the comments. Any other kind of trending discussions that we should put on the list Avri?

Malcolm Hutty: Oh Becky, I think we can't do that just off the top there. I think we're going - you really need to do that systematically with - that the first stage of work is to actually pick those items out, you know, because there will be many of them, yes - many issues, not just, you know, your top five or whatever.

Becky Burr: No, I think that's correct. But let's go to Avri and then let's go back to that point Malcolm. Go ahead Avri.

Avri Doria: Thanks. Yes, I really just put my hand up because you had said you didn't want people just typing. So I think though getting started on the ones that are

obvious, I think as we work through them, the rest of them will start to appear. And people should, you know, be suggesting their own.

I think the one - the other one - I'm not sure that it's in this group of where it is. But, you know, be exploring that whole issue of where the corporation sits trended in a couple of them. So I think it's good to start on the ones that are obvious and, you know, proceed to those that have a lower trend. And at the very end get to the ones that are singletons because no one has found the trend that they fit it.

But, you know, I do think it's easy to basically start with the first biggies. And I think some of the biggies while we're working them, we'll find that they touch on some of the others going through, so we may end up pulling in. But I think finding volunteers that are willing to take any of the obvious trending topics and start working through them might be a way to get this thing kick started so that we do have a chance of getting it done. Thanks.

Becky Burr: Okay, thank you. Could I suggest just taking those two comments - Malcolm's comments and Avri's comments, that what we actually have are sort of - we have a set of two things. One, it seems to me it might be good to have some volunteers to just go through and start looking for trending items - maybe the - we've got a list now and we'll ask for volunteers to sort of start - kick start the discussion and organize the comments on those trends.

But then I think at the same time it would also be good to have other people. And I'm going to suggest that Malcolm is somebody who I might voluntold for that - to go through and read the comments with a sort of what are the trends? Let's identify those. So...

Malcolm Huty: Becky?

Becky Burr: Yes sir.

Malcolm Hutty: If I may suggest, what I'm - I'm going to replace the word trends with pattern match.

Becky Burr: Okay. I like that. Trending sounds like - I don't know if you know in the United States we have this morning television show where they're always doing trending. And I don't even know what it means.

Malcolm Hutty: Okay. The things that I'm doing is I want to put all the people that are talking about, you know, on capture for example - all the people that are saying I think capture's a real worry and we need to do something about it with - needs to be grouped with all the people that are saying I don't - I think capture's not a problem, and this is fine, yes - so a trend that is going in that one direction on that one subject. The main identification of that subject has to happen first, yes?

And I think the first part is to go and identify the subjects. I think this can be done in a day actually. You just run through the thing and just circle, these are themes. Okay, right. This theme is coming up several times. Boom - put in on the white board.

Becky Burr: Okay. I think that's good. I think that's an excellent approach. But we do...

Malcolm Hutty: So if you like I will volunteer for tomorrow, certainly for the sort of mission and, you know, that mission of value section which I'm confident I can do. And if it's too much - if it turns out to be really easy I'll move on to the IRP next. But firstly for the mission one, I will go and identify all the themes, and

try and get who spoke to each theme for that as a sort of - and that will be the example and that will be the first piece done, yes?

And then the question is what they think on those things and how that's synthesized. That will need to be, you know, we'll need to have a discussion about that.

Becky Burr: Okay. So what you're proposing to do is to say here are the patterns and here are the matches.

Malcolm Hutter: Here are the patterns on this, yes.

Becky Burr: Okay.

Malcolm Hutter: So for example, I mean one of the things that we said on the mission of values was the idea that ICANN is not going to regulate the services or content that is supported by the unique identifiers that it carries. A lot of people replied to that point, yes? So that point needs to go up there on the white board as being one of the things that we're looking at.

Becky Burr: Okay.

Malcolm Hutter: And then you go through each of those and say these are the points that people replied to that they said - actually they picked this out as being something important they wanted to comment on, yes? And these were the people that did it.

Becky Burr: Okay.

Malcolm Hutter: And then you'll be able to have analysis of that point to see what they actually thought about it. So it's identifying that pattern that people were talking about this subject.

Becky Burr: Okay, that's very helpful. So I'm going to accept your volunteering to do that on the mission and core values. Can I get a volunteer to do that on the fundamental bylaws section? I think that might be a fairly easy one.

Malcolm Hutter: Okay. You know what Becky? I'm going to volunteer to spend all tomorrow doing this, and I'll start with the mission and values and move on through that first section into the fundamental values commitments until basically I've used up all my time.

Becky Burr: Okay. You're a wonderful person. I'll accept that. Do we - is there something that could be helpful, some way in which others can be helpful to you as you're going through that? Is there - I mean, you know, do we want to say we already know that capture for example is one of the pattern matches - one of the trending terms. Do we want to put somebody on, you know, what does everybody have to say for capture?

Malcolm Hutter: I think the first thing that you want to do is okay, yes but what about the IRP? What about the -what's it called, the reconsideration...

Becky Burr: Reconsideration.

Malcolm Hutter: Yes. Somebody needs to do the same thing that I'm doing on the mission and core values - need to do that with the IRP and need to do that with every consideration request we need to do that with and so forth.

Becky Burr: Okay. Well I have - I'm wondering if I can impose on - oh, I've got some hands here - before I voluntold anybody else. I'll look to Steve DelBianco first and then David.

Steve DelBianco: Thanks Becky. The stress test team had the advantage of only having about a dozen comments. So it was easy for us to identify the trends quickly on that. And then we spent the better part of a call this morning trying to say what is our principled response to the question of capture? What is our principled response to the question of jurisdiction asserted by government versus this special relationship of ICANN to the places where it's incorporated - places where its bylaws are based?

And I'm not saying we've resolved that. We didn't. But it was the most substantive discussion we could have had. And given that we had only had a dozen comments and there are far, far more on the list in front of you, that creates a little bit of a challenge. But once Malcolm, a time box of (Malcolm Huddy) is more likely - is most likely to get through them all.

I've worked with Malcolm. He can do the trending - sorry, the pattern match on all of these, and we'd have it by tomorrow night. But we are going to very quickly run into a problem where we're not all going to be on the phone together enough times between now and the 16th to put pens down and have any principled agreement.

Becky Burr: Well...

Steve DelBianco: It was Malcolm's dedication of a full time box of a day. Why don't we assume that by tomorrow night he would identify the patterns? Meanwhile we're aware of at least three patterns of huge importance - capture, whether human

rights should be brought in, enforceability. Oh and let me add another one, jurisdiction versus state of incorporation.

With the bright minds on this call, it would be awesome to get a principled debate on those so that that would guide once the patterns are identified. Because we already know those four are among the patterns. There are more. But if we know any patterns that require heavy thinking and debate, why don't we do them while everybody's dialed in? Sorry. Thank you.

Becky Burr: Okay. I'm trying to - I mean take Malcolm's dedication, but we have - (Jonathan) has volunteered to look at the IRP section for trending as well. If we could get somebody to do this on the reconsideration process, that would be great. And then we can have a virtual white board go up sort of end of day, tomorrow beginning of the next day agree on those, and then kick off that way. David?

David McAuley: Thanks Becky, David McAuley here again. I see now that Jonathan has also volunteered to get in IRP - there's Paul and David Post. So maybe I should redeploy and go to reconsideration. That would be fine with me.

Becky Burr: Okay. If you could just do that just for in terms of the trending for this - at this point for identifying the trending issues. I think that there are some difficult issues that surfaced in the reconsideration question. And we're going to sort of bring this all back together.

David McAuley: Right. And I'm happy to do that, maybe then help work on IRP later as well. But what might help for Malcolm since he'll be getting started on this earlier than some of the rest of us, is once you get, you know, one page into this or half a page into this, if you could send it to Becky and she could send it to us, we could see how this is being put together so that we have some kind of

consistent outcome that makes it easier both for the work party and then eventually for the full CCWG to try and...

Malcolm Hutty: Yes, that sounds good.

David McAuley: Okay.

Becky Burr: Okay, terrific. That would be wonderful. Now just - now let's take this out of the sort of organization into the more substantive stuff. Steve, I hear you saying, you know, do we have now - can we have a discussion about whether we have a principled response to questions of capture - questions related to capture or jurisdiction of which ever one of those.

So can you walk me through how, you know, pick one of them that you think that we could, you know, so the substantive jurisdictional question, I suspect that the trends are some people say that, you know, that the place of incorporation should remain in the United States. Other people say the place of incorporation should be evaluated, you know.

Some comments say it should be a fundamental bylaw that it remains headquartered in the United States. What - given that sort of variety of views on it, what's the principled response that you might start out with articulating?

Steve DelBianco: Thanks Becky. Avri and I and Cheryl discussed this extensively this morning. And the first principle is what is the distinction - what is the meaningful distinction between jurisdiction and place of incorporation? So without being pejorative and complaining that people are confused, let's just make that distinction and say in principle what do we believe jurisdiction means?

It's whatever a nation asserts in terms of ICANN affecting their citizens. And does the state of incorporation have special meaning to jurisdiction? It does, especially if the place of incorporation carries certain inherent rights to the members in the case of California.

And then that brought into play this question of does Switzerland? Because (Richard Hill) - first comment submitted, the one that Avri and I got all tangled up on this morning. (Richard Hill) said that if you move to Switzerland, everything is better. You now we have evidence that that's a complexly confused comment. It's not true.

So to responds, we want to say the jurisdiction is X. The jurisdiction is whatever countries assert, wherever they think that ICANN is affecting them. And we lay that down as a principle we understand. And nothing - nothing we do in the (trenchan) will affect nations' ability to claim jurisdiction over ICANN. Put that to bed period, and then move to the place of incorporation.

And we acknowledge the fact that this is status quo. We're not trying to change the status quo. Our proposal is to leave it where it is. There are huge complexities to use Fadi's word - complexities with changing where ICANN is incorporated. The grass is always greener. And in fact there's quite a bit of community empowerment that's embedded under California law. And we draw a line under that and say that the place of incorporation, we're proposing no change to that for work stream one.

Now we've covered jurisdiction and incorporation, and in terms of a principled way. And we can rely on those principles as we answer the multiple pattern matched points that get to that.

Becky Burr: So then in response to a comment that says it should be in the fundamental bylaws, our principled response would be we are proposing no change in the status quo regarding the place of incorporation?

Steve DelBianco: Yes. May I respond to that?

Becky Burr: Yes.

Steve DelBianco: Article 18 of the existing bylaws already says that ICANN shall be in Los Angeles. There is some amount of pattern match on that question. I don't know how many people responded to it. It's a pattern match question.

And let's suppose that the community was split about whether Article 18 becomes fundamental or not. We don't have to deal with that in a principled fashion. We simply can count the votes as it were.

Becky Burr: Okay.

((Crosstalk))

Becky Burr: So I'm confused about the - I was getting confused about the use of the term principle I think, because I..

Man: Do you mean factual? Maybe it's factual.

Becky Burr: Yes. I mean because we do have, you know, we do have comments on either side of the question about whether it should be a fundamental bylaw or not. So I mean I think - I'm now beginning to understand...

((Crosstalk))

Becky Burr: ...that someone I want to call on Avri who may be able to shed some light on my confusion here.

Avri Doria: Hi, this is Avri speaking. And I think I tend to confuse people more on this topic than shed light - so hopefully. I think that, you know, we really do have multiple issues confounded here.

Now the notion of making it a fundamental principle, that seems important to many people. One of the things we have to balance that against is the number of governments that want us to think about doing otherwise. Now we can argue that just because it's a fundamental principle, assuming that we are becoming a membership organization, that if in work stream two after a serious consideration there is a decision to somehow change that. That remains possible.

But I think one of the things that I really want to caution us on is the delicacy with which we handle this one because we really are between a rock and a hard place on this one given, you know, some US centric perspectives on the necessity for it to be even stronger than a fundamental, you know, to be a law of the universe, and for people in the other countries that find it abhorrent.

And finding a delicate balance between the two of those I think is going to be one of the most difficult questions to answer in a politic manner. So I don't know if that straightens it out or just makes it seem like - this one is a very tough one to touch I believe. And I don't think we can afford to do it glibly in any sense of the word. Thanks.

Becky Burr: Great. So that was actually why I was being confused here. And let me just see if I can articulate it in a way that sort of matches what you guys are thinking about.

So when Steve said, you know, there's a principle, I would say, you know, the facts are one, that jurisdiction means X, Y and Z. And government has, you know, a court or a government has jurisdiction over ICANN, you know, sort of unrelated to its place of jurisdiction under the following circumstances.

The place in which ICANN is incorporated and headquarters does have relevance for jurisdiction in the following ways. And the current bylaws say X. Those are the facts, right? Then next we come to the issue of where ICANN is headquartered is an issue on which many people in the community appear to, you know, have raised - have made statements, have thoughts, have views, have feelings.

On the one hand, some number of people - X - have said this should be a fundamental bylaw. On the other hand, some other number of people have said no, this should not be a fundamental bylaw because the community should decide. And maybe even some have said it shouldn't be work stream two, although I don't - I can't remember.

And then three, you know, all of the rest of the commenters have not really said anything about that particular issue. So we've got that. Now what comes next? That's the question I have. I can see how we get all the way down to that point.

And to your point Avri, this is a very delicate balance. So then what do we do? What's our process for responding? Do we simply make that a statement

of fact and say we believe this is an issue on which, you know, further discussion needs to be had? Or do we say on balance we think XYZ?

So let's go to the queue here. Avri, your hand is still up? Do you have something to say on...

Avri Doria: Yes. If I can add - I think what we may be able to do is to structure a response for RS - for work stream two that is a serious plan. And maybe the way to deal with it, you know? This is too big to try and do now. This is the way it is now. We're not changing it because of NTIA now. However, you're right that this needs further discussion and, you know, let's have that serious discussion in work stream two.

So perhaps there's a way to handle it. I'm not sure, and I'll put my hand down now.

Becky Burr: Okay. Steve?

Steve DelBianco: Thanks Becky. I like the way you summarized it. Whether they're facts or principles, we should be able to state it - a sentence or two - the way jurisdiction works. And here's where I'll differ with you Becky.

When you stated that the place where ICANN is incorporated has special significance maybe for jurisdiction, I would go way further. It has special significance because the community empowerment requirements that we are seeking to deliver on rely upon the place of incorporation legal enforceability of those powers.

Becky Burr: Right.

Steve DelBianco: That would be true in California, might be true in Delaware - would also be true in Switzerland. And here's what I would say, and Avri gave me this this morning. She said if you look at the community empowerment requirements - CP 1 through 6 - and you say California law is adequate to deliver those powers as enforceable, and you couple that with the inherency of the fact that's where ICANN is right now, and the political reality that moving it work stream one is well inconceivable.

And I use that in the true sense of the work - inconceivable. So therefore let's state the fact that the place of incorporation should be assessed as to whether it's adequate to give us enforceable powers that the community wants. Yes, check that box. And therefore let's tally up the people that think this should be fundamental or not.

Now the question of whether Article 18 should be fundamental or not is not all that important. I mean honestly, let's figure out what it was. If it's a split decision on Article 18, let's just report it. We don't have to take an opinion on it. Remember one of the powers we have is the power to block a bylaws proposal change from the board. If they tried in the future to change Article 18 and they didn't make a good argument for it, the community could block it.

So I don't want to get wrapped around the actual on 18, but instead be clear that jurisdiction is what countries assert, and that the state of incorporation matters hugely, but mostly only on whether it gives us the powers we need to give the community empowerment over the board.

Becky Burr: Okay. Well I think that's helpful. And I feel much more comfortable with using the sort of facts versus principle term because that was throwing me - and maybe I'm the only person. Jonathan?

Jonathan Zuck: Yes Becky, I agree with you on facts versus principle, in some measure because I think that we may find ourselves using both. In other words, to kind of get back to your description, what we'll want to do is clarify the factual contexts so that a true pro and con can kind of be constructed for a particular decision.

So part of what Avri was describing with respect to fundamental bylaw is rhetorical. It's about the impression it would leave or something like that, since we know that as a practical matter it wouldn't prevent the community from making a decision to move. But it might send the wrong message. And so, you know, putting that out there as a pro or a con means that you then reduce the people's opinions about things.

And I think this will come up even more in other areas like enforceability, etc. that the principle might be one of enforceability, but you still need to actually address the factual information and misconceptions that are rife throughout the comments about, you know, what situation is being created or not created. Can you - would you still have partial enforceability if you didn't have the ability to go to courts, or would you have none, right?

Becky Burr: Right.

Steve DelBianco: And so clarifying that question so that we actually have the facts established, then the principles might be the basis on which people make a decision between two competing interests. And so I think if we can reduce it to that kind of a question of - if this is important than that, then do X, otherwise do Y. But let's try as much as possible to eliminate people making decisions based on misconceptions.

My other point that I just - I'm a little bit concerned about is just a political one since we're talking about rhetoric, is that we probably need to be very careful about how we talk about this issue in particular because if I was a congressman listening to Avri describe it as, well, because of NTIA we can't do it now and things like that, that's probably going to hurt some ears to turn this into a less flexible thing going forward in U.S. Congress. So I think we're going to need to be sensitive in how we describe some things going forward or they'll - those decisions make it made for us. That's all.

Becky Burr: Yes. I think in general it's really important that we strive very hard in this exercise to kind of take a step back and be very, very neutral about the tone and approach. Obviously I feel strongly about lots of things, and I think lots of people on the call feel strongly about other things maybe in completely different ways.

But, I don't know, I'm sure I'm not the only one that feels like the conversations and getting a little bit binary in lots of ways and we need to kind of break through that and get back to a discussion as opposed to a, you know, lineup on one side of the room or the other.

So other thoughts? So in terms of where we are, what we have is some volunteers who are going to run through and identify trends. Malcolm in mission and core values section in the fundamental bylaws section if he has the time. Jonathan and David Post and Paul on the IRT section, and David McAuley in reconsideration.

Do we want to also look for volunteers to actually just start looking at, you know, very specific issues? For example, capture, enforcement, litigation, human rights, and sort of the jurisdiction versus - jurisdiction in place of

incorporation? Do we have volunteers who to start sort of diving in on the substance of the things that we know will be trending?

I've got Jonathan's hand and Steve's hand up. Steve and then Greg.

Steve DelBianco: Yes, thanks. I'd like to volunteer Greg for the jurisdiction corporate and state of incorporation and powers. I'm voluntelling him and I'm pretty sure he'll agree.

But let me turn to the capture. The capture problem comes up in multiple stress tests. So I have a feeling that Avri, (unintelligible) and I are going to be wrapped around the axle on that. And selfishly speaking, I would ask work party to - whether the principle -- probably not a fact, but a principle -- that you could agree to is that in this transition we cannot tell the underlying ACs and SOs exactly how they guard against capture by elements of their very own constituents.

Instead we can prescribe transparency about their processes and their charters, we can do stress testing on what happens if their representative goes rogue -- votes in a way that doesn't match with the underlying AC and SO's desires. We have to show them that there's a release valve.

In terms of capture I look to you, Becky, and your group to see whether you would agree with the principle that we are not going to instruct the underlying ACs and SOs what to do, except to say we require that they be transparent, and that (unintelligible) that their representative -- whether their designators or members or UAs, doesn't matter -- that the minute they think their representatives are not following instructions they have an obligation to inform the whole community that there's been a rogue voting incident. They will remedy that problem and will do a revote. How does that sound?

Becky Burr: Okay, well while others are thinking about that I'm going to go to Greg.

Greg Shatan: Thanks, Becky. Greg Shatan. Thanks Steve for voluntelling me, and I actually had my hand up to volunspoke and volunteer for jurisdiction -- my favorite subject, since it's (unintelligible) and usually not with the person who's saying it means. But in any case, that's why I am volunteering for it. So I will take that on as being within my jurisdiction. Thank you.

Becky Burr: Great. Others have views on Steve DelBianco's articulation with respect to capture and the proposition? I think if I could repeat it -- although, you know, we can speak to principles like transparency, and disclosure, and notice, and those kinds of things -- in the end of the capture issue with respect to SOs and ACs is an issue for which each of the SOs and ACs respectively will develop their own rules and procedures. Can I capture that correctly, Steve?

Steve DelBianco: The second part, Becky - that was the first part. The second part is that will take on an obligation to inform the community if the mechanism used...

Becky Burr: Did we lose you? We lost Steve. Okay. I think that he was beginning to say that there was an obligation to inform the community where broadly if the mechanism that any particular SO or AC was using the proved to be deficient or wasn't working in one other case -- and I definitely meant to include that when I was talking about the disclosure stuff. Hopefully we'll get Steve back shortly.

Greg, your hand is up - is it still up or is it up again?

Greg Shatan: It's a dead hand.

Becky Burr: A dead hand. I think we need to bury the dead hand, although you're obviously welcome to say anything else.

Okay, Mr. DelBianco, we have lost you. Yes, the user left the meeting it's telling me. Okay, so I think that Steve was volunteering himself and Avri and Cheryl to take on capture, and he was proposing a sort of outline for that.

What about the human rights question. And I guess that would definitely come up in the mission and core values work that - that's where it definitely came up. Does anybody want to volunteer to sort of take that issue on? Or should we wait until we get the input - okay, I've got Avri.

Avri Doria: Yes, this is Avri speaking. Two things, we might have lost Steve. I have a sort of reconnection to this server fail and come back up, so if he was only using the AC for voice that might be why we lost him. That one is definitely near and dear to my heart, and certainly something I'm more than happy to work on.

Becky Burr: Okay, great. Greg?

Greg Shatan: If Avri volunteered, I will allow her to have that.

Becky Burr: I do think that there are teams, but you know, can be working on this. I don't think that, you know, it needs to necessarily be one person. So I don't...

Avri Doria: Teams are good, especially when one is near and dear to one's heart, it could be good to have an off-balancing presence on a team to make sure that isn't too dear and near to one's heart.

Greg Shatan: I am happy to team and to be off balance.

Becky Burr: Okay. The enforcement issue is an issue that is - it's a big issue. So that, you know, that's one question - that one place where we're definitely going to meet some volunteers. Greg, is your hand dead or clammy, or warm?

Greg Shatan: I'm a little loathe to overcommit myself...

Becky Burr: Yes.

Greg Shatan: ...since that happened about 20 years ago and hasn't stopped since. but if there're no other volunteers for enforceability I might go my head in the ring, or my dead hand.

Becky Burr: I see that David has thrown his head the ring as well. So no, this is not all for tomorrow evening. What we're looking at for tomorrow is just the trends in the pattern matching as opposed to any of the substantive work, Jonathan. I just thought we would sort of get a jump on the enforcement in the litigation - the issues that we know are going to become - that we know are trending.

Okay, so we've got John - Jonathan, David McAuley, and maybe Greg if - depending on his timing on enforcement. That's great.

Jonathan Zuck: Yes. Becky, can I come in on that last thing that you said about by tomorrow we'll only less with the substantive, and more with the pattern matching, trending, and identification.

I would really like to - because there was some other discussion we've had earlier people seem to be moving past that into the principal discussion, and I really like to make a plea for why what you just said should be game for

tomorrow, not moving on to the principal discussion. Because otherwise we're likely to end up ignoring the input we've received.

If we get into the principal discussion were going to be (unintelligible) our points of view -- our views -- as to how the issue should be resolved. And then people who responded to this conversation I'm going to say, (unintelligible) there's no evidence that you never gave any consideration to our input.

So we need to go and identify who said what, and what points were raised before we try to resolve them. If you try to resolve them without even focusing on the various points that have come in then we'll just be conducting a discussion that we had before the conversation.

Becky Burr: Yes, I mean I actually - I'm highly sympathetic to it. I know that some people feel like they've, you know, I read the comments and identified the patterns and stuff. but I think that it is, I mean, I don't think it's a problem to have people start looking at this, but it will not be complete -- in my head at least -- until we actually have done the sort of the tally of Here are the things that are trending, here are the people were commenting on it.

(Jonathan): And who said - and who raised points on them, yes. Because if we - once we - if we've just done, okay, well for example jurisdiction is an issue, and then we just go straight onto the discussion as to why jurisdiction is not a problem versus why it's a fundamentally important principle, without looking at who said what, then we will be accused of just ignoring their input on that subject.

Becky Burr: Okay so...

Jonathan Zuck: Carrying on with our own discussion. (Unintelligible).

Becky Burr: Let me just recap - let me recap and see if people agree with this. What we are aiming for by tomorrow is it with the volunteers that we have, they're going to go through the sections, they're going to identify the things that are trending, they're going to identify people that have commented on them, and they're going to identify sort of generally the pro against new ideas, nuances kind of thing. That's what we're aiming for tomorrow. That's the whiteboard.

Meanwhile, the people who are not engaged in those assignments tomorrow can start looking at, you know, some substantive - the substantive issues, But understanding that we're still going to need, you know, to go back to the tally that says here are all the people who raised the issue of human rights in connection with mission and core values, and here's what they said about it, to make sure that, you know, we capture all of those, we have listen to them, and that our responses is, you know, based on all of the input.

Does that make sense to people in terms of the assignment for tomorrow? I will send out notes based on my understanding of what people have voluntold to do. somebody in the chat pointed out that it a really - it would be really very helpful to have somebody who is not American on the enforcement issue.

So I think we should try to, you know, seek volunteers to help out on that. I do think that's important, because I do think that the feel is that, you know, the enforcement issue is very much and American issue. So I'll be looking around and going to folks in the group to see if we can round out that a bit. But again, I think the enforcement track is going to be - that's going to be a big and complicated piece of work.

Okay. Greg, you're technically Canadian. That counts for something. I don't know what. David McAuley?

David McAuley: Thank you, Becky. I am pushing that button send out notes I guess early sometime tomorrow.

Becky Burr: Probably tonight. I'll try to do those before I leave.

David McAuley: Okay, I was going to suggest that whatever Malcolm sends you, as an early pass at this you might also bless that or sort of supplement it just to help us get on the same page for consistency purposes.

Becky Burr: Will do. Will do. I think that all beaver helping - helpful. Carlos, I don't - I think that the enforcement issue, Carlos, is sort of to define enforcement. and I think the way that issue -- and people should, you know, sort of jumping on this -- it comes up in the, you know, are we making the world so complex just so that we can make these community empowerments enforceable, and is the cost worth the benefit? Greg?

Greg Shatan: Yes, it's Greg. Just I think one corollary to that is some who argue that as soon as we have enforceability there will be tons of enforcement the people we'll run willy-nilly to the courts. I don't know if that's a subsection of the overall enforcement or a separate topic, but that does crop up, you know, related to the enforceability - the bogeyman that ICANN will cease to be a land of trust and informal engagement, and that we'll spend the rest of our lives litigating a multi-stakeholder issue.

Becky Burr: Right. I definitely see that as sort of - as I was talking about - the cost and benefit kind of question. David McAuley?

David McAuley: Thanks again, Becky. And I was just also putting my hand up to answer Carlos's question. I think -- not stating this is the definition, because it's certainly not -- but the enforceability issue has come up I think in the context

of going to courts, just as Greg was saying. And I think a good way to get a grasp of it would be to see the email interchanges with Chris Disspain of late. And it is an issue for AUDA and for Chris, and it will be stated by him. and so that might be a good place to get a feel for the enforceability issue. Thank you.

Becky Burr: Right. So I think Malcolm's question, doesn't force ability create less litigation, you know, the corollary being, you know, is it possible that as soon as the community powers are enforceables, does that reduce the likelihood of going to court? That sort of the question, and I think a theme that is going to be a very important thing, and again something that's very, very sensitive. And Greg, I'm sorry. I wish you weren't a legal person. That's just my empathetic response.

Okay. Greg, your hand is up. No, your hand is down. Jonathan. I thought we were going to get a free menthol syrup for life offer.

Steve DelBianco: He already offered me that.

Becky Burr: All right.

Steve DelBianco: But - and I don't want to make to fine a point on it. I think David and I are going to work on this enforceability issue. But certainly a big part of this is going to be sorting out the facts. And I reiterate that the facts seem to still be in dispute. I know that Robin for example the way believe believes that there's a way to have enforceability about board removal -- Robin Gross I mean -- border removal even if we give up enforceability on the other issues in terms of, like, approving the budget and things of that sort. And she believes that that's through the designator model.

But it's my understanding that the designator model leads to a contract -- which is ultimately enforceable in court -- and you end up at the same place. But if you take courts out of the picture altogether you have zero enforceability. And that's my understanding from talks to that we had with the legal counsel, etc.

But I think we need to get to the point where we're no longer disagreeing about the facts so that we can just make decision about enforceability based on priorities and principles. And that's the part that I don't know that David and I will be able to handle on our own. It's my understanding that (unintelligible).

Becky Burr: Right, and we will definitely have to help you on that.

Steve DelBianco: I'm sorry?

Becky Burr: We will definitely have to help you on that. Somebody told me that there was a good part in our public comments which I'm going to endeavor to find, but you're right.

Steve DelBianco: I think it's misleading though, because again I'm not a lawyer, but it's my understanding that the designator model uses uses contracts in place of membership to create the power. But then those contracts what ultimately need to get somewhere. maybe it's not a U.S. court. Maybe that's the part that I don't get, but I don't understand how the designator model gives you any enforceability whatsoever if you exclude courts altogether.

Becky Burr: Well, I think that's right. I think that's definitely right. Courts are essential to the designator model. I haven't understood Robin's...

Steve DelBianco: That's what we want to avoid is another large discussion where we're having a side chat in which people - I mean it was basically her versus Jordyn, and it should be something we ought to be able to just resolve as factual, and then let people vote with their conscience based on the facts. You know, oh, but this is the downside and enforceability isn't worth that to me. That's the conversation we want to be having, not going back and forth with just assertions about what ought to be a factually resolvable question.

Becky Burr: Right. I - okay, I will endeavor to find out what that conversation was. Jonathan, you've got your - no, you're talking - my understanding is that both the membership model and the designator model ultimately rely on some kind of judicial enforcement process. You know, courts and, you know, perhaps binding arbitration in other - depending on how things are structured.

But that the designator model didn't require the creation of, for example, unincorporated associations. And that was the complexity cost benefit that she was alluding to not by you never go to court. But I could be wrong, so I'll figure - I'll try to figure that out.

Steve DelBianco: it was about the enforceability issue itself, and she seemed to think that we could get half of our enforceability with the designator model and eliminate the court problem that was being raised. And so my belief is that with illuminating courts, we eliminate all enforceability. And I think it's important to get that figured out definitively. That's all.

Becky Burr: Okay. So I will take that on as my - my assignment is to try to work through all of this stuff and get clear answers, and then build consensus about the answers. Because you're right, in the end if we don't have agreements about what the facts on the ground are, we won't be able to resolve this.

Okay. All right. I think this is a pretty good set of the work here. I will send out a sort of recap about, you know, my notes and the way forward. what I'm hoping is - I'll put some more calls on the calendar, but what I'm hoping is that, you know, by the end of the day tomorrow we can have a whiteboard that sort of relays these things, and people will be, you know, walking down the road on some of the issues.

But at least we will have the what are the things that are trending, who has input about it, and where did they come out? All right? So, everybody okay? Other thoughts? Everybody's - rather than dragging this out let's capture 30 minutes of our lives back, because we're sure to suck it up in some other way. All right, thanks everybody.

Avri Doria: Bye. Thank you.

Steve DelBianco: Hey Becky, great work. Great work. Stick with it. It's so fantastic having you on board. Thank you, Becky.

Becky Burr: Thanks, bye-bye.

END