

**ICANN**

**Moderator: Brenda Brewer  
June 13, 2015  
12:00 am CT**

Jordan Carter: To this call of Working Party 1. Welcome everyone to this call of Working Party 1 in the CCWG on Enhancing ICANN Accountability on the 15th of June 2015, 05:00 UTC. Now that we're official and on the record and all that jazz, thank you to everyone who has been doing the work.

I can't speak any louder but I can move the microphone a little bit closer to my face, if that helps. This is as good as I can do.

The second thing I'd like to do is apologize to counsel because I promised that I would send you agendas and so on direct and I didn't, so that's my fault entirely. It's still preferable to do that than to ask you to join the list and field all the traffic that's going on. But I have not sent that directly to Holly.

The third thing is I apologize for the circulation of the agenda because I have to go through it. What I thought we would possibly most usefully do this call is in recalling our work is to get summary information and proposed approaches on the feedback that we've got ready for the CCWG to look at on Friday next week.

It would be helpful to start looking at the way people are summarizing the material, and I think on our last call we said we would look hopefully for summaries of some of the shorter parts. And I prepared summaries for questions eight and nine on the budget and strategic plan, and on whatever question nine was for reading, based on the comments that I think Robin had prepared in those areas. So we can go through those.

Questions 11 and 12, Fiona has gone through the comments there and has done draft summaries as well so that we can go through those. And if we have time in terms of content, I think it would be helpful to look at the updated comments that Steve and Roelof have been doing a little bit of in the AOC section and in the first section of the document.

So okay, if everyone is having trouble hearing me and this is not getting it any better, the fault is with the microphone on the phone that I'm using and I'll need to ask staff to give me a different dial out. So I'll organize that now. And in the meantime I would like to ask if there's anyone who has - if this is better than I'll keep on with that and I'll try to speak a little bit more loudly to the empty office, and then we can avoid any disruption.

So are there any calls on the agenda? Would anyone like to propose any additional items or to take items off the draft agenda that's in the discussion notes box to the right of your screen? I don't see any calls, so remember that if you do think of another thing that we need to discuss, we can do in the any other business item at the end of the call and we will move through as presented.

So if I could ask you, Berry, to move the screen that you're showing us to the summary for question eight, which is the about comment 268 in the comment section, I can talk people through that. So Robin isn't on the call, Robin Gross,

but she prepared all of the notes in the individual cells relating to these pieces of feedback from the public comment period.

And all I did was have a look at what Working Party 2 was doing in terms of its pattern recognition approach and I just kind of truncated it to give firstly a sense of the overall impression that was coming through. So you can there were 22 comments, 17 suggested agreement, 11 noted concerns, there were no confusion-rated comments, and there were two divergent-rated ones. So that adds up obviously to more than the number of comments because some comments have more than one attribute.

And my overall summary of the feedback was that there was broad agreement this power would enhance ICANN accountability but significant or extensive concerns that the power would have to be implemented in a way that does not compromise ICANN's effectiveness. So that was my attempt at a one-sentence summary of the 20 or so comments.

And the two main issues that came through on that were that people didn't want to see negative impacts on ICANN's operational effectiveness arising from the use of the power and that they wanted to see a process for preparing budgets and plans that did take account - effectively take account of all relevant community input so that by the time the board does finalize these plans or budgets there's likely to be a high degree of agreement anyway so that there is less likely to be a rejection through this process.

Now I should, before I go on, I was going to say this is a first draft so there's no assumption on my part that I've got it right. This is the collective scrutiny process that we're now doing. And then on the specific concerns, all I did was take basically from various comments that have been made, just going through one by one and adding kind of headlines that represent the suggestions or

concerns or feedback that came through. And then down at the bottom was a draft proposal of how we could suggest to the whole CCWG that we respond to this block of comments in total.

I should finish up by saying that I didn't go through and change anything, I don't think, in the CCWG response and actions to the individual comments. I didn't want to override the work that anyone else was doing on that front.

So I'll open the speaking list with Roelof first to just make any comments or any agreements or disagreements on the content that's provided there and we can talk through it. So, Roelof, the floor is yours. And, Roelof, you may be on mute because we can't hear you, or at least I can't hear you.

Roelof Meijer: Oh hello, Jordan. Sorry about that. I didn't know I had the floor, because on my side you're dropping off and coming back on all the time. And that's probably also the cause of my confusion that I'm not sure what I'm seeing with the document. Is the whole itinerary of all the comments that we are working on or is it a specific part? Because if I look at the main issues of concern, I can underline the comments that I've been going through so far.

Jordan Carter: Roelof, good question. This is only a summary.

Roelof Meijer: Is this just a part or all comments?

Jordan Carter: This is only a summary of the 22 comments that were lodged in response to the question eight, which was regarding the power for the community to reject a budget or a strategic plan. So my notion was that we would prepare a summary like this for each of the sets of responses to questions. So it doesn't deal with any of the other comments, this is only in respect to reconsider or reject budget or strategy/operating plan. That's all.

Roelof Meijer: Okay. So I think it would be helpful to get the starting number of the list of comments and the last - and the number of the last comment that is concerned with this. So this is summary of comments number X to comment number Y, something like that. But I understand it's only question eight and we're working on question seven. Thank you.

Jordan Carter: Good idea. Good idea, and we'll do it straightaway. Sixty-eight to two. Are there any other speakers with suggestions, questions on this? Please put your hand up if so? Can I ask, because there are no hands, can I ask a different question? Are there any kind of elements of a summary that you think would be helpfully added here? You're all very quiet. It must be a time zone thing or a time of day, or you're all blown away by the perfection of the work.

So I'm going to suggest that we move on and have a look at the next summary. Roelof has made a comment in the screen that he has no scroll control. The reason for that is that this is Berry Cobb's screen that is being projected onto the screen and so if you scrolled - if you do have scroll control you'd only be able to move his screen around, you wouldn't be able to interact with the document. But you can interact with the document on your computer through the links to Google Doc that is the top of the notes module on the right.

Roelof, please go ahead.

Roelof Meijer: Thanks, Jordan. I don't know if it's only me, but I find it very difficult to follow you because you keep dropping off. So I hear half sentences, I hear only to start or the end of the question. If it's not only, that might be a reason why there's so little response.

Jordan Carter: I will change phones and hopefully that will be able to happen quite quickly and hopefully that will lead to a better quality audio from me for all of you. If there are no other points on question eight, Berry has moved onto question nine in the screen. So you can see that - the comments there and I would ask if there are any speakers or any comments on that content?

Woman: (Unintelligible) I got it, I got it.

Jordan Carter: Someone I can hear whispering on the call. Roelof, your hand is still up or has it just gone up? It's just gone down.

Roelof Meijer: It's just gone down. Sorry about that.

Jordan Carter: Okay. Well if there are no comments on this one, again these are relatively straightforward comments because there aren't a large number of comments. Most of them are in agreement. And you can see that I took exactly the same approach. So excuse me, I'll just get on the other dial out.

Hi everyone, I've changed phones. So let me know if this better or worse audio. And Jonathan Zuck, your hand is up. Please go ahead speak.

Jonathan Zuck: Can you hear me okay?

Jordan Carter: Yes, we can.

Jonathan Zuck: Okay. Great. I guess -- sorry, thanks -- my only comment I guess, and this maybe applies to the last one more than this one, that there was sort of buried in the specific concerns section someone saying, you know, I don't remember whose it was, but "I do think this will work" or something like that, that's sort

of more strongly worded than just some of the corrective kinds of comments of the others.

And I guess I worry that if there's an outright opposition that we not bury it but make sure that we address it just in terms of how our reaction to the comments is perceived. And - because I know that the community itself has this frustration with the board that there's a big staff summary of comments, et cetera, but there's not clarity about how each was dealt with. So that's the only thing I'm interested about from this perspective is how we deal with sort of the - that we don't in bullets bury outright opposition but make sure that it's surfaced and dealt with.

Jordan Carter: Thanks, Jonathan. I think that's an important point and that we should absolutely draw out positions like that. I didn't read all the comments as thoroughly as perhaps I should have done when I was preparing the summary. I was relying more on the summaries of each comment. So I've got two things to ask for.

First is whenever anyone is doing one of these summaries or working on them, please make sure that you do add and highlight any comments that are in outright different or divergent direction so that they can be, A, seem to have been dealt with; and, B, so that the CCWG can take another look at those positions and actively decide whether it's going to change its position or take a different approach or do something, not passively forget about it because it got buried in the summary. So that's a general point for everyone who's doing summaries.

The second point is a specific one for Jonathan and for anyone else who's noticed specifics like that. Could you go in and add some track changes that actually highlight that? And just edit the end of the specific concerns list, I

think, maybe with a tag that says it's a divergent thing. We can clean up the format later.

So, Jonathan, I'm hoping that you might be able to do that. Do you recall the specifics of what the comment was? We do have time to work through this now. We do have time to get this right.

Jonathan Zuck: Right, and it's just an example; right? And so I want to make sure that I didn't -- given the time zone here -- that I'm not missing it. But for example the third from the last under specific concerns was doubtful of value or effectiveness, opposed to strengthening. It feels like a different kind of comment than limit rejection of plan to once per cycle, for example, that feels more like a constructive criticism that could be incorporated somehow into the recommendations. So that's why. It just feels different to me. So the comment is 278, it looks like.

Jordan Carter: What if we do something like what I'm doing on the screen at the moment? Is that a more helpful and transparent and visible way to show off divergent comments by literally labeling them as such and having them in a separate list?

Jonathan Zuck: I think that's helpful, but I also think that we'll need to make sure that we - and we haven't - I realize we haven't gotten to this part in a way but we need to make sure that we surface them in a response. Hopefully this comment 278, which right now is sort of anonymous, it's just a number, but has some rationale for that and there's a response to that agreement or disagreement.

Jordan Carter: It might be helpful to look, because once again we've got time. So you can see it on the screen in front of you.



Jonathan Zuck: So here it's not listed at divergent either, so I mean it's just under concerns.

Jordan Carter: That's a good point. It probably should be divergent rather than - so that's a, you know, there are no perfect ways of representing any of this stuff of course. So I've added the divergent tag to that, because I think that's fair. And what this shows is that everyone does need to be taking a careful look at these to get the summaries right. I've now updated the number of divergent comments in that summary too.

Steve DelBianco, your hand is up.

Steve DelBianco: Yes thank you, Jordan. I did thought it was constructive to not only read the underlying comment, which takes much longer than reading the status summaries, and of course referring back to our actual proposal document to understand areas where maybe the comments are misunderstood what it was that we had proposed, and that gives you the opportunity I think you would call it confusion or perhaps they had a mistaken notion to it.

And the very first one under question nine is Richard Hill and in the text of (Richard)'s long comment, he answers nine with the word yes, that's great. But in the status summary you would miss what Richard Hill said in the context of his comment -- I put it into the chat -- where he said, "The membership and only the membership should have the power to change the bylaws."

I know Richard Hill's just one commenter and we can't necessarily do this with every comment, but in his case we've got to chalk him up to agreement, and I agree with that, but he went further to suggest that we haven't gone far enough to empower membership, and he's a huge supporter of membership as the only way to do this, but suggesting only the members can change the bylaws. So that's a - this is stylistic question. If somebody went further than

we did, how do we note that? Is that a divergence, concurrence, an exclamation point on what we did? Jordan, you could be on mute. I'm not hearing you.

Jordan Carter: Sorry, yes I was. That's a shame because I can't remember what I said but it sounded okay, I thought. It may be that the best way to surface that for the public record, because this document will end up being public, is to make sure that we note it in the summary or impression as I've just amended that here. And if there was an overall sense that four or five or six of these 20 comment made the same point then that would surface up into the overall main issues or concerns part of the summary.

But when it's one or two or one person making a kind of extensive claim like it is with (Richard), my initial feeling anyway is that surfacing it here in the amended way proposed is enough. And I'd welcome any other kind of views on that. I mean in the end I certainly by next week - by the end of tomorrow in fact will have read all of the comments top to bottom, but it's just not - I just haven't done that myself yet.

Steve DelBianco: May I follow up?

Jordan Carter: Yes.

Steve DelBianco: Yes, I feel like reading all of the comments top to bottom isn't nearly as useful as digging into a comment at the point when you want to understand what that comment said on a particular question. Perhaps both are necessary. But I only mean to say by example when you click on the RH right there next to 290, it opens up that comment, and it's relatively easy to go to the section where he speaks to membership and realize that there was more there than meets the eye. It was not just a yes. There was on an exclamation point on it.

And so reading the comments while you're working from the questions back, often reveals more than a first pass would have. I found that for me the first pass of reading, there were a lot of subtleties I just completely missed that I picked up when I went backward working from question in.

Jordan Carter: That's a fair point, Steve. And that's part of the digestion process that we all need to make to make sure that we are summarizing the stuff accurately. And good faith does require that level of action. I don't know if we can all do that in time for the meeting on Friday. I'd certainly have the chance to do that by then, but everyone is working on the limited resources that they've got in terms of time and energy.

So I think it's a good - for people who are volunteering to be originating these comments or impressions, that's a diligence that it would be - I would really welcome you taking on. And when I get back to doing some of that work, I will take that approach. So thank you, Steve, for that contribution.

Are - unless there are any more thoughts from you on that, I'd just ask more broadly if there are any other points here to raise? Because if there aren't, we might nip onto the - Fiona's first draft and summary of question 11. And so, Berry, could you move the summary up to the question 11 summary?

And, Fiona, I hope that you could take the floor and talk us through this.

Fiona Asonga: Can you hear?

Jordan Carter: I can hear you yes.

Fiona Asonga: Yes I will (unintelligible) approach and go through the original comments as well sort of just the summary that you were sent. Thank you.

Jordan Carter: Okay. My impression when I read through the comments that flowed under this summary, Fiona, was that in a couple of cases you've said in the action suggestion you said consider recommendation, for example on comment 330, or in comment 332 you've said consider the concerns raises. Where other colleagues have being doing these summaries, they've treated these boxes on the right as if they should be kind of summary of the materials.

So I see that you have identified all of the comments with the kind of tags of staff and that's extremely helpful and thank you for doing that. Is - are you in a position to maybe do another pass of the comments that you've done in questions 11 and 12 and think about adding a little bit more detail to the summary impression or actions so that when someone just reads that right-hand column they only - they get more of a sense of having to then go and read the whole comment. Is that something you might be able to do, Fiona?

Fiona Asonga: Yes. Yes I can do that, yes. The only thing that I found was that the comments, the summary comments, are already so summarized and - but I know they read - if I go back and read the main comments then I'll be able to actually provide an appropriate summary or impression of each of the comments. So yes I can get that done in the next couple of hours before our next call.

Jordan Carter: That would be fantastic, and thank you very much, Fiona. Are there any comments or questions for Fiona about the summary at the top of this section on question 11, which is the removal of individual ICANN directors? Any hands up?

Steve, your hand is up. Please go ahead.

Steve DelBianco: Yes, under this question, the USCIB, number 335, is cited as needing a higher threshold. This is 335 in your table. And if this is still the same question then I think we've miscategorized it. USCIB leads to the spilling of the entire board at 80%, not a single member at 80%. So this one is misplaced. Would you agree?

((Crosstalk))

Jordan Carter: To me, you're making a reasonable point, Steve. I've just highlighted the text involved. So you're - to restate, you're suggesting that this last part is actually suggesting a higher threshold for spilling the whole board, not for the removal of an individual director?

Steve DelBianco: That's right. So just take that out and lodge them as agreement without any recommendation to be considered. Agreed?

Jordan Carter: I think that makes sense but this adds to a question I've got for the staff. Adam, I know that you started out by - this call by saying that there were some additional material that was coming in that would be added into the public comment tool. And I e-mailed the staff earlier today to ask that where new comments are added from new material if it was at all possible that they would either flag, you know, in an ideal world for me that would come into this Google Document and add those matters there.

But the question -- so hopefully that is possible -- but the question I've got is if we find text in the Google Document that is misallocated that we think belongs to a different comment how - like only one person or one group of

people should have authoritative control of where the comment summary lives.

So presumably we shouldn't just move the text ourselves between comments. Adam how is it best to organize the moving of content in this kind of situation?

Adam Peake: I think you would send those comments directly to myself to me and to Alice and we will update some master document.

And then I would imagine move it within the Google Doc as well. And as long as you're flagging to us where you think the misplaced text is and that would be fine.

There was some text that we founds yesterday it was actually for a Work Party 2 rather than Work Party 1 and we flagged out over to them and moved it into master document.

So this is happening. But as long as you inform Alice and me then we will control the master. And as long as the master reflects what you are working on in the Google I think that's probably fine.

Jordan Carter: Okay. And thank you for that Adam. One thing that I have started doing in the Google Doc is if I see text in the comments that it feels like it's in the wrong place then I highlight it in yellow.

So I'll just sent that with the spilling the board material and so can we take it as at this point if anyone finds the wrong text in the wrong place your job is to let Adam and Alice and preferably me know by email and to highlight it yellow in the Google docs so that it can be easily found and if you can include

your suggestions about where to move it that would be good. I'm sure there will be a US GIB text in Question 12.

But I think it is helpful to get the staff to be managing where content lives so we don't get to divergent versions of content.

Steve is yours an old hand? Can I take Kavouss so you've got a comment here? It's an old hand. Kavouss please go ahead.

Kavouss Arasteh: I was typing something in the chat saying that this higher threshold was (boldly) discussed. We were about to agree with that but at the end of the discussions previously one or two person proposed its introduction.

So that is already something we have considered. So saying that the suggestion is to be completed I think it was considered already. Thank you.

Jordan Carter: Thanks Kavouss. Yes it has - it was one of the things that we have thought about.

Okay well I suggest then in the absence of any further hands that we move into the next question summary for Question 12 and ask it's pretty self-explanatory there. And Fiona I'd ask you to speak to this if you would like.

Fiona Asonga: Thank you Jordan. On Question 12 we did get some (unintelligible) comments. Most of the comments I (unintelligible). There are only two, the (urgent) comments and then the side comments that (unintelligible) and concerns that we have either considered or that we need to consider.

But for me the way I approach the work is the fact that a concern was raised I just made a note that the concern was raised so that if this is the what we are

doing becomes a public document then it is not of that a concern that the concern was noted.

So I'm not going back and saying oh, we already discussed and therefore we agreed and I'm making a point of noting that the concern has been noted, it has been received and it will be considered whether we had considered it before not.

I'm not going into all of that because that will have to be there to - out to the entire group to make a decision on whether we want to reconsider some of the issues like Kavouss, like what Kavouss has mentioned about the 80% threshold.

These - the comments have been very clearly articulated and there isn't anybody is bringing any form of confusion. And most are - the main concern that is being raised is that the - the spilling of the board should be as a last resort.

It should not be something that we want to do all the time frequently but it should be something that comes in as a last resort because everything else has failed.

I did not again do summaries. I promise to grow in (unintelligible) them full documents that are appropriately captured impression and summary of the comment for each of those comments.

So where you say you see a region for example three, five, four I say consider concern the concern is that it should be a last resort and if possible it should never happen.



If we were to respond to them letting them know that we have received their comments would probably be telling them - well virtually telling them we are going to - we have considered the concern, thank you for your feedback.

I have not gone through putting in all the CWG responses because I thought we would then be working on that together as we went through the comments.

But from us we know the other - there isn't much action that we need to do. Yes the - generally there is a lot of agreement with our proposal on as far as filling the (table) is concerned. But I'm ready to take questions from the rest of the members.

Jordan Carter: Thank you Fiona. Are there...

Fiona Asonga: Thank you.

...Any questions? I see one hand up to from Kavouss. So Kavouss please go ahead.

Kavouss Arasteh: No, it was old hand perhaps sorry.

Jordan Carter: Okay. Are there any other questions or comments for Fiona?

I think that this does this whole process once again indicates the kind of time pressures that we're operating under. I think it's fair to acknowledge that in a perfect world we would all have had the chance to prepare draft CCWG responses and review them all for all of these comments.

And because this isn't a perfect world that we're under a really bad time constraint. I do think it's reasonable for the drafters to if they wish to go through and do a CCWG response.

And I'm happy to spend a bit of time just randomly going through the document and showing that line out where it can be because I think if memory serves one of the ideas is that we will publish a document that does respond to all of the public comments.

So we will need to say something at some point in response to all these. And the rest of the material might go in that version of this document.

And but they don't have to be wordy or difficult except where the comments themselves are difficult or raising complicated issues. So sometimes it's easy, sometimes it isn't.

And Steve your hand is up.

Steve DelBianco: Thanks Jordan. Row 359 is a business constituency or BC comment. And I'm a policy coordinator in the BC. And I looked at Fiona how you characterized it. It's certainly agreement.

But you also indicated concern. And I ask you a little bit about that. You have considered concern and recommendation. What concern did you see in the BC comments so that I - maybe I can set the record straight on that? Go ahead.

Fiona Asonga: Thank you Jordan. The issue of concern in your document is that some of the BC support (unintelligible) 5% member working threshold while others support the 80% threshold.

And so then that is something - and that comes through all the other comments as well whether there are comments that are in support of the 75% threshold and there are others recommending a much higher percentage of 80% threshold.

So we need to be able to have a discussion as a CWG or if we have had a discussion before now the comments are coming in.

I think the right thing to do is to re-discuss the issue of the threshold. And let's reaffirm whatever discussions we had in the past are firms up and finished, finalize and therefore we are not going to reconsider them.

But I think the purpose of us having public comments that the comments will come in and we will go back to issues we may have discussed before and we look at them.

I think we need to relook at the issue of the threshold and be very clear on that, why a 70% threshold as opposed to an 80% threshold.

So the concern for me was the threshold and in that, during that discussion most of the issues that the comments we have written is that they've raised a concern. The concern has to do with the percentage of the threshold or with the process. So for the BC it's really the percentage that is a concern.

Steve DelBianco: Thank you, Fiona.

((Crosstalk))

Steve DelBianco: And I was quarterbacking that comment and the BC was split on whether it should be 75% or 85%. So we don't really have a recommendation on that.

I think next time around when the comments are for the draft perhaps we'll have it one way or the other. But it's probably more accurate to say the BC agrees and there really is no concern in that row since we did not have a majority to 75% or a majority for 80%. We were split.

But in general we support the comment and don't have any concerns with the plan.

Jordan Carter: Thanks Steve. And I think we can leave that one there. It sounds like your argument from where you are, your role isn't a concern there. So I'm going to insert my thing at the top and delete the concern one.

And someone else is highlighting the consider concern end. And Fiona so is that tidied up. And She's going to add something there no doubt.

Kavouss your hand is up.

Kavouss Arasteh: The majority in favor of the threshold proposed there are very few in favor of the highest threshold what do you do?

Do we reconsider the situation because of this very small number of minority proposing different value or because of the let us say overwhelming majority of happy or do not have concern about the threshold retain that.

So the approach is how much effort we put to review the situation based on the minority concerns just as a general question not just as (unintelligible) this one. Thank you.

Jordan Carter: Kavouss I think it's a very good general question. And my general answer is that we don't - someone here has a saying in my office or someone on the working group with the CCWG that you don't count submissions, you read them.

And I think the point there is that we, for minority of submissions comes up with a new angle or a new argument that the CCWG hasn't thought of then we spend more time and energy considering the point made and seeing if it affects our overall analysis.

If a small minority or if the same size minority of commenters make points that we've already considered and incorporated in our analysis we spend a bit less time thinking about it.

So I don't see any hard and fast rule that we can use to answer the question other than to play it by ear almost, to look at the nature of the input that we're getting and where it forces a broader rethink because of the kind of arguments that are being advanced than we do that.

And where it's just a reiteration of something we've already thought about we'd probably take a little less time and a little bit less energy in reconsidering what's been proposed by the CCWG already.

Now if there aren't any other comments on this part of the doc we seem to be tracking reasonably well in terms of the time that we've got.

So my suggestion is that we do have a bit of a chat. I don't know if Steve and Avri have connected with the affirmation of commitments material.

But I think Steve has proposed has taken in Avri's drafts and done a second draft that generally speaking from what I saw expands on the material.

So I'd like us to spend the next ten or 15 minutes with Steve on the floor and maybe discussion between Steve and Avri will flow from that just taking us through the start of these comments in Questions 13 incorporation of affirmation of commitments into the ICANN bylaws.

So Steve if you're happy with that would you mind taking the floor for us and kicking off on comment Number 373?

Steve DelBianco: Thank you, Jordan. Avri and I have not connected person to person since our last call. But I did what I promised to do which is to give a second look at some of the analysis that Avri did on this section.

And you'll see that I retained in most cases Avri's language but added what I could from our own proposal.

So I did not fill out the summary Jordan that is at the top of the section yet so I don't have anything to speak to that.

But on 373 I noted in here that Richard Hill, he already understood the distinction between jurisdiction and where ICANN is located. So there wasn't any trending item there and no disagreement.

He shows that if California law doesn't allow the membership to exercise full powers then it might be better to incorporate elsewhere.

And am I right in saying that the legal advice you provided to us indicates that California law does allow the membership to exercise and even enforce full powers?

If I'm right about that we don't have any disagreement with Richard Hill on that (Rosemary) or Holly.

Jordan Carter: Question's to get clarified right now and Holly's hand is up. So Holly I welcome you to speak.

Holly Gregory: Hello all.

Jordan Carter: Holly you - there you go.

Holly Gregory: So can you hear me?

Jordan Carter: Yes.

Holly Gregory: You can hear me? Okay I'm sorry. It took me a minute to figure out how to get my mute off at this time of the night.

So yes I mean California law provides you reason for simple powers to a person who is a member and to do that they must be a legal person. I think we've been pretty clear on that.

Steve DelBianco: Thanks Holly. All this indicates is that Richard Hill started his comment by saying if California law does not allow the membership to exercise full powers.

So given that he doesn't have any disagreement with us there either and so the entire part about moving to Switzerland is an interesting idea but it was predicated on his statement that if California doesn't give us the powers.

Holly Gregory: Right...

Steve DelBianco: So on this point...

Holly Gregory: And if I may Swiss law has the same, very same requirement around legal personhood for membership so there's no advantage. I mean, if the subtext to his comment was around the SO and ACs needing to be come - take action to become legal persons.

It's very clear that there's no advantage under Swiss law. They would have the same requirement. But you're...

Steve DelBianco: Right.

Holly Gregory: ...right. He...

((Crosstalk))

Holly Gregory: ...phrases his question as if there's a problem in California, there is no problem. You have these so you do it.

Simply the only issue is this hurdle of legal personhood which is the same in either jurisdiction.



Steve DelBianco: Thanks Holly. He goes on to say that I didn't want to disqualify Richard's other statements about moving to Switzerland just because the if answer to know.

Avri Doria: Can I...

((Crosstalk))

Steve DelBianco: So because he suggested - sure go ahead Avri.

Avri Doria: Okay before we leave the question that we just finished I wanted to ask a question. And I wanted to make sure we were differentiating them whether there was a need to between what Richard means about full power and what we mean about powers to do the five things and are those the same? Thanks.

Holly Gregory: Avri that's a very good question. I was assuming when he said full power what he meant was the full powers to do the five things you want to do.

But he could have a different meaning and maybe someone who has read his comment at length has more insight into it. I haven't gone to the underlying comment and read it in full form.

Steve DelBianco: Here - well he says to elect and revoke the board, approve and review the budget comma, et cetera. So I don't know whether that Avri was comma, et cetera, right, so hard to say.

Holly Gregory: I think - look I think a fair reading is it suggests he's talking about the powers that the proposal identifies. I don't know how else to read that.

Jordan Carter: Neither do I.

Steve DelBianco: So, okay. So Avri let's ask Richard did you mean all five or did you mean the two because he puts, et cetera. He names dump the board, lock the budget comma, et cetera, so I don't know how to read that.

But rather than just discount Richard's point about Switzerland I agree with you Avri and we should keep it alive. And I agreed with your suggested action is to ensure the jurisdiction and state of incorporation or serious topics for Workstream 2.

But then I went back to Richard's point about what the working group is proposing. The working group is not proposing that ICANN - we're not proposing a change to ICANN Articles of Incorporation or bylaws with respect to the California incorporation and location. That is an existing Articles of Incorporation in Article 18 of the bylaws. We propose no change on that.

We took a look at the affirmation of commitments 8B and we concluded that was already reflected in Article 18 in the bylaws so we did not make a change.

That also came through in another comment below. And then finally with respect to Richard Hill I tried to figure out what would he say about Article 18 being the fundamental by law. We'll given all that he said about wanting Switzerland maybe he would say no to that. He doesn't answer it explicitly.

But then he does say that all bylaws changes should be fundamental when he made the comment that the membership and only the membership should have the power to change the bylaws.

That would suggest that every bylaw becomes fundamental in his thinking. So I'm a little confused, don't know exactly what column to put Richard in for that.

But you can see that I mean Avri and I always approach things a little differently. And my approach to Richard's comment came out with a different analysis than Avri. But the action suggested is well, it's still the same.

Jordan Carter: All right.

Steve DelBianco: Jordan this is a lot of detail and if you want me to go through this on each of them I could.

Jordan Carter: I don't think we need to go into that much detail on each of them myself. And I think we should take Kavouss's question or comments. Kavouss if you are questioning or commenting you have got yourself on mute.

Kavouss Arasteh: (Unintelligible).

Jordan Carter: Oh there you go.

Kavouss Arasteh: Some of them are constitutional and fundamental should remain constitutional fundamental with more stability to be changed in order to create the stability for its application and others which have a less fundamental nature and less constitutional nature therefore remains additional bylaw.

So it is difficult to say they're all provision of bylaw should be fundamental. It creates sort of a rigidity for the process.

Point number two, it is said that if the California law does not allow the membership decides its power does the Swiss then law allow that or are we going to investigate all the laws of all countries to see which one allows and which one does not allow and that would be a productive exercise?

And one comment the membership referred to in this comment has nothing to do with the member model. It's perhaps it's talking about community but not membership as such. And we should not confuse that figure.

And fourthly (unintelligible) does not exist in our discussions. We have six areas and these areas are quite clear budget, plan, color of individual the color of the tool and so on and so forth.

So we don't have anything more than that fix so there is no excess at all.  
Thank you.

Jordan Carter: And Steve do you want to reply to Kavouss's points?

Steve DelBianco: Kavouss it's Steve. I was just noting that Richard Hill gives us an ambiguous statement about what to do on Article 18. It's a fundamental bylaw.

He suggests that the membership should approve all bylaws. So I just noted that in the comment. And if he is the only one that suggests all bylaws become fundamental then we wouldn't consider it a consensus approach of the community.

And I don't think we necessarily have to argue against it unless we see that's something that comes up over and over again.

I don't recall a single other person saying that all of the bylaws should be fundamental.

Jordan Carter: I don't - I think the use of fundamental is a misnomer when it comes to Richard. Because what he's really saying is that the board shouldn't have anything to do with the bylaws, that they should all be in the power of the members and only the members.

So that isn't making the fundamental (unintelligible). That's a, to use a different kind of fundamental, that's just a fundamental change to ICANN and that's not where we're going. So we can set that aside.

Avri your hand is up. And so please go ahead. Your hand is down so please don't go ahead.

Avri Doria: Yes, it was an accidental up, sorry.

Jordan Carter: Outrageous, you know, the next thing the sky will be falling. Don't laugh at your own jokes Jordan. It's too late in the day.

Who would like to go on to the - so we don't have time to spend 15 minutes per comment and Richard's comment is particularly challenging so I understand why it took a while.

And do you think that we could move on to the next one and maybe pick up the pace Steve? Would that be okay?

Steve DelBianco: Absolutely. We'll go as fast as we like to go. The next one was Danish business authority. And all they noted is that governments are given appropriate weight.

And I picked up on Avri's point neither today in the affirmation or in our proposal did we get into the precise makeup of the review teams. But we did propose that everybody have one.

Do you believe, does this group believe that the response is appropriate? We have to express it more specifically in our next version where we actually break down the details of how many people on each review team come from GNSO, how many come from ccNSO, how many come from GAC?

Because I get the sense that maybe that's something that gets worked out over time and not necessarily baked into the bylaws I think I'd agree with Avri on that. I don't see any hands. Jump ahead.

We'll carry with completely in agreement on 375. On 376, this is a mistake in notion. They believed we were bringing the affirmation of commitments reviews in as they were. But, we made significant changes. The comment that they make about it being too slow.

Well, that's understandable, and it's every three years. Sometimes every four years or five years as we expand in that. But, I did want to bring up the fact that we did some belts and suspenders in the CCWG. We didn't count on just doing an ATRT every three, or four, or five years, because any time the board takes an action that violates the bylaws, we can invoke an IRP or reconsideration.

And it could be binding if we do it through a membership. And I don't agree that it's a conflict of interest. So, I went ahead and said that there. I don't see that it's a conflict of interest, because when the community does a review, it reviews itself to some extent.

But, it also reviews the actions of management and board, since they're the ones that handling the true implementation and operations. We should look at work stream too for further approvance, which is probably not much more to do there. I think I should fix the types that says, "distinct from the ICANN board," not "district." Okay, (Aflek) is agreement.

Next one's agreement, 378 of you keep scrolling down. Berry, do you have control on 378, please? Three seventy-nine, the government of Spain. I certainly just want to say that they want to terminate the OC after the transition, and that's important. I included the quote from our proposal on paragraph 357, where we indicated it was possible.

And I'm suggesting in our next draft, we could make termination of the OSC a desired, or an intentional outcome, of having brought the commitments (unintelligible) into the bylaws. So Jordan, as a matter of - I'm wondering when. Perhaps we do this in Buenos Aires, where they - CCWG tries to consider whether we want to reflect a comment like this, by changing what it is we're recommending in our next draft.

Jordan Carter: Steve, it's a good question. I think that we're discussing the agenda for the I'm meeting on Tuesday's call. And I wouldn't want to hazard a guess about whether we're going to have a section yet of that meeting that makes some initial early decisions about things to change in the next version of the document or not.

So, I just can't remember what I've seen in terms of the (job)'s agenda. But, I don't think there's any problem in our CCWG, you know, sort of actions and recommendations. I don't see any problem in picking up what we would like

to propose for the CCWG to do. The sooner that's done, the better but, all things being equal.

Steve DelBianco: So, we'll just note it.

Jordan Carter: I'll direct you to Kavouss's handout. Maybe get Kavouss...

Steve DelBianco: Let's see, let's (unintelligible) next option to indicate that terminating a (filer) is desirable of something. I would just - different language. We could say, "termination of commitment." It's consequential actions from the CCWG process of inclusions of menu or some of whatever you say of its position in the bylaw. So, it is not desirability.

It is the consequence of action. And sometimes we need to terminate that, because they have - the main part about being including in the bylaw and in the (unintelligible) or be taken by events. So, we should be more clear on that. But, not talking about desirability or possible (unintelligible).

Jordan Carter: Thanks. (unintelligible) set a (unintelligible) to take into account. But, we'll need to get rights by the time we get to our second stem public comment. Steve, back to you.

Steve DelBianco: And then finally, (Stane) gave us three or four specific ideas about the transparency, and the process that's used by review teams. And those ideas are interesting. It could be catered next to the (Shapo) section where we suggest that all four review teams had a set of rules, sort of, capabilities. And it makes entire good sense. I agree with Avri for us to consider those in our next draft. So, to the next one after (Stane), please. It's the registry stakeholder group.



We need get some clarity from Keith Drazek on the last call that we did. I don't even remember when it was. He spoke about inconsistencies, and that they want the ATRT to have the role of sun setting reviews. And then specifically, they think that Whois will be a good candidate. The Whois review will be a good candidate for sun setting.

But, they really are in full agreement here on the sun set part. Look at number two, though. The registry stakeholder group said they noted a concern that they want to bottom up multi-stakeholder process to interpret things like the new GTLD review.

Because that's where the words like - let's see, I drilled into their underlying comment. Because there are concerns that the review of the new GTLD program will allow a review team to interpret things like consumer trust, consumer choice, and competition.

And the registry stakeholder groups said it should be a bottom up multi-stakeholder process. So, here's my question for you folks. Do we think that a community driven review, such as the affirmation of commitments, is sufficiently bottom up.

Does it have a consensus in it? Isn't it actually populated from the bottom of the ICANN community? Or, is there something completely different when we do a review? Is it really a bottom up process? I think that it is, and I'm curious about what others think. All right, let me move on then to the next one, 381.

Avri Doria: This is Avri. And while you're moving on, that the trickiness, I think, on the full bottom up procedure is to some, I think -- and this again, the registry people on the call can correct -- needs more the PDP process, than it needs a review. The AOC review is certainly a multi-stakeholder group. And yes, you

could say its members are chosen in a chosen in a bottom up review, and it's those comments.

But, in other places, when we've defined the whole notion of the bottom up, it's included that's the development process. So, there may be some ambiguity there, and that's what I would want to look at more closely. Thanks.

Steve DelBianco: My words exactly, Avri. I think you want to ask the registries whether they mean that we need a PDC for things like that. That's great, okay. On the next one, JH I believe had a mistake in notion about this co-existence between the bylaws, and the affirmation of commitments.

So, we repeated the comment above. There's another mistake in notion that the affirmation of commitments A, B was driving some sort of requirement, where IT had to be located in Los Angeles. And so, I explained the current articles and bylaws of where that is.

We're not proposing JH to those departments. And I can't really tell whether JH wants Article 18 to be a fundamental bylaw or not. So, this one is really full agreement. And I don't think it's a concern. I might have said confusion, but I'm trying to be careful about use of that term. But, this is certainly not a disagreement or concern.

Next one, Berry. So, 282. Again, Article 18 should be fundamental, but BC was explicit about that. And 383. They recommend increasing the cycle time of the periodic reviews. The UK may not be aware that we did in our proposal.

Expand the number of years between reviews. So, we did so, and I believe that we'd need to check with UK. Our next draft is to whether they even want

them to be further apart. USCID has one interesting point, where they were actually - they indicated they don't support the words, "where feasible and appropriate." And what's interesting is that the CCWG does review on the call.

They didn't suggest those words. They came over from the AOC. So, we didn't even suggest adding them because - I don't know what to do with that. They want to cut words out as we bring them over from the affirmation of commitments.

And they'll probably need to understand whether others have that same view, to decide whether to take action on it. Three eighty-six, 385, it's the same. I think this is a mistake in notion for jpnice. And determination of the affirmation will not be necessary. So, I think that we covered this one already. I just want to just copy it in the same time. Three eighty-seven.

Jordan Carter: I think, Steve...

Steve DelBianco: And that's as far as I got. Go ahead.

Jordan Carter: Yes, that was as far as you got...

Steve DelBianco: That's right.

Jordan Carter: ...your revisions and reviews. So, thank you for doing that work. And I wonder if you and Avri together are going to be able to keep tag teaming on this, and flush out the rest of these comments. You've got another 10 or 12 to go. Is that going to be viable for you, Steve? For you, Avri? And Avri, I see your hand is up so go ahead.

Avri Doria: Right. Yes, this is Avri to answer your question. Yes, in fact the tag teaming and, you know, in fact if Steve wants to go through and give the initial answers on the rest. And then I can do, you know, the second review as he did on the ones I provided in the first class. So, tag teaming is actually a really good way to do it. And now, we can switch roles, or I propose we switch roles, and Steve continue with the initial answer. And I'll go back and do the second review.

Jordan Carter: Okay, that sounds good to me.

Avri Doria: And if Steve accepts that, obviously.

Jordan Carter: He said, "Sure, Avri," in the chat. So, we're going to assume that he stand by that comment of a moment ago. And the other thing I would ask maybe for an action is that you guys have a go at the summary thing, which will be a little bit more complicated for this block of comments, than it is for the previous one. But, if that's possible, that would be great as well.

Avri Doria: Well, once the rest of it is finished, we can look at doing that.

Jordan Carter: Yes, absolutely. So, we followed the analysis and the comment. And if I'm not mistaken, we have got about 36 hours between now and the start of the next call. And so, maybe that's a viable thing for you to enjoy spending your weekends in doing. Look, thank you to both of you for that. The last content piece of that call that we've got tonight is to flick right up to the start of the document.

And to start looking through the first section of the doc, where I had a start with the comments. And then Roelof has been amending and improving and carrying these on right in the first comment, on to two, three. We ask for some

words from Sidley, and we've now got some words from Sidley there. So for this call, if we could have a Sidley lawyer to just briefly speak to that language there, that would be good. Holly Gregory, go ahead.

Holly Gregory: Well, what we did was we added a suggested language to clarify that, whether you're under California law or under a Swiss law, we issue around recognition of legal persons, as a requirement for members, is the same. And also that both jurisdictions provide two members of a non-profit corporation, or a non-profit association.

The ability to exert some meaning oversight of that entity. But again, in each case, needed to be organized as legal persons, which means either human beings surviving in their individual capacity, or legally recognized entities, such as an incorporate association.

Jordan Carter: Thank you. Thank you for that, Holly. I'm just incorporating that in the proposed CCWG response. So, we can leave that one there for now. Roelof, do you want to speak? My initial jobs, you've done quite a lot of work improving. Do you want to spend - should we spend the next, sort of, 15 or 20 minutes you work through as the lead speaker on this stuff.

And I can tag in as you like. Are you happy to do that? But actually, you think about that for a moment, Roelof, because there's suddenly a queue. So, Holly, if you're done, if you can put your hand down. Kavouss is next in the queue.

Kavouss Arasteh: Yes. I have just a small question. I see here that under the CCWG's response that you say, "The CCWG thank you," and refers to an individual. Are we do the same thing in all of the other comments, write back to those who send the comments, and then provide individual response? I think that's the first time I see it here that, "The CCWG thank you." Thanking an individual. Thank you.

Jordan Carter: My impression is that we are indeed meant to provide a response to each comment. And so, it isn't mean to be a particularly polite one, because (unintelligible) individual as opposed to an organization. It's just that, you know, I have a hatred of bureaucratic sentencing and language, and so if I'm writing these CCWG responses, they're going to be a little bit different each time.

But generally, thanking people for input. That seems to be the steer that we've had from the coaches, and from the whole group. Holly's added some material in the chat about what could be better said. But, if we could go back into Steve's question, which is that.

Steve DelBianco: Thanks. Holly, giving that Richard Hill was talking about individuals, not the ACs and SOs being the members. My question for you is, do each of those individuals have to be part of a UA or legal person, where they as individuals have sufficient standing to be members, of ICANN or an individual member entity?

I'm raising this, Holly, because the way he's confusing us is they could be marked individuals, not ACs and SOs. And part of our answer that you're working on is all about, well, ACs and SOs.

Holly Gregory: Okay. So, legal persons, individual, individual humans by definition are legal persons. So, the answer is yes, individual persons can have all of the membership powers. They can be members. They qualify. That's the easy - maybe I didn't answer it, because that's the easy answer. I thought it was pretty clear that human beings are legal persons.

Steve DelBianco: That's a helpful clarification. Good, thank you.

Jordan Carter: Thanks, Holly. Thanks, Steve. And I've incorporated that in the answer, just in terms of getting that right. Let's just not spend any more time on Richard's comment at this point. I think we've got an answer that makes sense with the help of counsel. So, thank you.

And I would like, if I may - Holly, you've got more to add on that one? No? Okay. I would like to go back to my previous suggestion of asking Roelof to lead us through some of this content, if you would like to do so. Roelof, are you able to do so?

Roelof Nordling: I'm joining this group. Yes, and I'm a producer. If I'd like to do it, that's a different question, because I'm wondering whether this way would be good, so that it doesn't become very boring, and (unintelligible) any suggestions. And (unintelligible).

Jordan Carter: Okay, well let's actually - let's take it. We're a small group today. We've gone through quite a lot of content already. And I would like to put a proposition to the room, based on Roelof's clear hesitation in wishing to bore us all/ explain to us all for a while what he's already written. And to me personally, it's more valuable to look at summaries once they've been completed, and to make sure through a collective discussion process, that we've got the summary right and cross checked for everything that needs to be included or not, is done.

So, I'm going to make a proposal, where I would like you to get ready to use your voting text, or crosses. And the proposal is that we don't go through these comments one by one, but that actually we save this area of the content to go through on the call on Sunday at 18:00, when the summary work will have been done. So, if you agree with that proposal, that we don't go through

these comments one by one now in this here section, but that we go through them as needed when the summary is done, by (unintelligible) and everyone on Monday's - on the Sunday night's call.

If you agree with that, please use your green check. I'm going to use mine. Before we do that though - please use your green check, and we'll take Steve's question after it. If you disagree with that, and please use a red cross. And if you are no longer a person and a zombie, don't do anything. Four green checks out of 13 on the list. Some of you may not be able to do checks. You'll do a smiley face.

Okay, that sounds like the opposite of (unintelligible) for nearly Christmas. So, I think we've got a mandate to not work through all these individual, which I find helpful because it's Saturday night, personally. So, Roelof, you're saved. And I just thank you for the work that you've been doing in this area.

I don't know if (Matt) has been doing any or not. I think if we could come to the next agenda item here, which is what to do next, approach to the 14 (June) call, Sunday 18:00. So that's, you know, 23 hours away. No, I think it's 36, 36, 40 hours. Whatever it is, it's a while away. I think the actions that we need to do at that call, is to look at the summary for this section to Section 1 on the overall mechanism.

To look at the summary for the AOCN Corporation. TO have another review of the summaries on the director of the (new born) question. And hopefully, to get a look at a summary of the bylaws material, which relies on Keith Drazek having a loop in. And he did say he'd be on the next call.

Those seem to me to be the important pieces of work that we need to do on Monday's call. And I don't know if we'll be able to get them all done. It



relies, of course, on the volunteer work. And to have made some more progress in terms of the CCWG's response. So, if those summaries are done along with the overall CCWG response to each section of comments, so a proposal for the CCWG to look through in Buenos Aires, I think we'll have done a lot of very good work very quickly. So, I would welcome, kind of, people's reactions to that proposed work for the next call. And Kavouss, I see that your hand is up. So, please go ahead. And you're on mute, Kavouss, I think.

If you are - oh no, your hand has gone down. So, that's allowed as well. Given the sort of strange times that we're in the relative quietness of the call, I'm going to assume that, that is a reasonable program of work for Monday, or whatever it is. The 14th is of June, the next call. And I think that, that means that we're largely complete on this call.

So, I will now make a call for whether there is any other business to raise of the items we discussed today. Does anyone have anything else to add? I see people typing. I don't see any hands up. And it's okay not to have any other items, by the way.

Don't feel an urge to speak. And now I see no typing and no hands. So, I think we've drawn this call to a close a half an hour early. So, I'd just like to close out by thanking everyone for the contributions on the call today. And a special thanks to the people who've been doing a bit of writing. The people I know about that have been doing that, Fiona and Steve, and Avri, and Robin, though she isn't here. And thanks for all the input.

I look forward to seeing the work that people come up with. And the last point I'd make is that if you - I don't understand the method variations and quality of experience that people have with respect to accessing the Google Doc.

Whether I'm on a mobile connection here in New Zealand or on a fixed line connection, I get a fast response and service from it. I know that other people have frustratingly and distressingly awful experiences there. So, if you need another mode to work on the document, please let me know, and I'll (unintelligible).

I'm happy to download it and to send you a Word doc. What I'll do directly after this call is I'll write a draft agenda for the next meeting. And I will circulate a Word version as it is now, after the changes that we've made on this call. And a PDF version, because it doesn't take any more to do.

And so, if you need to work on that, please do it and track the changes, so people can see what you're doing. And then, send it around on the email list, and see if (unintelligible) and IANA staff can paste things back into the Google Doc as a central repository. And if you find things are in the wrong place in the comments, don't forget to highlight them in yellow.

And I look forward to speaking to you at our next meeting. So, thanks everyone. And we will talk again soon. Have a good evening, morning, whatever it is for you. Clubbing experience, if you'd like. See you later.

Woman: Bye. Have a good weekend.

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