

ICANN

**Moderator: Brenda Brewer
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6:00 am CT**

Coordinator: Recordings have started.

Cheryl Langdon-Orr: Thank you very much. My name is Cheryl Langdon-Orr, and this is the Stress Test Working Party for the CCWG on Accountability on our weekly call. I can't even remember what time UTC is, but someone will work it out and put it onto the transcript.

We have a fairly light group of attendees tonight, noting three staff: Adam Peake, Alice Jansen, and Kimberly Carlson in the Adobe Connect room. And Avri Doria, myself, Cheryl Langdon-Orr, and my co-chair Steve DelBianco are in the Adobe Connect as well.

And with that I'd just like to ask if there's anyone else on the audio bridge who's not in the Adobe Connect room so we can note them as present at this time. Not hearing anyone, and to be honest not expecting anyone, we'll - we might make this a somewhat informal call if we don't get a few more people in the next, say, five or so minutes.

We have noted in some of the other work parties a bit of a drop off just in this ten days or so before people will be traveling to and attending the Buenos Aires meeting for ICANN. We also note and appreciate the fairly serious amount of time that has been consumed by our rank and file members and participants by our CCWG activities in the last couple of weeks.

And so we can be fairly forgiving to note that if we have a low turnout tonight, we won't do any first readings on anything, we won't do anything extraordinary and suggest that we have anything like a quorum, although I must admit Avri and myself and Steve could probably have a darn good conversation with Adam and Alice and Kimberly. We will appreciate the fact that we all have other lives we could lead, and we will postpone this meeting until a later date. But let's leave the lines open for a little while and see if some other latecomers do turn up.

And at that, as long we recognize that what we say and do at the moment is on the record and will be recorded and transcribed for posterity's sake, we have Avri and Steve having a very important conversation in the chat. And so, Steve, I'd like you to stop typing at Avri and just bring her up to speed on what's happening in the Hill with relation to your work and some of the influence and information that you've been privy to.

Steve DelBianco: Sure. Good morning, Avri. When I testified last month, I tried to direct the Commerce Committee's attention away from sort of this GAO post-proposal analysis and more towards giving the conditions and the requirements that we need from Congress. And I said at the time we were worried that ICANN Legal and Staff and perhaps even the board might just - might resist or modify the community's proposal.

Because at the time you'll recall there was evidence that the protocol and numbers teams were having trouble getting some relatively minor items implemented, and legal staff was making claims that had us all very alarmed. So it was in that atmosphere that I told Congress the bottom line of my written and oral testimony was the way you can help most was to require that NTIA certify that the bylaws changes requested by the community had been adopted prior to transitioning the IANA contract. In other words, that implementation actually happen. Don't leave it to chance.

And lo and behold, I think Commerce and Congress in general have really come a long way in the last year. They're much more sophisticated about this transition. And the Commerce Committee's sponsors, we met with them a few times, and they've done exactly what we asked. This is a really a one-page bill that will be introduced today as a substitute for dot-come.

And it says that the Secretary of Commerce, once he sees receives the community's consensus proposals -- getting to consensus is another matter entirely -- but once the community proposals come over to NTIA, NTIA has to certify basically two things. It has to certify first that all five conditions of NTIA have been met in the proposal. And number two, Congress requires that they certify that the community's proposals, any bylaw changes required by the community as part of Work Stream 1 had been adopted by the board.

Currently the word is implemented, but when you implement a bylaws change they may end up changing that word to adopt the bylaws change. And then if they certify this, then Congress would have 30 days to react. But if Congress does nothing, then NTIA has permission to relinquish the contract, the IANA contract.

So it really takes the appropriations shock block away and puts Congress in a position of supporting what the community wanted, giving us explicitly what we asked for in terms of implementation as well. So I think it's a huge step forward. I'm pretty sure it'll be adopted unanimously in the subcommittee today. Then it has to go to full committee and then to the House floor. I've got to then turn to what happens in the Senate next.

Cheryl Langdon-Orr: Steve, could I show my absolute ignorance -- Cheryl here for the record -- of the arcane machinations of the way your elected officials operate? Just, you know, give me the Cliff Notes, is this a five-month process, a two-month process, a ten-month process? What sort of timeframes are we talking here as possibilities?

Steve DelBianco: Yes good question. It's probably only a few weeks until the House would pass it. And then it would probably be a month or two before we got it through the Senate. And Avri asked a good question about the conditions on spending, the appropriations writer. That's a different committee and a different bill, Avri. And that's pretty much already through.

So what we would do is get an amendment later on, and amendment to the appropriations writer to either peel it back or to add the qualifier that the non-transferability, the non-termination of appropriations would be triggered either by a date certain, next September, or could it be triggered by satisfaction of the requirements of the dot-com act. So we're just starting on that, but I think we can work through the writer on appropriations once we get this in today.

Cheryl Langdon-Orr: I note Avri's typing. Cheryl again for the record. But if I can show ignorance even further. Steve, does this mean that if things become a (unintelligible) or is there still some other, I don't know, cross-calling or

review part or, you know, reconsideration aspects that may come into play? I mean how much politics is likely to happen.

Steve DelBianco: You're right about that because the 30-day window. Let's suppose Secretary Strickling on January 15 certifies that the community came together with a proposal that meets the conditions and that the bylaws have been adopted, and that 30 days' window opens. And at that point, Congress has 30 days to react, right? And Congress could hold a hearing, oversight hearings. It might decide to introduce other conditions.

I mean it can reopen this in the middle of January or February next year if in fact the community - certain elements of the community are still really dissatisfied. Maybe the bylaws have been adopted but certain structures have not been set up. Maybe it's not enforceable and there's a whole element that's concerned about that. Maybe .mil and .gov haven't been addressed properly. So there are residual issues, and some of them might even come up today at the markup. But those residual issues could be introduced. Congress, you know, reserves the right to do that after the proposal's in.

But this really is a huge step forward in the sense that it's not trying - last year the Dot-Com Act passed by the House would have taken the hard work of our proposal and simply handed it over to the Government Accountability Office, who could take up to a year to analyze it. And I lobbied for almost nine months to say that was like the wrong approach. Don't second guess the community. Be part of the community, give us your requirements now, and we'll work with them.

So that - I think it's a huge improvement. I know Avri's not optimistic. That's okay. Yes and, Avri, I don't agree with you. I don't think there's any question of authority. The Commerce Committee has jurisdiction over the Commerce

Department. And in fact the Commerce Committee last June sent a letter to the GAO asking them to analyze the risks and implications of the transition. All of this is in my testimony, and those questions will surface in the next couple of weeks.

And they may introduce a few new wrinkles, such as the mill and gov question I mentioned earlier. Mill and gov don't even have an agreement, a framework agreement, like a ccTLD would have, and I think there needs to be some evidence of permanent control for mill and gov, which happen to be the mill and gov used by the USA, even though the mill and gov used by Australia are at the second level. And the same is true of about 100 other countries.

Avri, you're typing a lot today. Do you not have voice with us?

Cheryl Langdon-Orr: I don't know why she doesn't just talk to us. But, Steve, while she's working out whether she wants to talk to us or not -- I'm tongue in cheek there, Avri, don't worry -- does this mean that we could be looking at a reasonable outcome around the 2016 mid to third quarter, or what?

Steve DelBianco: The objective I think from all forces is to have it done before the presidential election season gets too fired up. So I believe that the most optimistic is probably March. I did an event with Fadi yesterday here in Washington and the other day. He was talking about March. The Marrakech meeting would probably be the earliest that everything could be done.

Cheryl Langdon-Orr: Okay.

Steve DelBianco: It might take until the June meeting. But it would be awkward if we extended it into the August, September, October timeframe.

Cheryl Langdon-Orr: But not impossible.

Steve DelBianco: Not impossible at all. Not impossible. I remember us...

Cheryl Langdon-Orr: And not really...

Steve DelBianco: This administration is still in place until January of 2017.

Cheryl Langdon-Orr: Yes. And in fact very much conservatively in keeping with the timelines that have been put out by the CCWG and the CWG, so that's, you know, there's no - we shouldn't feel that we've been holding things up is what I'm saying.

Steve DelBianco: No, no. And we have a genuine controversy, and it was the big subject of discussion that three of us plus Jonathan Zuck had, and I think Par was on as well last week, this notion of if to get enforceability we end up adopting a member designator model, does that have a burdens to it or does it have risks to it that we end up turning to a California court or an international arbitrator court more frequently than people are comfortable with. That is the core question in front of us.

And I think we've got to work that out in Buenos Aires, since that - honestly that could get in the way of achieving consensus. And I think the stress test group were just one of many groups that's going to look hard at that, figuring out how we're going to handle that. And that was part of the discussion last week.

Did you want to recap what we did last week? I have my notes in front of me if that could help with that?

Cheryl Langdon-Orr: I'll ask you to do that just after we wrap up on this sort of ad hoc information sharing moment in today's meeting. And the one thing I wanted to ask which is germane to the meeting we're about to formally, more formally, begin and that is -- and then decide how long we're going to run it -- and that is, is there any additional stress test scenarios that you think we need to now put into our toolkit based on where you're seeing the Hill and your government running at the moment?

Steve DelBianco: Good question, but no. We're trying to simplify what they're doing and not - it probably doesn't suggest new stress tests there. We're not at a loss for new stress tests.

Cheryl Langdon-Orr: No, no, no. I was going to say we've had a few extra suggested out of the public comments, so let's roll this back and note that hopefully the coffee will kick in and we'll get Avri's voice onto the MP3 recordings before this call closes out. And there are a couple of very, very U.S.-centric sort of interactions going on in the chat, which I'm sure Steve and Avri will sort out and leave me in blissful ignorance about.

We are, by my calculations, some 17 or almost 18 minutes past the hour. We note that the attendance at this call has not changed, and it is a seemingly small turnout for significant business to be undertaken. But for the record -- and there are those who would be reviewing at their own leisure the transcript and recordings of this call to keep themselves up to speed -- I think it's appropriate that we do at least the following.

And that is review the call we had last week and then also review the parts from the call within the last 24 hours that was held looking at the public comment input onto the CCWG most recent document that were particularly germane or had a relationship a nexus with stress test. And with that, I'm going to ask Steve if you don't mind to first of all take us through a little bit of review from last week. Tell me about it, Steve.

Two to 5 am is how you will have been going for the last however many months it is, so I empathize but not sympathize. We'll get to the three-hour call review yesterday, but let's first do a quick recap on the high points and holidays from last week's call of the stress test working party.

Steve DelBianco: Yes, we had two action items and then a long discussion. One action item was Mathieu's stress test over the FIFA scandal. We discussed, suggested that we already had a stress test that covered most of it and that we wanted to inform Mathieu about that. It was stress test number nine, if you recall. And Paragraph 445 was the remedy.

We had a discussion on whether the hotline aspect, or Paragraph 442, was weak or not. Adam Peake gave us some confidence that it is alive and working. We don't know the extent to which it's used yet, and that's not necessary to explain all that in the stress test.

So we sent that to Mathieu. He seemed relieved. But I believe he came back with some sort of - let's check our notes. Did Mathieu want us to go further on the FIFA stress test? Here's what he said.

Cheryl Langdon-Orr: I didn't read it that way, but I'm...

Steve DelBianco: Yes he said, "I might be going to sleep my perception of the FIFA scandal is that it's not only corruption but also that many of the members themselves were involved in this scandal by reelecting the same officers." Anything that we can show, he's asking, that would prevent a corrupt insider would be useful. And then he gives an example.

It said, "What if a minority of stakeholder in each AC/SO would be enough to block the recall of the board? And I know I am not bringing much help here, but maybe we should expand on this stress test a bit, refining the contingency in a small group to ensure that we can sustain scrutiny on the matter."

That doesn't help me much, so I think we have to go back to Mathieu -- and we're together in Buenos Aires -- and ask specifically if he wants more on stress test number nine. Do you guys agree?

Cheryl Langdon-Orr: I'm comfortable with that approach, but I don't necessarily think it will sit under necessarily just stress test number nine, because where he's heading to in that particularly fluffy scenario he was sort of stitching together was how do we keep the next level accountable, how do we assure the community rank and file at the edges that there is no capture happening within the representative bodies, et cetera, et cetera.

And that is a question which I don't believe we have in fact looked at with anywhere near enough rigor or detail. But on that, I'd be very keen to hear Avri's response, because that's very much my knee-jerk reaction. Avri, do we have your voice yet? I think we can hear you. No.

Steve DelBianco: Cheryl, while we're waiting...

Cheryl Langdon-Orr: Go ahead, Steve.

Steve DelBianco: The notion of capture was stress test number 12, and that was on Page 80 of our full proposal document.

Cheryl Langdon-Orr: Which is why I don't think it'll fit under nine, yes.

Steve DelBianco: And under capture, Paragraph 595 was as far as we went. We said that each AC, SO and SG needs accountability and transparency rules to prevent capture from outside that community.

Cheryl Langdon-Orr: But I think one of the things is we really haven't looked at how we can either expect or ensure that some agreed standing is not norm of accountability should be expected of the component parts of ICANN. We focused on the board but we really haven't looked at the representative bodies let alone the rank and file. And that's okay. It can be - it can in fact be, you know, later work and that's fine too. But I think we need to recognize that.

Avri, can we work out your audio? Because I would really like to hear what you're saying?

Steve DelBianco: Is Avri on the audio bridge or the Adobe Connect for audio?

Cheryl Langdon-Orr: Alice, did we get to dial out to Avri? Is that (unintelligible)? Or Kimberly, maybe you can sort that out?

Steve DelBianco: Cheryl, I've come to believe that the Adobe audio bridge is superior to the dial in and that's a switch. It used to be the other way around.

Cheryl Langdon-Orr: I think it depends on your Internet connection at the time. While ever my little green bar is up and that's saying my Internet connection within the

Adobe Connect room is nothing other than 100%, I have no problems. Some days I have horrendous problems, and occasionally it's just shocking. And I, you know, lose Adobe Connect so many times it's - the poor staff just do nothing but let me back in the room. And I don't believe I'm in a third world or developing economy, although one could question that looking at our current state of affairs. But it just gets very, very flaky sometimes.

The other thing is occasionally, and I have no idea why, it's the telephone bridge that drops more often. And without the Adobe Connect running, then I wouldn't be able to turn up the volume and not miss what's going on. So it I guess from my perspective it fixes one, half dozen of the other.

Avri, do we have your audio in yet?

Steve DelBianco: Cheryl, I'll note for the record then that we still need to look at internal capture of SOs and ACs, and I'll note that stress test number 12 will probably have to be expanded, because it talks about external but the word internal in there. It's about parties that are inside. And this is not a lot of work for the stress test team. We would simply note that it's a risk. We won't solve this one.

And I'm pretty sure we aren't going to recommend bylaws changes that affect each and every AC and SO, which tend to operate rather autonomously and are subject to bylaws-driven reviews of their internal structures and charters. But the most we can do is suggest that more transparency about their voting processes, the charters that are used.

And then one other item that we covered last week was rogue voting. And this sprung out of a long discussion about the accountability loop, as Avri notes it, and that how the member model might contribute to rogue voting, where an

unincorporated association might vote in a way that was different than the underlying AC and SO had instructed.

And then I believe I articulated a couple of steps in a stress test that would solve that if there was a way to negate the vote if the AC and SO chair informed that voting body that that's an illegitimate vote, give us a chance to fix the rogue representative. If it was a misunderstanding, we'll correct it. If we need to replace that person, we'll do so. And that's whether it's a designator or a UA, it doesn't matter. And then there would be a re-voting. So we said that that would be something we'd write up as a stress test. I hadn't done that one yet, but I have all my notes about that.

Cheryl Langdon-Orr: Okay so it's still pending, right?

Steve DelBianco: Yes exactly. So we called it the rogue voting stress test. Okay?

Cheryl Langdon-Orr: Good. And I don't think there's anything else outstanding then from last week.

Steve DelBianco: No, just a continued discussion as to whether we are creating new risks in going to court. And we still differ on that, but that's going to be a huge topic in Buenos Aires.

Cheryl Langdon-Orr: It's going to be the big face-to-face conversation. Avri?

Avri Doria: Just one of them, yes. Can I be heard now?

Cheryl Langdon-Orr: You sure can, my dear.

Avri Doria: Okay so it means it wasn't my headsets, it was the hotel connection. I have no idea what question you asked me.

Steve DelBianco: Are you in Washington, Avri?

Avri Doria: Yes I'm in Washington.

Steve DelBianco: Okay. Are you going to go to the markup this morning?

Avri Doria: No. No I've got - I'm here for a different set of human rights and protocol considerations meetings. So, yes. But I have never been to one of those Congress thingies. I've never been in their house. It's - I usually stay away from the city, but anyway. It's never been my place. I've never felt all that comfortable here around all these American government types. Not a customary native like you are, who's comfortable talking to them. I couldn't imagine ever giving testimony to these people. But anyway.

Steve DelBianco: You'd do it fine. Both of you would.

Cheryl Langdon-Orr: Oh yes, indeed she would.

Steve DelBianco: It's not hard at all.

Cheryl Langdon-Orr: You'd give the hell, Avri.

Steve DelBianco: I announced this before you joined, Avri, but I have a hard stop in the next 30 minutes to get into that hearing markup.

Cheryl Langdon-Orr: To get there.

Steve DelBianco: So I had suggested that all that we really need to do, I think, is walk through the two pages of stress test comments that Staff compiled for us. It's on the Adobe chat right now. We actually went through it briefly at 3 o'clock yesterday morning on the big CCWG three hour call, but we've got to labor through each one of these and come up with a response from the stress test team. Is that right, Cheryl?

Cheryl Langdon-Orr: We do, Steve. But, you know, you, me and Avri were all on that call, and I'm wondering whether reiterating it all to each other - I certainly was acutely listening to you because I'd been very frustrated by not being able to get myself off mute just prior to that. So I'm not sure. Perhaps if we discuss how we want to approach reacting and interacting with those comments rather than reviewing them, that might be more useful for the next few minutes.

Steve DelBianco: Yes, I would modify that to say let's cover how we want to do it and then let's do the very first one to test out whether - how it works.

Cheryl Langdon-Orr: Yes, happy with that.

Steve DelBianco: So what's your plan for the how? Do we want to generate this notion of support, disagree, confused, clarity? I think there was a four-part criteria that Mathieu had suggested. The co-chairs had wanted us to characterize each comment on a dimension.

Cheryl Langdon-Orr: Yes I had still images of smiley faces at various levels of scowl or joy when he was doing that, but anyway. Yes right, he's the boss. Let's work with what he's proposing. Is my enthusiasm palpable?

Avri Doria: Yes and your attitude about some of the comments is similar to mine, but anyway.

Cheryl Langdon-Orr: Let's bring up that document, because at the moment what I'm looking at - oh because I'm at the end of the document, that's why. Let's just look at the first ones. Steve, how would you approach it then, to begin with? I mean we obviously have to bring the committee as a whole in on this. The way we've done it in the past is present them with a scenario and some fairly well fleshed out columns associated with that scenario that we worked out of the face-to-face - well the face-to-face ICANN meeting that we held. We don't necessarily have to do it that way, but how would you like to do it?

Steve DelBianco: If we took the first one, it was Richard Hill, number 76, I believe that part of his is confusion between where an entity is incorporated, where ICANN is incorporated, and where it is subject to jurisdiction. So my proposal would be we'd walk through that. And I note Avri brought up jurisdiction in the chat. Some of that is confusion and we sort that out.

Legal jurisdiction is broad and has nothing to do with where you're incorporated. But where you're incorporated has a lot to do with how you're governed in terms of whether things like the membership structure take place in Switzerland or does it happen in California, is there a membership structure at all.

Cheryl Langdon-Orr: Yes more (unintelligible).

Steve DelBianco: In jurisdiction, it's very different. ICANN is subject to the jurisdiction of any country that claims that ICANN's actions or inactions are affecting the citizens of that country, the interests of that country, and to the extent that that nation can claim that it can reach ICANN, it will have jurisdictions. So I think we sorted this out months ago. So jurisdiction is different than a corporation. So we'd have to resurrect that explanation.

Cheryl Langdon-Orr: And we have legal counsel notes to back that up.

Avri Doria: Yet I don't agree with it.

Steve DelBianco: So we'd have to resurrect - go ahead. Oh sorry, go ahead.

Avri Doria: We all seem to be so certain that we have. And indeed in most cases yes, you are under the jurisdiction of wherever you're doing business. But that doesn't mean -- and I think that's kind of the thing that some of the Brazilians and others are driving at -- is that there isn't, and I do believe the word jurisdiction still applies, extra jurisdiction constraints imposed upon where you are organized.

Because there are -- and I'm not sure that I'll use the right words -- but the government of the country that you're based in can oppose certain kinds of are they prior constraints or is that improperly used on you may not do business with X. Now when you're in a country and you do something, yes you're in their jurisdiction. But this whole notion of the U.S. and/or California being able to create legislation that affects what you are doing is also true in any country that you base in.

And that's one of the reasons why certain people have always tended towards the notion of a host country agreement that explicitly says no, the local legislature or the national legislature cannot create rules that affect who we do business with and what sort of business, what countries we do business with. People within which countries, what things we can import or export, not that we're importing or exporting, but who knows what the (unintelligible) could fall under at some point. Can constrain any of those issues.

So I think that by saying oh you're confusing the issue of incorporation and jurisdiction, we're missing their point. Thanks.

Steve DelBianco: So we won't pejorative to claim there's confusion but we should describe the distinction. And I do know (Richard)'s point. I read his comment. His point was he'd prefer ICANN be incorporated in Switzerland. That's really his point.

Avri Doria: Yes but that's not Brazil's point.

Steve DelBianco: I know but I thought we were covering one at a time. We'll get to Brazil.

Avri Doria: You had said we were covering Brazil by talking about (Richard Hill), so that's why I figured that the two of them were being discussed at the same time.

Steve DelBianco: I didn't realize I said Brazil.

Avri Doria: I thought you had said that when we were in the chat. Sorry, I'll go back to not talking.

Steve DelBianco: No, no, it's fine. Let's see. So (Richard Hill) wants us to address the question of incorporating in Switzerland. When he - he was the first, one of the very first comments to come in, and there were folks who investigated the Switzerland option.

And I don't know that it's the stress team -- this is a stylistic question -- should the stress test team do a deep dive and explore pros and cons of a Swiss incorporation? It's a little bit outside of our areas of expertise here in the same sense that the jurisdictional discussion was. What does the stress test work party do in response to a suggestion like this?

I mean we can clarify in the stress test that there is a distinction between jurisdiction and incorporation, we won't call it confusion. We'll point out the distinction. We can beef up the right-hand column, but if I had - if I were to propose something, I would write into this - I would write a textual description in response to (Richard Hill), and I would make the distinction between incorporation and jurisdiction and suggest that under any country, even if it were Switzerland, we'd still be in the same place of exploring how is it that the community empowerment becomes enforceable.

Does it require something like membership in Switzerland? And we would be throwing the question literally back to him, as the proponent of this switch. We'd throw it back to him to suggest that update our stress test for a Swiss incorporated ICANN, one would have - we would need to understand how one implements membership empowerment -- sorry, community empowerment -- that's enforceable under the Swiss construct.

And that includes some discussion of whether legal or natural persons are required and a discussion of how does one enforce a power, if the board didn't want to follow an IRP or did not want to follow a vote to block a bylaws change. So that would throw the ball back to him or to Legal, but the stress test itself wouldn't be substantially modified. Adam is in the chat giving us some info -- intel.

Cheryl Langdon-Orr: Sorry. (Unintelligible) Richard Hill. Yes if there was that note is the one that Adam - if that's same note as I have memory reading at some point in the not too distant past, it basically said he's wrong, don't bother with it. And I am paraphrasing. And to that end, I'm wondering whether that approach is outlined - is really, Steve, more of value than the comment is worth.

I think what we need to do, and it's important that we do, is within the tool that I thought we were going to be using, which is the one that's a fairly pro forma public comment review tool as currently used by the GNSO for working groups, we show how we have considered the comment and what the reaction and any response or alteration to product, if any, is in a tabular form.

But that's sort of not our stress test. That's something our working party needs to do, but it doesn't actually impinge on our stress test at all. It ensures that we have thought about, discussed, and taken advice and looked at whatever research is reasonably available to us that may help answer any questions or queries raised by the commenters. So I'm not sure I'm as - I think you're being far more generous than I tending to be.

Steve DelBianco: Mostly in anticipation of what Avri said, is that we'll need to deal with this in a couple of other instances like Brazil.

Cheryl Langdon-Orr: And that's true, we will. But that's not necessarily work for now. The matter of jurisdiction has in fact been discussed a number of times and has been seen like a number of other matters, you know, definition of public interest in the world of ICANN is one of those, that is slightly more complicated, if not very much more complicated, and probably needs to be looked at the next layer of our accountability.

Steve DelBianco: You know, stress test number four, we put a lot of time into stress test number four. Just to refresh your memory on that it was new regulations or legislation. For example the government citing antitrust law, et cetera. And I believe it came from Matthew Huddy. And stress test number four seems to get to the second sentence in staff's summary of Richard Hill's comment when he said in particular they cannot stop interference from the country where ICANN is incorporated.

So he seems to be suggesting that if ICANN were incorporated in the USA, where it is now, that U.S. laws would have special reach and we couldn't - we won't have protected ICANN from that reach. So we would have to ask the question about whether if you change where you're incorporated, does that protect you from the reach? If the Swiss passed a law tomorrow affecting ICANN, could ICANN ignore it? The answer's no.

And when we wrote stress test number four, we said in here that the community - after the ICANN board responds to the regulation, the community could challenge that response through an IRP, right, or the next time there was an affirmation of commitments review, could review and make recommendations about that.

So we focused our stress testing on the adequacy of these measures and giving the community the ability to challenge and hold the board accountable. So in that respect, how the board decides to respond. And I think it would be worth clarifying to Richard what stress test four, that's the one he's talking about, what stress test four measures. But we also have to clarify that any nation that passes a law...

Cheryl Langdon-Orr: Wherever you are housed, you are subject to, that's right. You just shift where the issue is, not what the issue is.

Steve DelBianco: Okay so that's why I said a lot of text.

Avri Doria: It's Avri again. I didn't get my hand up in time.

Steve DelBianco: Go ahead.

Avri Doria: I think that's too glib an answer, because notice how major corporations say oh having an office here means we're subject to your law, we're just going to move that office. And moving offices it's a relatively simple thing if it's a rented space with 17 chairs. Whereas changing the seat of incorporation is a much more serious and expensive proposition. So to say that there is no difference between the two is indeed problematic.

Now in response to Richard Hill's thing where he's saying is, if I'm understanding him, is that are we sure that members are allowed to do everything we want members to be able to do in California or else maybe it would be better somewhere else. Now if we're capable of saying, listen everything we want the members to be able to do, they can do in California, then I think his question has actually been answered.

If, however, there are things that we would like members to do -- and I haven't seen that list -- that we could not do, for example, you know, being able to deny any decision they make at any time, and I don't know that we'd want to do that or that Switzerland would allow that, then he might have an issue.

But I think we have set -- and so it's not a stress test issue -- we have set out a number of things we want the members to be able to do: the budget, the voting them out, the this or that. And California lets us do them all. So his condition is not met, and therefore I think that is a sufficient comment on that one. If indeed there had been a membership power that we just couldn't pull off and we decided oh okay, we're going to stay in California, we can live with it, then he'd have a point.

Cheryl Langdon-Orr: Avri, Cheryl here. That second sentence though that Steve was referring to just a moment ago, where he - where Richard talks about not being able to

stop interference from a country where ICANN is incorporated, that's sort of separate to what you were just outlining, isn't it?

Avri Doria: Exactly. That's a point - and that's a point that shows up one way or another in several comments. That's a trending point. I don't know if we do the trending, perhaps how big a trending point it is, but it is a trending point in one way or another. And that's - I guess I'm more concerned about the trending points than a particular Richard Hill point.

Cheryl Langdon-Orr: Okay so, Avri, can I ask you, does that then make it a stress test issue or does it make it a community working group as a whole issue?

Avri Doria: I think it is a stress test issue. I think - and perhaps we cover it and I'm just not remembering it -- the stress test of the government saying there shalt not - the government of the incorporate saying thou shalt not deal with (unintelligible) anymore because we have freedom fries not French fries and we're not going to do business with them anymore. You may not. And the government, U.S. government, can do that. You know, that's not a fantasy.

Steve DelBianco: Alice, can you bring up stress test number four on Page 76 of the proposal?
Avri, do you have visibility of the Adobe?

Avri Doria: Yes I do. And also I'm looking for a comment, the one that I'm not sure whether it was at all reasonable or not because it was full of things I didn't know, where someone talked about rules and, what was it, Alabama saying that you can't do, you know, can't be involved with countries that follow various international covenants or stuff.

Cheryl Langdon-Orr: There was something about Alabama, yes.

Avri Doria: Yes, and I don't see that one in the summary. It was one I read in whole, but I'm not finding the word Alabama in the summaries anywhere. So I have to go find that comment again.

Cheryl Langdon-Orr: Yes, Alice, could you take an AI to sort dig that (unintelligible).

Avri Doria: Something about agenda 21 or some...

Cheryl Langdon-Orr: Agenda 21 is very different from Alabama, but yes.

Steve DelBianco: All right so in the Adobe chat -- thank you, Alice -- you brought up stress test number four, which I referred to, and Richard Hill I don't think he mentioned it but it's exactly what he's talking about in the second sentence about stopping interference from the country where ICANN's incorporated.

Stress test four looks at it broader in the sense that new regulations or legislation, which by definition come from government, would impact ICANN. We didn't focus only on the places where ICANN is incorporated because ICANN is subject to regulations and legislation...

Cheryl Langdon-Orr: In various countries.

Steve DelBianco: ...wherever it is under jurisdiction. So I don't really know if there's any special significance to where you're incorporated.

Avri Doria: I think there is. I think there is. I think there's an answer for it, but I don't think stress test four answers it. I think - I don't think that by claiming the legislative power over where you incorporate it is the same as the legislative power over a country where you've got a person, a staff person, based. I think those two are somewhat different simply because of the problem of moving...

Steve DelBianco: Is that because - yes exactly. Let's suggest that we can modify...

Avri Doria: Right. You can't move an incorporation as quickly as you can move a staff member. But I think the answer to this one is. I think there is an answer and I don't think necessarily a stress test answer. The answer to this one is yes but nothing's changed. We're already incorporated in the U.S. We're already subject to whatever rules it comes up with. The transition doesn't change that in the least, and therefore that is the reason we can move it to a Work Stream 2 issue. But I think as long as we can state it, we have a problem.

Steve DelBianco: I like that. I like that. So we're not creating this issue.

Cheryl Langdon-Orr: That seems like an elegant solution.

Avri Doria: Right. What was bothering me was the glibness of our answer and the fact that the answer didn't cover the conditions, not that I think it's a showstopper. I just want to make sure that we answer it correctly.

Steve DelBianco: All right. And the reason I was a stickler at bringing up number four is that putting aside where you're incorporated versus where you happen to have an office, in all cases what we measure is not - see Richard might want to say that stress tests should assess how ICANN can ignore a law that a country passes or escape from a regulation it doesn't like. That might be what he has in mind, and that is not what the stress test team did.

In all cases we looked at what are the mechanisms by which the community could hold the board accountable for the decisions it took or the inaction in the face of the stress test. So here the stress test is a new regulation or legislation

from the government and that would cause ICANN to have to change what it does. And all we said is that the board would have to decide how to respond.

It might decide to close the Singapore office in response to a legislation in Singapore. It might decide it wants to move out California, or it might decide to change contracts with registrars and registries. It might to decide to launch a new PDP. Whatever decision the board took, in Paragraph 540 and 541 the community has the role of developing new policies if it's a PDP and we have the ability in 541 to challenge whether reconsideration and IRP based on the new amended mission commitments and core values.

So we would make the case that, ICANN, your decision to follow this new law, this censorship law in California, your decision violates our core values. We are going to challenge it with an IRP. International arbitrators make a decision based on the standard of the review. They come back and say that the decision violates the bylaws. The decision is therefore rescinded or negated.

Putting aside the question of how we enforce that decision, we might have to go to court to enforce it, but if ICANN listened to that decision, we have to redo the board's reaction to the new regulation. So - because the IRP can't tell ICANN what to do.

So just walking through this, you see how this works. We - the stress test doesn't try to solve the problem, the stress test asks how does the community have accountability of the corporation in how it solves the problem. So I don't even know how I would modify stress test four in reaction to (Richard).

Cheryl Langdon-Orr: Yes I agree. Avri, are you comfortable with that approach?

Avri Doria: For now.

Steve DelBianco: (Unintelligible).

Cheryl Langdon-Orr: Well for now it's good.

Steve DelBianco: So I could draft an explanation.

Avri Doria: Yes. I'm still, as I say, I'm - I don't think it works quite as well for the country in which we're incorporated as for other countries. And I think that that's a hole we can keep falling into. But I don't - I'm not recommending we create another stress test for it at the moment.

Cheryl Langdon-Orr: But I think it an issue that we can deal in Work Party 2 -- sorry, Work Stream 2.

Avri Doria: Steve, the place where it falls down is the again when we get to enforceability since enforceability seems to be one of our requirements. You can't enforce - let's say that California law has precipitated this whole chain of events -- and I know you've got to leave in six minutes -- California has precipitated this full chain of events and the IRP has said yes that's right, we've got to move out California or some such.

Because, you know, California, you're certainly not going to go to California laws to enforce a decision that's counter to their laws. Right? You can go to a California court to say you can't follow Singapore rules anymore, you've got to move out Singapore perhaps, but you can't enforce that kind of rule against your domicile.

So I think that the domicile condition is always going to be different. And I think as long as we conflate the jurisdiction or power of a place where you're

stationed and jurisdictional power of your domicile, we leave ourselves open. But I am agreeing that it's not a stress test issue that I can see handling at the moment. Because stress tests don't handle the problems of where you're domiciled.

Cheryl Langdon-Orr: No they just help shine a spotlight on where they may be, yes.

Avri Doria: Right, because where you're domiciled sets the constraints upon which you have to operate. All the other places, it's voluntary. You don't have to be in Singapore. You don't have to be in France. You've got to be where you're domiciled.

Cheryl Langdon-Orr: Yes exactly. Okay. All right. Now what I'd like to do in the couple of minutes we've got left is deal what I hope will be your agreement that we will cancel next week's call.

Steve DelBianco: Agreed.

Cheryl Langdon-Orr: Avri?

Avri Doria: Sure. I'll be on an airplane anyway.

Cheryl Langdon-Orr: Hell, I think we're all traveling, that's for sure. So, Alice, if you can let Brenda know that there will not be -- or Kimberly also -- let everyone know that there will not be a stress test working party call next week and that we will pick up from where we're leaving off now on the first or second. And that's the next question I want to ask you. The first or second of week after you return from Buenos Aires. Do you need a week to become more humane or do you want to get right back into it?

Steve DelBianco: This is Steve. I would recommend we schedule it and then if it turns out we got so much done in Buenos Aires we could cancel it.

Cheryl Langdon-Orr: Okay. So we would actually be talking the first of July then?

Steve DelBianco: That's right.

Cheryl Langdon-Orr: Okay. If you're running on the first of July, Steve, you are going to have to be running that because I'm still on a plane.

Steve DelBianco: Okay.

Cheryl Langdon-Orr: All right? So let's schedule it for first of July and let's assume that you'll be running the show for that one, and we will get back to situation normal on weekly calls after that anyway.

Steve DelBianco: And why don't we find some time for the three of us to sit down in Buenos Aires that Friday full-day meeting, which I guess is only nine days away, we ought to be able to carve out...

Cheryl Langdon-Orr: We should have lunch together.

Steve DelBianco: I think so.

Avri Doria: (Unintelligible) but we don't know what immediate huddles we will have to get into because of - so I think it's reasonable to set it as a default. But if there's some other huddle that needs to be gotten into to deal with whatever we're dealing with there, I think we should be open to that. Okay.

Steve DelBianco: Yes, yes.

Cheryl Langdon-Orr: We'll have to do it the best we can.

Steve DelBianco: You're right.

Cheryl Langdon-Orr: The only other thing I wanted to do for today's call was just ask if Alice or Kimberly noted that we did have a fourth participant in the call for a short while. He's recently left. We did have a GAC member with us, so just make sure that that name is recorded for the...

Avri Doria: Fantastic.

((Crosstalk))

Avri Doria: We've really got to be careful with this jurisdiction issue and GAC members. I mean we've really got to take it quite seriously. And even if we are putting it off into Work Stream 2, we have to do it very deliberately and carefully and not do it like a sweep under the rug, which I think we're attempting to do and that worries me.

Cheryl Langdon-Orr: I thought we were fairly clear again and again and again that it does belong in Work Stream 2.

Avri Doria: Right.

Cheryl Langdon-Orr: And I don't just mean in our work party but across the board within this working group.

Avri Doria: Right. But the second step -- and this is not this working group -- but the second - I mean this is the whole working group, the second step of that is

what do we say in the Work Stream 1 report about the manner in which it's going to be taken up and is it stating that are we raising an alarm flag for the U.S. So, you know, the how we deal with that whole issue is a lot more delicate than I think people are taking into account. At least that's the way it looks to me. Because we have to take it very seriously. In other words, Brazil is quite adamant. We have to take it very seriously, and yet the U.S. Congress has been fairly adamant about (unintelligible) a year from now.

Cheryl Langdon-Orr: Exactly, yes. It's a tightrope. All right then, coming exactly to the top of the hour, thank you one and all for joining today's call. And we will expect a whole lot of interesting conversations on our Friday meeting in Buenos Aires and look forward to trying to get some form of, you know, 35 or 40 minutes together to focus on stress test working party work at some point during our Buenos Aires face-to-face meeting.

Safe travels to all of you, and keep us posted, Steve. You've got a busy day ahead of you.

Steve DelBianco: I will. I will. I think it'll go well, and I'll see you all next week.

Cheryl Langdon-Orr: Okay. Bye for now. Thank you, Staff.

Steve DelBianco: Alice, Adam, thank you.

Woman: Bye, everyone.

Cheryl Langdon-Orr: Adam's already left. Thanks, Kimberly. Thanks, Alice. And thank you.
This call is now concluded. Bye for now

Woman: Bye.

END