

**ICANN**

**Moderator: Brenda Brewer  
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1:30 pm CT**

Leon Sanchez: Welcome everyone to this CCWG on Enhancing Accountability meeting. This is Working Session 2 within our Buenos Aires meeting. It is - we're reaching our 100th call.

I don't know if this is the 100th call but we're pretty much very close to reaching the 100th call in this group.

And so we will be going through the roll call as usual with those present in the Adobe Connect room and of course of those who are here with us in the room.

And I remind you to for those who are in the Adobe Connect room I remind you to please mute your speakers and your mics if you're not speaking so we can have a clear conversation and state your name, please state your name whenever you are speaking. This is useful not only for the transcript but also for our remote participants.

And we have sent an email suggesting that we would extend this session after 5 o'clock.

This is of course optional. This is not something that we are suggesting that would be of course mandatory for anyone.

What we will do is then after 5 o'clock we will be brainstorming with our friends from Explain so we can have a graphics built to help people better understand what we're up to in the working group.

So anyone who wants to participate in that brainstorming session is of course welcome to join. And those who have previous commitments and that of course they don't have time to arrange extending the session are of course also free to attend any comments you might have.

So we've so far have many meetings with different SOs and ACs through the week. I think we have had very fruitful discussions.

As you know those of you who were present here and attended our pre-meeting on Friday we had very fruitful and thoughtful discussion about the reference model. And we came with a new strategy, a new proposal that has been circulated and we've been discussing since Friday.

And what we would like to do is to listen from you at this point about any feedback you might have with regards to this new approach that we're taking. And I would encourage you to please provide us your comments.

So I'm now opening the floor for volunteers from each SO or AC that have already revealed this new model that we're trying to discuss in this meeting and of course the next meetings we'll be having.

So it's an open floor if people please come forward and let us know what you think about this new model so...

Thomas Rickert: Is not limited to the model. It's also...

Leon Sanchez: Oh yes of course yes of course feedback is not only limited to the model as Thomas suggests. It's of course wider than that. We would like to get your feedback that only on the model but also on the comments that we received from the community.

We have had lots of comments from the community and we would like to listen to your assessment on those comments as well.

So I see Tijani is raising his hand. Tijani could you please?

Tijani Ben Jemaa: Thank you very much Leon and Thomas. When for the enforceability shall we already have to change the (unintelligible) of the organization to be a membership organization already so that when we need to go to this stage to be ready for it or shall we wait till we will have the need to do so?

Leon Sanchez: Thank you very much Tijani. I think this is I believe premature to state. Let's remember that we are looking into a model in which we would be able to have a lot of flexibility in how this is formed. And it wouldn't have to come to automatically having enforcement.

Let's do - let's - and I want to be very clear between the difference of exercising powers versus enforcing powers because all within the ICANN structure as it stands today have different rights that can be exercised.

And in this model that we're trying to put up if it be needed and when time comes that this would be needed then the door would remain open for the different SOs or ACs to actually enforce the powers. But that will be a next step. A check-in did you want to add something to that Thomas?

Thomas Rickert: Yes maybe just to clarify. We have two points on the agenda. We're now in point number two, debriefing feedback received. We have another agenda item where we discuss the empowered SO AC model -- whatever that might look like.

So we would like to encourage you not to comment on that model. But please do share concerns, suggestions that you have received during the week from your respective communities not only limited to the model we're using but with respect to all sorts of aspects of our initial report.

So let's say we've been together with the GAC for longer session this morning and there have been questions on the IRP.

So I think it is worthwhile for those that have been in the respective sessions to share with those CCWG the points that have been made by other communities. That can be support, that can be concerns, that can be suggestion but let's not chime in with our own comments for the moment. Let's reserve that for agenda Item Number 4.

Leon Sanchez: Thank you very much Thomas. I have a queue forming. I have Kavouss and then I have George Sadowsky. So Kavouss could you please comment with us your feedback?

Kavouss Aresteh: Good afternoon everybody. Welcome back to lovely group of our CCWG with the very respectful and lovely chairman see.

Before I start in to any of these things I would like to make if you allow me one or two minutes of introductory statement.

We are now after the first round of public comments we received many. We also in fact you co-chairs listened to the views and concerns expressed by the SOs and ACs in various those that we have attended. We are very thankful to you.

Distinguished chair and distinguished colleagues the success or the failure of the process is on our shoulder between now and next meetings.

It depends on the approach we will take, heavyweight approach, lightweight approach, workable approach, realistic approach or idealistic approach.

Second, in addition to the public comments we have received also comments from secretary Strickling, Fadi Chehade a few other distinguished colleagues.

Although they made some report on the progress but in there were many feedback from what they - in our view we need to carefully read the secretary Strickling statements perhaps if not word by word but line by line.

He explained what NTIA expects from us and to be mindful to distinguish between the overall accountability which is more or less in Workstream 2 two and immediate accountability I would say with Workstream 1.

Success of Workstream 1 would be a lot of steps for the success of Workstream 2. If you fail the (unintelligible) in 1 we have little chance in Workstream 2 to go ahead. So we have to look into what we really expect to do.

The issue before us is enhanced accountability is not comprehensive revision of accountability. It's enhancement accountability. So we have to look it that one.

All views are most welcome. All of them are valued. No one could judge any others persons whether it is right or wrong. Everybody is right. But we have to see what we can do.

We have heard that there are areas that we need to achieve 000.1% of any probable occurrence. So we have to think with to what extent do we go to that and at what expense we do that.

Could we accept some tolerances or do we want to have full perfection which is almost impossible? There is only one perfect entity and that is God and nothing else.

So there are always a threshold, so always some areas that we need to see to what extent we have to go.

So Chairman I request you kindly to take the most immediate, urgent and important issues as a minimum set of requirements that we have to address as the public comments to provide us opportunity to prepare ourselves for the second set.

So you have to establish a sort of priorities, what priority you take. There are many, many areas.

What I mean by this is to the extent possible shift those areas which could be addressed later to the Workstream 2 and concentrate once again on Workstream 1. And I thank you very much.

Leon Sanchez: Thank you very much Kavouss for your thoughtful comments. Yes I as you mentioned what kind of approach are we looking for there definitely needs to be a holistic approach. We need to take into account everything and every feedback that we receive.

And we also need to of course meet the requirements that the NTIA has set for this transition to happen. And we will continue of course to discuss this very thoughtful contributions that you have just given us and you continue to give us is very valuable feedback.

Next in the queue I have George Sadowsky and then I will go to the lady which - and then (Jerry) okay.

Man: Thank you very much.

Leon Sanchez: I'm sorry?

Okay we'll also add of course the people in the Adobe Connect room. I apologize for not looking in it. So George could you please address?

George Sadowsky: Yes, thanks very much. I'm George Sadowsky. I'm a member of the ICANN board but I'm speaking for myself not as a board member because after all as individuals we are part of you. We are stakeholders also.

I've used and deployed networks and been involved in networking since 1986 and I have dealt with infrastructure development management training and so on.

My career has been pretty much dedicated for the last 30 years to the availability of the Internet in not only the developed countries but developing countries.

Now the board hasn't engaged very much in this process. We've sent you a lot of questions and there have been issues with that.

So this is the beginning I think of this engagement. Perhaps we should engage positively earlier.

We decided as a result of the history of the process that we were concerned we would appear to be pushy or obstructionist or dictating.

So we have deliberately held off. In discussions with two of the three of the co-chairs we have been encouraged to proceed.

So I'd like to make several interventions. I'll only make one now and my colleagues on the board are prepared also to make interventions.

And I'm hoping that when we do these issues demand a more comprehensive discussion then we can give it two minutes.

And we have a - so we - I hope we can just generate some dialogue rather than just making statements and we can get rid of the Twitter like two-minute disconnected slices of time that sometimes dominate a discussion.



We're not here to make statements. We're here to dialogue with you.

So I'd like to reflect on the accountability models discussion. And I'm not going to refer to any of the models in this. So it's essentially model, specific model free.

I had a Facebook conversation with someone on the committee which grew into something that a rather large debate which we thought after meeting and talking about it would be of interest to the community.

So I'm raising - the following thing made me curious. I was at your Friday morning meeting and you graciously gave everybody who had a concept of the way the model should be developed three to five minutes to outline the model.

And what impressed me was the diversity of the models that were being presented. And I thought to myself why are people making these choices? Why do people like one model over another?

Clearly there's some self-interest involved but that didn't explain it all.

And so what I did was try to abstract. I thought well how do groups and societies and organizations resolve disputes if there's a dispute about whether something one group is accountable to another, whether one group delivers what's promised to another?

And I conceptualized this is a one-dimensional spectrum. On the one hand on the one end of the spectrum I should say there are contractual arrangements where you have commercial suppliers, consultants, lobbyists, people who are concerned about defining a deliverable well, not necessarily relying on trust

and relying upon legal intervention if the trust is not merited, if the delivery isn't made.

And on the other end of the spectrum you have let's say the Quaker meeting where people get together and everybody stands up when they feel like it and they say what they think. And there's social cohesion that brings the community together.

That Quaker model is close to what I consider the voluntary model that was being discussed.

The history of the Internet is largely dependent on the adoption, the enthusiastic adoption of that voluntary model because from the beginning until about the mid-2000s there were hundreds, thousands maybe tens of thousands -- maybe more -- of volunteers who saw the Internet as a promise for addressing some of the problems that we have in society.

And these are people who spread it, who taught people how to use it. The culture was one of freedom, freedom of access and also freedom generally without cost -- wherever that could be accomplished.

It was an open culture, a sharing culture, a learning culture. And there was a major value added in that culture because the characteristics of the culture allowed it to spread.

There were obviously clashes with the commercial culture. In 1995 the Internet started to be commercialized. But that voluntary culture and the enthusiastic volunteers who want to spread and use the Internet it's still pretty strong.

Some of the models which were discussed in on Friday and which have been discussed previously introduced the idea of control ultimately in the last analysis through the judicial process.

Add that clashes with the culture I think. It changes the tone and the mood of the discussion. It has a non-trivial effect upon how we discuss things and how we approach issues relating to the Internet. It's already happened just from this discussion by the way.

And so this contractual and legal orientation even if it's of the last step creates a level of dissidence and distrust that infiltrates a little bit, I mean maybe not a lot -- depends how far we go -- to our thinking and our culture.

And so I suggest in a way that some of the resistance to the more formal models, the contractual legal models are because those models are trying to move counter to the prevailing Internet culture.

So if that's the case how do we deal with the concerns regarding accountability because nobody's is going to argue that accountability is a bad thing?

Our current models to have by the way a judicial review capability if you...

Mathieu Weill: George?

George Sadowsky: ...ask legal...

Mathieu Weill: We are in a 90 minute session working session.

George Sadowsky: Yes?

Mathieu Weill: You've been speaking for more than five minutes. Can I ask that we keep to the - we stick to the agenda? With all - I mean with all due respect we need to work. This is a working session and not a - an engagement session.

So maybe you can share your input which is with your obviously have prepared to the mailing list. And I would really welcome that we can get the feedback from the SO and constituency meetings that we've had all week because that's what is going to be valuable for our group.

Its group work, community input. And yours is valuable. And I think I'm starting to see a thread here about where you're heading to.

And that's because we still have a number of agenda items after that that I would really like us to move forward before we leave Buenos Aires. I'm really sorry to be impolite like this.

George Sadowsky: Thank you Mathieu. I had assumed that this was a time to speak and I was hoping that because the board hadn't spoken that this would be of interest so I stop now.

Leon Sanchez: We will be addressing this also in agenda Item Number 4. And we will be of course opening the floor for the comments George.

And we thank you for your consideration and your understanding.

So as Mathieu said the intent for this part of the session is to provide the brief from the different SOs and ACs.

So I would urge of course those who want to provide us that feedback from the different SOs and ACs to speak up and to try to keep it as short as possible because as Mathieu highlighted we have very little time and a lot of things to discuss.

So I will now go to someone in the AC room. And I see (Athena Fragulli) is the first one in the AC room. (Athena)?

Athina Fragkouli: Thank you very much. Athena Fragulli, ASO representative.

So from the beginning of this process the ASO representatives have taken a position to be respectful of the needs of other SOs and ACs in the ICANN accountability discussions of - and their requirements.

We have also been spreading the word or been sharing the progress of the CCWG work with the RARs and the members community.

However questions and concerns are strongly expressed by several members of the numbers community on whether the CCWG would be able to deliver the proposal and implement it without delaying the overall stewardship transition process.

The progress of the CCWG work affects not only the names community but also in equally the numbers community and the (project) parameters community in the IANA stewardship transition process.

The three stages of the IANA stewardship transition were served in the opening session by Fadi Chehade. And we are now at the point where we need to be strongly conscious that the CCWG timeline has to be in sync with an ICG process.

Our work should not be a delaying factor for the IANA stewardship transition. We would like to strongly remind our colleagues in this group that effectiveness is not the only goal in this process.

We should come up with a generally agreed proposal in time the implementation of which must take into account the timelines of the IANA stewardship transition.

We also understand that enforceability of the proposed community powers is desired by many groups in this community.

However in our proposal there should be a balance of this enforceability with the needs of the stability of ICANN as an organization.

Finally I would like to take a step back and question ourselves whether particular requirements are indeed needed in order to replace the absence, the future absence of the NTIA oversight or are we going too far in our efforts to supplement what we have today? Thank you.

Leon Sanchez: Thank you very much for that feedback (Athena). It is most useful.

Next on the queue I have - I'm going to go with one person that wasn't on the Adobe Connect room and that is Cherine. Cherine could you please share your feedback if you...

Cherine Chalaby: I will wait for later on because...

Leon Sanchez: Okay.

Cherine Chalaby: ...just give the...

((Crosstalk))

Cherine Chalaby: (unintelligible) later on the board members can be heard, individual members...

Leon Sanchez: Excellent.

((Crosstalk))

Cherine Chalaby: ...that's fine.

Leon Sanchez: Thank you very much. Thank you. Yes could you please state your name for the transcript?

Cheryl Miller: Yes thank you. My name is Cheryl Miller and I am with Verizon but again I'd like to make my comments today on behalf of myself just as an individual of the community and not my company.

I definitely appreciate all the work that has been done. This is certainly a complicated process. And Friday was actually the first opportunity that I've had to really dig a little bit deeper into some of the work and start to understand the proposal.

I think that when we're creating a new governance structure we certainly have some concerns that we need to think of and we need to be careful.

It's generally better if it's been tested before and so that's certainly a concern.

I think also Secretary Strickling raised some really good points on Sunday about doing homework. And so I thought about that and I took it to heart and looked at some other areas where we might focus on such as strengthening the IRPs, strengthening the bylaws.

I am worried about timing. I think the comments on timing are important. And so again I'm a very new member to this community and so I'm looking at this with very new eyes.

I understand some of you have been working on this for many, many years so please understand that with respect to my comments.

But possibly maybe we could look at doing something such as shifting some of the work regarding community empowerment into Workstream 2 if we feel that as a community we're having issues with timing moving forward.

I'm sorry not everyone in the room knows me but I am very friendly. Please do get to know me and I look forward to working with everyone in the future. Thanks.

Leon Sanchez: Thank you very much. Next in the queue I have Robin. I believe Robin Gross could you give us your feedback may be on the NCUC side or NCUC?

Robin Gross: Hi. This is Robin Gross. I'm the representative from the Noncommercial Stakeholders Group on this group.

So I wanted to raise what my - one of my concerns, my main concern with this new hybrid model that's being put forward. And it's...



Mathieu Weill: Robin can you please provide feedback from the NCSG meeting. This is the debriefing part. Can we please stick to that? Sorry we're going to have...

Robin Gross: Okay. Do you want to hear what NCSG concerns were that we discussed in our meeting or...

Mathieu Weill: Exactly. This is the debriefing part where we collect the input we received during the week so that everybody is up to...

Robin Gross: Yes. That's what I'm trying to tell you.

Mathieu Weill: Okay great. Thank you.

Robin Gross: The concerns that we discussed this week have to do with derivative lawsuits and the powers of derivative lawsuits.

And under this membership, hybrid membership model that we're talking about now as you may know we're a very contentious conflictive community from time to time.

And our concerned is that every time a policy gets put in place that a powerful stakeholder doesn't like, there will be deliberative derivative lawsuits filed.

So that's a concern for us under this model. And we could be tied up in litigation, tying ICANN up. And that is a concern of ours.

So we really we're hoping that we could see a little bit more discussion about how we can achieve getting the community and the board on the same page with respect to the budget and the strategic plan.

I understand that under this membership hybrid membership model we're talking about we will have tighter control and enforceability because we can go to a court and impose those things, the budget and strategic plan.

But I wonder if we are using an awfully big hammer to achieve these two things and if we could just try to find ways to bring the two sides together perhaps the board doesn't get a budget until it's been approved by the community.

That would be away of sort of gating that without needing to go to court. Perhaps we can have some forms of reconsideration of those issues.

I understand we can't go around and around forever and the board has the final say. However they would be not very smart if they continued to not accept what the community is trying to say to them with respect to the budget and the strategic plan. And they will be kicked out. So there is some softer enforcement mechanisms if you will besides having to go to court on these two issues.

So again I just think we should spend a little bit of time exploring what could be achieved under the empowered designator model with respect to the budget and the strategic plan and getting folks on the same page on that. Thank you.

Leon Sanchez: Thank you very much Robin. And we will definitely discuss in a different way those concerns that you have provided us from the NTIA.

And next in the queue I have Arun Sukumar. Arun?

Arun Sukumar: Thank you Leon. I'm (Aaron Sucomar) from the National (unintelligible) Delhi. I do not represent a SO or AC but please I hope I can take a couple of

minutes of those working group's time because I'm - I'd like to believe that I'm reflecting some concerns that have been represented - that have been raised by several stakeholders from India who have not had an opportunity to be presenting here.

And as I understand it the models in question whatever the community decides to choose finally deals fundamentally with the relationship between the board and the SOs and ACs.

And this is of course a critical concern and greater the board's accountability to the constituencies the better.

But I cannot help thinking that we are well and truly in the realm of a Workstream 2 issue which leads to the larger concern of ICANN accountability.

And just to pick up on some of the remarks by Mr. (Aristay). What the Workstream 1 concerns here are I would believe are the first and foremost concern regarding the IANA transition process.

And you have a fully-fledged proposal from the CWG on names. And I'm frankly yet to see how critical questions like the functional separability of CTI from ICANN and role of the IANA functions review vis-a-vis accountability have been addressed either in the discussions on the models or elsewhere.

And I'm quoting from the CWG on names in the second report. "It is important to know that this proposal is significantly dependent on the results of the CCWG on enhancing ICANN accountability."

Now if the working group is investing in the models in question can definitely address those Workstream 1 questions, that's great.

I'm yet to see those before the Buenos Aires meeting is over. And I'd appreciate an elaboration or an explanation of those concerns. Thanks.

Leon Sanchez: Thank you very much (Aaron). Next in the queue is Jordan - I mean Steve DelBianco. Could you please provide us maybe the views of the BC?

Steve DelBianco: Leon I'll give you a quick three points which I gleaned from meetings with the Commercial Stakeholders Group in the GNSO. And that includes the BC, the Business Constituency, the Intellectual Property Constituency and the Internet Service Providers Constituency.

And members of those individual constituencies can add to this. But here's three high level points.

There was a welcome to the simplification that was sought on the Friday meeting. So the idea of simplifying it was appealing to all although there was a call to preserve the potential for enforceability of the communities voting and rights at some point.

And when we discussed the notion of how that would be enforced there were several attorneys I might add who asked are anxious that we get to the details of who and how that enforcement would happen eventually.

Second major point, there a lot of suggestions on how to make the improved Independent Review Panel or IRP more accessible to groups like the Commercial Stakeholders Groups and the constituencies because it isn't at all

clear how the costs of an IRP would go down as a result of our ability to have ICANN pay the experts.

So we're going to need to flesh out the accessibility and likely cost of pursuing an IRP not from the communitywide level but say from a constituency or stakeholder group level.

And then finally we acknowledge the fact that SSAC and RSAC had declined to participate in the voting on a variety of issues.

But there was an interest to not lose their input, not to lose the input on security, stability and resiliency when the rest of us are exercising the voting that we would do or exercising our ability to have an IRP.

So there is an idea there to keep to be open to advice to the community group, not just advice that they give to the board but be open to advice from SSAC and RSAC when it comes to items that the community is taking on through these new powers. Thank you.

Leon Sanchez: Thank you very much Steve. Next in the queue I have Jordan Carter. Could you please tell us?

Jordan Carter: Thanks Leon, Jordan Carter here .NZ reporting on the discussion orange this morning. We had an hour long session on this in the middle of trying to approve the CWG proposal.

And the general temperature of the discussion was kind of neutral to warm. And there was some questions. Were there any of the major issues open? How would this actually affect individual ccTLD managers as opposed to broad ICANN matters?

There was some suggestions in terms of the needs to update everything that comes out of the CWG with the framework of interpretation language whether it's in respect to ccTLDs which hopefully the board will be approving on Thursday.

There were some other questions. Is there a veto mechanism available for any impacted group? And the question of standing came up, how an individual ccTLD manager could compel the ICANN board to follow the processes and bylaws set out if there's a breach, particularly of fundamental bylaws.

The question of GAC advice and its role came up. And Larry Strickling's suggestion and respect to setting expectations through how the ICANN board operates came up as something worthy of further explanation.

And the question of the achievability of the implementation of the Workstream 1 proposal came up. And a point was made that when we talk about advisory committees no one's proposing taking away powers from advisory committees to advise ICANN.

So and then the linkages to the CWG proposal were explained. So I think that's the kind of highlights. I could go on longer but those were the key points.

And there was one other suggestion of the view that in terms of the enforceability question we're grappling with one person expressed the view that all that needs to be enforceable was the power to remove the ICANN board.

And there were a bit of discussion on the practicalities of the FOIA and ccTLD access to that while noting that the proposal does include the prospect of developing a ccTLD specific schema within the IRP. I'll leave it at that.

Leon Sanchez: Thank you very much Mathieu. I'm closing the queue with Alan Greenberg so we can move along with the next point on the agenda.

And may I please urge everyone that wants to speak to log into the Adobe Connect room. It is really hard to keep track of those who want to speak that are not in the Adobe Connect room. And we of course are skipping some people that are probably (not).

So next in the queue I have Avri. Avri Doria please?

Avri Doria: Thank you. Avri Doria speaking and just making a quick point with relation to the AOC reviews both in individual conversations and in one meeting that was looking at reviews.

There's a certain confusion about the relationship between the ongoing nature of the AOC reviews and our incorporation of those reviews into bylaws and how any sort of shift over or relationship between them.

My advice has been to continue with AOC reviews as normal until such time as something else has happened.

But that whole notion of how the pre-bylaws change and how any shift over might happen is still a mystery that people are asking about so I wanted to put that on the table. Thank you.

Leon Sanchez: Thank you very much Avri. Next in the queue I have Mathieu.

Mathieu Weill: Thank you Leon, (Matthew Ray) speaking. This is to report on the conversations that we've had during the last couple of days with two advisory committees who are not charting organizations but with whom we have engaged the - namely the SSAC and RSAC.

Both of these groups expressed the view that they are very much committed to the advisory nature of their role and that they are not - they do not expect to participate in a voting mechanism such as the one that we are describing for the community.

For reasons that are slightly different the SSAC expresses the importance that they attach to being an expert group providing advice and as such would not - are cautious about the unintended consequences of providing the advisors with extra powers in terms of potential candidates for SSAC for instance.

So they know their charter is very narrow, the types of questions they can address is quite narrow. And they don't want to create a fuzzy border between their advisory nature and some other roles.

And RSAC has some view, has some similarities although there's - it's there is also the view within RSAC that it is they have a narrow focus as well.

And then not to be confused with the group of root server operators since there are advisors nominated by the board.

And it's also worthy of noting that RSAC mentions that it was of interest to them if in the distant future if these community of root server operators wanted to organize in a another form to interact with ICANN just as an example if they wanted to form a new supporting organization for instance



they were interested to know whether the model would be flexible enough to accommodate this change which is definitely something that we'll need to be working on to provide an answer to such a question for the root servers but also if there's another supporting organization coming up in 20 years' time like I've been using the example of the Internet of things supporting the organizations for instance.

So that's I think two very valuable feedbacks we received from these groups and we are keeping engaging with them in the next few weeks and months.

Leon Sanchez: Thank you for keeping it short Mathieu. Next on the queue I have Alan Greenberg.

Alan Greenberg: Thank you very much. The ALAC spent a very large amount of time talking about this in the last few days. Although I - we didn't have the eloquence of some of the things that George was saying it is first intervention.

I think if we had and use words like the culture of the Internet they would've resonated very well with our people.

There is a very strong feeling that we're looking for something which is just a little bit softer than legal enforceability which ultimately goes to the courts.

There are a lot of issues with membership in the minds of our people. They relate to liability, they relate to a number of things.

They may not be a - again we have not many lawyers in our midst so I am not sure we have the hard words we could use. But certainly there's a significant amount of concern.

And lastly right at the end of our discussion there is sort of a revelation that came up. And we've always been talking about if we don't have members who has standing to take on the corporation?

And it dawned on, certainly it dawned on me and I think a number of our other members that yes it is quite conceivable that a ICANN board does something that we the community think is really dumb. It's not likely to make that decision unanimously.

And if we all think it's really dumb there's a good chance there is at least one director who thinks it's really dumb. And that director has standing to take on the corporation. And we have an actual example in the past where that happened.

So we think there's lots of possibilities without taking on strict legal enforceability. Thank you.

Leon Sanchez: Thank you very much Alan. And last on the queue I have Pedro from Brazil.

Pedro Ivo Silva: Yes. Thank you Leon for allowing me to give that very quick update on what we have discussed in the GAC. Actually we have held several sessions and on the positions in the GAC varied quite a lot.

We have also kind of agreed that we need more understanding on the proposed mechanisms. And what we have agreed is that we defined a set of questions that are now were opposed to the GAC representatives.

And we will have some time in the following weeks to prepare answers to those questions and then probably prepare a final document that will be submitted to this group prior to the meeting in Paris.

So basically the main question here is whether the GAC wants or not to participate in this proposed community empowered mechanism and also ask the considerations regarding the IRP and how public policy considerations will be taken into account into this new framework? Thank you.

Leon Sanchez: Thank you very much Pedro. We thank everyone that has provided the briefing feedback to this session.

It is very good to see that we're not ICANN centered. We also received feedback from outside ICANN in the case of India so that is something that I want to acknowledge and to recognize because that certainly enriches our discussion and our debate.

And now I'd like to hand the session to my co-chair Mathieu for the next agenda item.

Mathieu Weill: Thank you Leon. And I know this is going to be a frustrating item for many because it's a little bit of an administrative.

And what we want to make clear is what are the next steps and how we are proceeding in order to meet the timeline expectations that we've heard rehearsed a number of times and it's very close to our hearts.

So basically our timeline is we need a second public comment to be issued at the end of July. We have a face to face meeting in Paris July 17 and 18.

At that meeting our expectation is that all the items that will fall into this public comment need to be discussed and 99% of them agree within the group

about how we are going to public comment. That's basically what would be the project plan.

I have noted that the GAC indicated they would be providing submissions or at least governments would be providing submissions probably, not GAC positions in time for the Paris meeting.

It's important to stress that it's welcome number one but also probably could not be delayed any further than a couple of days before the Paris meeting to be properly addressed in an open-minded way as was said earlier in the GAC session. So I think that's very important.

We are starting to track the various items of discussions that we have highlighted in - through the public, number one and we'll design a scorecard of items in the public comment structure. We don't need to show it because I'm going to be fast (Alice), thank you, where we will highlight what is seems to be mostly supported, still to be considered where we have divergence. And basically there are about 30, 35 items.

About 1/3 are probably ready to proceed, 1/3 are we need further discussion on this and a small 1/3 is really strong discussions we need to have such in the membership or designator or SO AC empowered model.

So that's just to give an outline of where we are and how we are planning to move forward.

But one very important aspect is the bylaw drafting approach that was highlighted in the opening session as well as by Larry Strickling's interventions that the timeline for approval of the bylaws associated with the proposal is very tight. We have basically until mid-November.

And some of the items in our proposals are getting support from the public comment number one so they are almost ready.

An example of that -- and there are some refinements -- but is the incorporation of the AOC reviews into the bylaws. That's almost ready.

So it's now time for us to discuss how we're going to proceed with drafting these bylaws, what is going to be our role as CCWG, what is going to be the role of ICANN staff and advisers in preparing these bylaws because it's a text that they usually manage.

And there are consistency issues, assessments that need to be done about the potential unintended consequences or the introduction of new provisions.

And so we need to collaborate. And of course the board itself has a specific role to play in terms of bylaw changes. That's what the bylaw says.

And so we need to set up this, stop this project with the clear roles and responsibilities for everyone in the community.

So what we want to do now is a quick discussion. We would like to keep it short so we get time for further discussion on the empowered SO AC model about the requirements of the CCWG with regards to how we're going to proceed with the bylaw drafting.

We want the roles and responsibilities to be clear upfront so that there's no confusion of battle or conflict in the end about I was expecting to do this and you did that and the decision process needs to be clear.

So we're not going to draft this decision process here but we want to hear you, your views about what is absolutely required in terms of interaction from our group with ICANN legal, with ICANN board and your other stakeholders you might think of in this bylaw drafting process so that after that we could task ICANN legal to come up with a consolidated proposal to us in terms of how this process is going to take place.

So that's where I where we want to spend ten, 15 minutes listening to your requirements in terms of who is holding the pen, what's our role as CCWG members?

Are we just reviewing the proposals? Are we obviously validating the requirements? What are the expectations in this group from people who have been involved in drafting these proposals? And some of our initial proposals already had draft, rough draft bylaws.

So how do we want to interact with ICANN legal on that is the key question here for the next let's say ten minutes.

And I see a queue forming with Malcolm who is leading the queue. Malcolm?

Malcolm Huty: Thank you Mathieu. I must say I was slightly surprised to hear you say that ICANN legal would be leading the work of actually drafting the bylaws changes that we are proposing.

We did have quite a degree of discussion shall I say with ICANN legal at the beginning of this process. And it resulted in us developing what we believe was a need for us to acquire our own legal counsel independent of ICANN to provide us with advice.

Can I ask you why you are not suggesting that it is our counsel that draft our proposals on our behalf?

This is not to say they ICANN legal would not have of course been an important participant in the discussion. I would expect all of us to participate in the discussion as to how that happens. But why is our counsel not lead in the work of drafting our proposal?

Mathieu Weill: Malcolm I think the point here the key word is, is leading. Leading means nothing. There's different roles and ICANN legal is the one organization that has the best knowledge of these bylaws number one.

And so I think that should not lead the process -- my personal view -- but they should be holding the pen as much as possible.

We have legal advisors. Our legal advisors are - have the advantage of being external or to the path of the ICANN bylaws. And as such it can provide us advice about how the draft that will be provided meets our requirements and whether there are flaws in these drafts.

But I think the leadership of this effort that's what we need to discuss but to me the leadership is definitely not the drafting.

So I think that's sort of the expectation. So I would encourage everyone to think about what their requirement is in terms of for instance having the last word or holding the pen or being reviewed.

I would for instance offer an idea that every draft is reviewed by independent legal advice. That to me is a good, sensible requirement for that process.

Next is Sam. Oh Sam I'm sure you have an opinion on that. Where are you Sam?

Samantha Eisner: Hi. This is Sam Eisner from ICANN. I'm ICANN staff member to the CCWG. I also happen to be a member of the ICANN legal department.

So I'll just lay out we've been talking internally about how we can make sure that we at ICANN provide the best support to the CCWG in making sure that we reach a timely as well as a cost effective conclusion to the CCWG work in time to make sure that we're meeting the other deadlines that are being set out, et cetera.

And we do have a few characteristics of this process that I think that we would like to put on the table.

We think it's essential that the CCWG well as the independent counsel are part of the effort, that they have - that there is a role for review and assessment.

This we do not think that ICANN legal going off into a corner and writing these and saying okay here they are we're done is the effective way to do that.

It's essential that there be clear guidance about what is supposed to be within those bylaws. It's also essential that we remember that these are ICANN bylaws.

And we would have questions about tasking out the independent legal counsel to the CCWG with primary responsibility for drafting bylaws for ICANN that don't - that may not be drafted in a way that incorporates the rest of the bylaws spirit and that that could have some impact on how much it costs to



have those done. So we would ask that cost measures are considered as the path to bylaws drafting is done.

But we do agree that CCWG as well as the independent legal counsel to the CCWG are both very important components of this process.

Mathieu Weill: Thank you Sam. Kavouss?

Kavouss Aresteh: Thank you Mathieu. Instead of fighting who will do the job? Let's do the job. Doing the job is that we should take advantage of those who have experience.

Legal unit or legal department of ICANN has considerable amount of experience. On the other hand our legal advisor, legal counsel also has considerable amount of experience in this process. So let us say that legal users of ICANN in collaboration with or assistance of the legal advisor or vice versa. That's all.

So let's go to the next item but not discuss an hour because there are - I 100 people with 100 different ideas and we don't spend too much time on that. Just define one and collaborate in the other. Thank you.

Mathieu Weill: Thanks Kavouss, point well taken. Thank you for being concise and I close with you after Chris following your suggestions. James?

((Crosstalk))

James Gannon: I fully agree with Sam. These are ICANN bylaws and we are ICANN's community and ICANN is an organization here for the community.

So I would feel quite strongly that it should be the CCWG holding the pen in conjunction with our independent legal counsel.

And of course ICANN legal will be very involved in the process. But I feel quite strongly that we as the community should be leading the drafting in conjunction with the independent counsel that we've taken on.

Mathieu Weill: Thank you. Milton?

Milton Mueller: Yes Milton Mueller, Georgia Tech. I am agreeing with (James). I think the - this group, Cross Community Working Group is developing a plan to reform ICANN. Therefore it knows what its intentions are and should be the one responsible for actually drafting the bylaws.

However of course ICANN legal will need to be in there and pointing out, you know, oh, you're contradicting something or you're maybe there's a disagreement about how to implement California law requirements.

So I would certainly welcome and expect ICANN legal to be closely cooperating with the working group and with their legal counsel.

But I think the pen definitely has to be in the hands of the working group and not the other way around.

Mathieu Weill: Thank you. I have Steve next.

Steve DelBianco: Thanks. Steve DelBianco. I know that you teed this up as suggesting that the bylaws drafting would start with some of the items from which there is broad support.

So I'll take for example bringing commitments and reviews from the affirmation of commitments into the bylaws. And that was part of a multiple member team of this group that drafted that language.

And we relied heavily on what is already in the affirmation of commitments which was obviously of adequate detail for us to conduct multiple reviews.

And we tried to mimic the same level of detail that's in the existing ICANN bylaws which a large chunk of which are dedicated to the structural reviews of the different ACs and SOs. You probably are all familiar with that.

So it wasn't - I'm no lawyer and have never written any bylaws but that section of the ICANN bylaws is written in a very plain language form.

And the affirmation of reviews, the affirmation of commitments reviews were written in a similar way.

So the draft that we prepared providing the support was in evidence as we believe it is that draft is very close to what the current bylaws are requiring for the level of detail to describe structural reviews.

So it's entirely possible with a little more spit and polish from the CCWG that we could send that over the transom and have ICANN legal come back and say here's the ways in which you might have to tweak it to fit it in to the structural reviews part of the bylaws.

So by taking a baby step like that with the relatively easy new section we'd have an opportunity to learn how this interaction with ICANN legal will go before we get to some of the trickier parts which as Milton pointed out there

are trickier parts were a change to this word in the bylaw has a ripple effect to other words or the parts of the bylaws.

And I understand that's more complex, don't know what to do with that but let's please start with something that is relatively easy like a new insert section that's not different from the current set of bylaws. Thank you.

Mathieu Weill: Thank you Steve. Greg?

Greg Shatan: Thank you, Greg Shatan IPC for the record. To some extent this is a tempest in a teapot as whoever starts first will get the appropriate amount of pushback from the other side.

And in fact I would expect it to be more collaborative than anything else but it certainly would be my hope that'd be equal since I have drafted a lot of legal documentation over the years.

I always prefer to have the first draft when I can. Although sometimes when I have a client on a very tight budget I'll tell the other guy to burn it for a while.

I don't know if that's the reason for this here. This is hardly - we're hardly looking to maximize our outside counsel fees. Either way appropriate amounts of time and effort should be expanded.

But I would say that the optics of taking this execution point of our proposal that we the community are generating and I think should be in the hands of our counsel first. In the end regardless of the choice made we'll get to the right place however.

Mathieu Weill: Thank you Greg. Chris?

Chris Disspain: Thank you. So I'm speaking as a lawyer now and I agree with much of what Greg just said. I have concerns about legal liability.

These are ICANN's bylaws. The independent counsel do not act for ICANN. You're all very specific that that shouldn't be the case.

So at some point along the way it's going to have to be signed off by ICANN at ICANN legal. I don't really care. I think Greg is right there's a storm in a teacup. But I don't really think it matters whether you call it leading or not leading.

But understand that the board will need to pass a resolution on these bylaws and the board will need to be advised by its lawyers. And Sidley & Adler are not liable because they are not acting for us.

So with all due respect I think we need to be very careful about how we put this together and make sure that we do it in a way that as Greg said collaborative but also make sure that we are all of us protected when well, the advice that we receive. Thank you.

Mathieu Weill: Thank you Chris. I don't think that was (such). Kavouss is that a second intervention? You were very concise and willing to move to the next one?

Kavouss Aresteh: It's fairly concise. If there is dedicated people from CCWG -- Jordan Carter and Steve DelBianco, (unintelligible) that want to be inducted, let them in that group.

But we don't want to spend the whole time of the CCWG drafting that one. We have other important work. They should be there, so say, ICANN legal

department in (unintelligible) with legal advisor plus dedicated persons or group from the CWG, thank you. (Unintelligible).

Mathieu Weill: Thank you. I have closed the queue after Chris. And I know there was a request from Bruce who's laptop was out and Alan. Alan is in the middle.

I would really like that we can move forward. I - there are different views on this it's obvious. But we need to move forward.

So Bruce if you have a very short point and its adding something that hasn't been considered to the requirements please. And Alan is also after that.

Bruce Tonkin: Thank you Mathieu. I just want to I guess reinforce what Kavouss said I think and a couple of others did as well that we've got three sets of legal advisors. Let's use them in the most efficient way.

I think there's confusion when people are using the term holding the pen. I think the CCWG should be briefing whichever legal team you choose. And that's the key thing is who's actually briefing the legal team and giving them the requirements. And I think that should be the CCWG.

I think from a cost perspective the most efficient thing would be to have the ICANN legal team manage the drafting in response to the briefing from the CCWG, use your external counsel as a way of validating that and just confirming that, you know, the work that ICANN's managing is okay.

But at the end of the day you're briefing the legal team. So just think about the ICANN lawyers as working for you.

Mathieu Weill: Thanks. Alan is that something else?

Alan Greenberg: Just one quick sentence. If we really don't trust our external counsel enough to raise a big red flag if they think ICANN legal is slipping something in on us we're in big trouble. So if we're trusting counsel let's trust them.

Mathieu Weill: Yes Wolfgang I'm seeing your hand but is that really something totally different that you're bringing to the debate? Because I think we have agreed that there is a diversity of views on this but so...

Wolfgang Kleinwachter: One sentence, the legal process has to be embedded in the multi-stakeholder discussions so it's not separated from the multi-stakeholder.

Mathieu Weill: Yes okay.

Fadi Chehade: Something that wasn't said Mathieu two facts from a tactical standpoint. We also have bylaw changes from the ICG.

It is our responsibility to make sure these have integrity across the board and secondly that the bylaws changes will go into your proposal. And after they go to the proposal the board does not have a lot of time to do anything other than to review them and approve them.

If we now have the board changing these after Dublin the whole transition timeline we shared will slip.

So it's important that we are stuck together from now till Dublin so we make sure by the time that language is in we can change a comma after it's in without going through public comment period.

Mathieu Weill: Thank you Fadi.

So we'll take this as co-chairs and come back with a more fleshed out proposal trying to accommodate the various requirements that were made very clear and not spend too much time on this.

Because we have indeed more substantial points to discuss but I think this, the debate outlines that we need to make this clear by the outset of this process otherwise we're up for trouble in the end.

And with that I turn over to Thomas.

Thomas Rickert: Thanks very much Mathieu. And now we're moving to agenda Item Number 4 to discuss the empowered SOAC model. That's at least the working title that we gave it.

And I would like to ask(Becky to come to the table...

Man: If she can.

Thomas Rickert: ...if she can. Is Becky already in the room otherwise I'm going to volunteer to do that the reason being that there has been a lot of talk about this new model which has been first introduced on during our meeting last Friday.

And we, you know, we've met with a lot of communities during the week. And we got the impression that everybody created their own sadly different version of what was communicated.

And in fact on Friday we did not embed that into a fully-fledged legal model. We were revisiting requirements established by this group.



You will remember we had this table up where we discussed the pros and cons of the models that we knew. We discussed their complexity, the issue of watch the watchers.

So how is the underlying community to be made accountable to what we're doing. Messaging, how easy can we communicate that to the outside world?

We discussed perceived or actual implementation challenges, unintended consequences.

We discussed the need for diversity participation, CWG expectations need to be met, NTIA requirements need to be met. We mustn't have a single point of failure.

There needs to be some authority for the community to get their work. We dropped the word impossibility in our discussion as you will remember. We tried not to use that last Friday.

And we were considering implementation time as a factor for our considerations. Add I read these for you just to refresh your memory that what we discussed last Friday is not cast in stone.

We need to discuss this. We need to evaluate the pros and cons. We need to revisit our requirements as need be and then have a full legal test because we don't want to destroy more than we do good right?

So just for all the others that are sitting in the room and that might have another eureka moment that we've resolved everything, that's not the case. This is just a little further baby step towards consensus.

And in order to bring us up on the same page in terms of what we understood we had discussed last Friday I'd like to show you through a few slides.

It will only take five minutes but I think it's important for us to all be on the same page when we're done through the queue. And then I'm sure there are many of you eagerly waiting to chime in on how we're going to operationalize. And then we're going to listen to you and take everything with us into our deliberations.

Can we see the next slide please Alic)? Now the idea was to have a simple fast low or no cost, a no risk path to enhance accountability.

So it must, you know, time is an issue for enhancing accountability. We do want to be as less invasive as we can. So we want to build on the existing SO AC structure that we know and that we trust. I think that's important. We want to retain that trust.

We don't want to change anything in terms of operating principles. Ideally the SOs and the ACs would continue working as they currently do.

We want to respect and address the various community perspectives and the concerns with the other (time) model.

You will remember that we have the potentially unincorporated associations acting as alter egos or as avatars for the SOs and ACs. So that's gone. We wanted to address that.

And we want to have flexibility for the future. That's one of the points that we heard during the week that we need to be able to onboard new groups in the future or restructure as need be.

Next slide please. So we don't want to touch the existing legal nature. For some of the groups we don't know what their current legal nature is.

Some think they are already a legal person. Others think they aren't. We don't want to decide that right? We want to step out of it.

We want the ability to exercise community powers. Again let's not confuse. And that's a point that Leon made earlier. Let's not confuse exercising community powers with enforcing community powers.

There is a very important distinction to be made. Everybody must be able to exercise the powers.

And the idea for this model was that we leave the current status, the status quo as it is but that SOs and ACs could switch on a more formal relationship with ICANN that would give them the authority to acquire legal, authority to exercise certain powers and get the communities will or help, the communities will to get through.

At the same time even if not all SOs and ACs choose to formalize their relationship with ICANN still all the SOs and ACs should have the same weight. So that's important that we don't lose anyone on our way to exercising community powers.

And I think this hasn't been said but (Becky) has done some back and forth with legal experts. Both the membership model and the designator model could be the basis for such a hybrid model. So this is still quite flexible right? I guess what Becky tried to convey is that we try to maintain the status quo and that we add something.

We don't yet know what that edition might be on top of it to give the community more authority. But this is still quite open, next slide.

Becky Burr: (Unintelligible).

Thomas Rickert: Please do. I didn't know that you entered that you joined the table.

Becky Burr: Sorry, I first of all want to apologize for being late. I just returned from the ccNSO Council where the council voted unanimously with the extension of our ICG member to send that CWG proposal to the ICG so we're moving forward.

And I just want to make one comment on this last point. Several people have suggested that the language about jeopardizing meeting the CW conditions reflects an assumption about what the requirements and the contingencies for the CWG are with respect to enforceability on the budget authority.

I am going to admit that I am not the world expert on that. And to the extent that there are questions we obviously have to have those questions.

So I just want to put that on the table because I know there are those in the room would have a different view on this on the conditionality issue.

Thomas Rickert: Thanks Becky. Can we move to the next slide please?

So what do the SOs and ACs need to do, nothing at the moment. They can make a choice at a later point to formalize their relationship with ICANN.

And I think that we are not going to get through all the details. But I guess it's important to note that status quo is maintained and that we are taking the necessary steps in the bylaws to make the system ready for the situation if and when an SO or AC wants to have a more formal position with ICANN.

Next slide please. What does ICANN need to do? ICANN needs to make sure that the authority is granted in the bylaws and that yes I think we should maybe leave it there. I just want to have more time for bylaws and that, you know, I think we should maybe leave it there. I just want to have more time for people to comment. So I guess the important thing is that ICANN gets ready for phase two if you wish (unintelligible) model, should it ever be invoked. But apart from that I think we can move to the next slide.

So, again, the hybrid model seems to be working for both the membership situation as well as the designated situation. We might need - or we will likely need ammonification for as those in AC's.

On top of that, we still need to work on other remaining work stream one and work stream two tasks. And certainly we need to do stress testing. And we need to make an impact assessment on it.

So this was just a refresher on the discussion that we had last Friday. And I think what's now important is to get your views on a model to be used, right. So I would like this group to really focus on the model.

Do criticize this model. Let's not go back to other models that we've abandoned. But let's try to further provide for an evolution of this based on the status quo. Because I think that's been a main theme of our discussions that we want to as little changes - if at all - at the beginning.

So it shall be as lite wide as potentially possible. So can we open the queue for comments? I think (unintelligible) was the quickest one to hit the trigger. And although we don't have a two minute clock, can you please make your statements as briefly as you can.

We would like to get as many voices heard as practically possible.

Roelof Meijer: Thank you (unintelligible) – Roelof Meijer for the record. I'll try to keep this within two minutes.

So first of all I really want to because I'll be delivering some criticism. But first of all I think I should complement Becky for coming up with this plan.

I think we were quite at a loss at the beginning of our first working session last Friday. And this is a very good way out. So don't take what I'm going to say as a criticism to the whole (unintelligible) idea.

I'm a bit confused by the way - by you using the word mobile because we had powers and mechanisms. And I think we are now talking about a mechanism. And so maybe we should stick to that term.

I've made my point several times now in different arenas. And I'm referring to the remark that Becky has already made. The difference between using this way in a designator mechanism or in a membership mechanism and the only difference between the two apart from the designated mechanism being much easier to implement.

But the only difference in practice concerning the powers will be that the (unintelligible) and strategic vetoing powers would not be legally enforceable.

And I think if we focus too long on that we're just focusing on something that - on the difference that in practice will not exist because I cannot imagine the situation where the whole community - - India - - votes on the decision to veto the (unintelligible) or the strategic plan for that matter.

And that whole process with the majority of 70% it is passed on to the board. The board just does nothing with the outcome. And we force the board through a court case to obey to the outcome of the community votes.

And then we just live on happily ever afterwards with the same board. To me it sounds like you're having marriage problems. Your spouse is not adhering to the marriage vows.

First you get the whole family together. And the whole family practically unanimously tells your spouse to behave. It doesn't help. You take your spouse to court. The court tells him or her to behave.

You don't get a divorce. I can think of such situation. So I think we're making this more complex. It can even be simpler than we have it now. We don't.

The only power that we need to be legally enforceable is the power to remove the board. And we will never use it. I'm sure of it.

Thomas Rickert: Thank you (unintelligible) before I move to the next speaker let me just quote publically a remark that my dear co-chair - what you just made - whether there's a need to enforce divorce in court. Next in line is Kavouss please.

Kavouss Aresteh: Thank you so much. I think you take your chances that we already agreed earlier in which the empowerment of community has declined. Yes let's discuss that.

It was in the first draft. But now after comments that you don't whether in all those six areas that are mentioned that you really need to empower. That has direct impact on the mother.

And all of us hasn't - we taken (unintelligible) of the CWG hybrid - hybrids of what? First you have the (unintelligible) already mentioned and the area in which we've required (unintelligible) easily empowered.

Then after that you have (unintelligible) if we had a hybrid. So you come - we came all of the sudden with hybrid. But we have to see what a hybrid is - hybrids of what.

First we have to set the area in which the security needs to empower. They left out of this about too earlier that it would be difficult if you want to involve the community, thank you.

Thomas Rickert: Thanks Kavous. And just a small remark, the community will have the power to - will have the opportunity to exercise the powers that we define. So we're not going to let go of the powers that are defined.

And I think that's what Roelof meant. He's talking about the authority to fit or the enforceable part of that. Let's move to Alan now.

Alan Greenberg: Thank you very much. We keep on saying that the only difference between designators and membership is that we don't have the powers to veto a strategic plan in the budget.



Well the concept of vetoing a strategic plan which is going to be with us for five years is not a particularly urgent matter. The budget, I worry if the community can veto it.

However, those are not the only rights of members. Members have statutory rights. One of the statutory rights of members is to by majority vote and if there's only one that - them agreeing with themselves to dissolve the corporation.

The concept of one AC or SO of the unilaterally dissolve the corporation - assuming I'm reading the California law statutes properly - it's just shocking. The steward of the IANA function goes poof.

I think we have to consider some of those issues, thank you.

Thomas Rickert: Thanks Alan next is (Malcom.

Malcom Hutty: Thank you chair. Firstly, I would be amazed if Alan is reading the California statute properly. Under the single member can dissolve the corporation on their own.

That said however, I had a specific question about how this model applies as in what the consequences are. We have been looking at this very closely in terms of the effect of these models on the community powers that we've created in WP1.

But that is not the whole of it. And so that extent Alan raises a very important point. There is also the question of generally of enforcing the bylaws. In WP2 we hold PA to some very important accountability mechanisms.

In particular, substantial reform of the IRP, that substantial reform of the IRP must be effective. And so those of us that believe that legal enforceability is absolutely a core requirement of any satisfactory accountability.

That means that the availability of the IRP must be something that we can have legal certainty in. So my question is this, with regard for each of these models, do they provide a legal remedy for breach or material breach of the bylaws generally and specifically with reference to the IRP.

Supposing that ICANN failed to implement the IRP, for example, by failing to appoint any IRP panelist, under each of these models would there be a remedy?

Thomas Rickert: Thanks Malcom - Sebastien.

Sebastien Bachollet: Thank you. I would like you to come back to what (unintelligible) say earlier. I think there are already (unintelligible) with the current organization with just changing and just it's that small work but changing the bylaws that we can act.

I really feel like Alan that (unintelligible) involvement they will not act wrongly all together at the same time. And that if (unintelligible) that means that this (unintelligible) didn't show us the right people to be on the board.

They have choice the same type of people all around. And it may be that we need to fix first. And I do appreciate the (unintelligible) with the proposal written by Becky. And thank you very much to have done that.

But I think that we can go even further without any need of a membership or designator model at all even if it's at the end of the day. And once again, I

don't like the expression of its (unintelligible) of course or free but nuclear option.

We don't need any nuclear in this world. Please try to keep ICANN in a peace world, thank you.

Thomas Rickert: Thank you Sebastian. Next is Milton.

Milton Mueller: Milton Mueller, Georgia Tech University. First of all I would like to endorse the concerns expressed by Malcom (unintelligible). I think he was very articulate about the importance of getting a better definition of the safeguards or whatever membership or whether we have to adopt has to guarantee that these kinds of IRP processes are effective.

Second, I want to talk about something no one else seems to have mentioned which is how granular the units of memberships are. Are they only at the SO level, AC level or within the SO's?

Could they - particularly in a GNSO could they be at the level of the stakeholder group which would give a lot better representation to some of the minority interest.

But that could have problems, as well. So I'd like to see that discussed by the members of the panel.

And finally, I just don't understand the point of the - what you called the springing membership concept in the slide. Why don't we just decide whether they're members or not.

And if they decide they're not members they're never members. And if they decide they are, they are. What is this business about them bouncing back and forth from one status to the other? I don't get that.

Maybe I don't understand what's being proposed. It's possible. But I don't understand why we wouldn't want to know who the members are at all times.

Thomas Rickert: Thanks Milton. Before we move to the next speaker maybe answers to - attempts to answer your questions. Our group has so far only allocated both to the SO's and AC's.

So according to our current thinking it would be two votes - five votes for the GNSO let's say and not membership or whatever other granularity you might have for the individual stakeholder groups or even at the continuance level.

So the proposal at the moment as the votes accumulated in the SO's and AC's, with respect to the hybrid nature of the model that is to respect those in our group as well as in the wider community that do not wish change to be made, that do want the model to be trust based.

And we try to honor that wish or that request by leaving the situation as it is. So we would be acting merely on a trust based model until such point in time when the relationship between the board and the community which hopefully will never happen - turn sour.

And then the groups could switch on and change their mode but I (unintelligible) that would never happen. But that was the idea behind it to reconcile the different approaches between full enforceability at the one end of the spectrum.

And no enforceability merely trust based on the other end of the spectrum but censuses - I guess a very - maybe the most central point. You know, we had hoped to get impute on other aspects of the various options of the table.

But we seem to be revolving around the question of enforceability and going to courts pretty much. I think Becky has another idea to offer in response to that.

Becky Burr: Well I just wanted to do a couple of clarification points and respond to Milton's question I think. Just on the point of bouncing back and forth. I don't think that the proposal contemplates bouncing back and forth.

And, you know, if somebody really thought that was important we could certainly consider it. But to me it seems confusing. The other point was clearly respecting the wishes of those groups that want to continue to rely on the voluntary and cooperative approach.

Also providing enough time for the groups to talk about it and understand it and decide what they want to do without creating road blocks in the way to go forward.

So part of this is a timing issue. If we had all the time in the world we could probably argue this to the ground. But recognizing that we all want to get this right and get it right in a timeframe that works and supports the transition.

This does offer the sort of additional time. I've said this before and I just want to reiterate. We have heard loud and clear the concerns about litigation and taking ICANN to court and derivative suits and having ICANN tied up in the court and all - that we've heard that really clearly.

I don't think anybody thinks that would be a good idea to create a model that has ICANN constantly in court. We have had long conversations. And we have legal confirmation that with an extremely high degree of confidence.

We can, if the community choses have disputes resolved through the IRP without resorting accepting the most extreme corner cases to courts for substantive review.

I just want to - that I think is a fact now. I'm not a California law expert. And I'm not going to tell you there is never any possibility that can happen. But general, we have a high degree of confidence that for in the general and normal case there is - if the community decides it would prefer to rely on the independent review arbitration mechanism that is a workable approach.

Thomas Rickert: Thanks Becky. And I'm conscious of time. I will close the queue after Jonathan. And I would. Because we had said we were - work with (unintelligible).

And since we hear a lot of expressions of anxieties for the various models in the extreme we would really like to operationalize a little bit and help understand all the options on the table better. Let's move to Jordan Carter now.

Man: (Unintelligible).

Man: (Unintelligible) (Jenny)'s hand.

Mathieu Weill: Okay, Tijani's hand was up.

Man: No I think Tijani would prefer (unintelligible).

Man: Yes.

Thomas Rickert: Okay so your hand was lower, obviously too Tijani. It's your turn.

Tijani Ben Jemaa: Thank you very much (unintelligible). First of all I'd like to (unintelligible) and all the people (unintelligible) hybrid model. Please don't think (unintelligible) to the model of the (unintelligible).

Second, I'd like to say that I agree most of with what (unintelligible) said.

Third, this model it gives a resolution for - of when (unintelligible) problem.

And I (unintelligible) the board and the committee...

((Crosstalk))

Tijani Ben Jemaa: ...(unintelligible) this problem between the board and the committee we have to (unintelligible). And since we've (unintelligible) we understand what item has to do. They have to prepare the chance to be - to make the resolution able to become (unintelligible) model.

And then we come back to the first page (unintelligible) discussed on the (unintelligible) all the problems that we (unintelligible) that we don't even want it.

So the conclusion of all this is that (unintelligible) model is no problem. If things don't improve then we (unintelligible) we need something for problems.

So what (unintelligible) membership model or the (unintelligible) model and I don't think we solved anything. Thank you.

Thomas Ricker: Thank you too, Tijani. Now it's Jordan's turn.

Jordan Carter: Thanks, Jordan Carter. I just wanted to make kind of three reflections, I guess. The first one is that it sounds like we've made some progress on Friday.

And the progress we've got out of it in a tangible form in five or six slides. So really hope that no one is going back in (unintelligible) or trying to make decisions that where they support this model yet or not because we do not have enough information.

We need at least a table that compares this new model - whatever we end up calling it - with the two we explained before that we need to develop. We need to more clearly specify how it works and what the underpinnings of it are.

Certainly I would just urge everyone to not jump to conclusions. The third point is that because we keep passing on these hard issues I think we keep understating or underestimating the successes that we've had in building this model and the associated parts of it

The wide community consensus around the powers that are being discussed, the fact that everyone I think accepts that board members and the board collectively have got a legal obligation to follow those powers as they're exercised whether or not there is a membership model or not.

The fact that there is an obligation on us to support the work of the CWG and to meet their requirements, it would be hilarious and disastrous all at once if our work fell over and the CWG transition proposal fell over as a result.



So we need to keep their requirements firmly in mind in a real way. And just so we've got a lot of work to do in a short space of time in taking those consensus elements and building on them the kind of frame that delivers them and it's not easy.

So, you know, I certainly don't feel like I've got enough information to be able to make a call about whether this is the right way to go or not. If any of you have that certainty I envy you for it.

Thomas Rickert: Thanks Jordan - Fiona.

Fiona Asonga: Thank you very much. I just want to mention that I think it's important for us to be realistic on how - on the practical level of empowerment that the community can have or the (unintelligible) can have.

Bearing in mind that there've been models of trust in other parts of the community, for example, that have worked very well - within the numbers (unintelligible) there is a mechanism that works at the global level right from the grass roots up - bottom up process.

And all these powers we are talking about are covered in all those processes. Maybe we need to be looking at what works right. What has worked right in those parts of the community that can be adapted to cover the rest of the ICANN community?

And that means that we need to be able to allow for a trust best environment. We have achieved a lot of (unintelligible) because there's been a certain level of trust to the board, to the staff and within the community that has (unintelligible) to where we are.

We need to hold on to that as you move forward. We need to also begin to consider whether we really have to have a numerical best manner of exercising those powers.

Do they have to be five votes or whatever - we decide 70%. Can we work on trust on consensus building because that helps us to - will help us to build on what we already have in place and move forward.

And although there may be challenges for some of the constituencies - like the GNSO that has a lot of other parts in it. But I'm sure if we give it a bit more thought we can find a solution that works even within the GNSO but doesn't destruct the structure of ICANN so much.

And the reason I say that is because for the numbers community any instability or risk that are going (unintelligible) ICANN will directly affect the number community.

And that is something that the community will not take kindly. Being that, the community makes a lot of effort to get a lot of its processes and empowerment of each part of the community out of the ICANN meetings and the ICANN space, thank you.

Man: Thanks Fiona - Julia.

Julia Wolman: Thank you very much. It's Julia Wolman. And after having discussed these issues in the GAC and especially once we got to the role of governments in this new mechanism and new model, I'm trying to have.

I have two questions that I would like to bring forward and clarifying questions. Because maybe this is clear to some but at least to us it might not be very clear.

So the first one is about - is the empowered SO and AC model would require a home of legal personhood in order for the members of the GAC - could be the GAC - to exercise its powers.

And I related one, this could. If some are members and some are not if this could create an imbalance of powers maybe. And the second question is about this bringing model proposed.

And if some members or AC's and SO's would decide not to be a member from the start and then decide at a later stage to join, who would decide in the end if they could join or not, thank you very much.

Thomas Rickert: Thanks Julia - Kavouss.

Kavouss Aresteh: Yes this is the second time I've raised a question. We need to look into the - empowering the community associated with the enforcement. If we take that we simply are not convinced that for the budget and for the (unintelligible) plan we need enforcement.

There's a difference within the bylaw for the conditional or fundamental which is more or less a (unintelligible) constitution charter (unintelligible) and the started plan of five years.

We see still no point to have that enforceability with (unintelligible) for the budget nor with the steady plan. So we have to come back to this point to see

whether we need that if you take these two the situation will be much more simpler and purer. Thank you.

Thomas Rickert: Thanks Kavouss - Chris.

Chris Disspain: (Unintelligible).

Cherine Chalaby: I use (unintelligible) if you want to. That'd be good. Okay let me start by saying as a director of the board I want to ensure everyone around here and the entire community that I look forward to the community being empowered appropriately within the multi stakeholder model.

And I firmly believe in strengthening the bottom out process. In that spirit, I believe that we are all aligned in enhancing accountability without destabilizing the security and stability of ICANN or introducing opportunities for capture.

Now within that context and in my personal capacity as a member of this community I'd like to bring to the attention of the CTWG a concern about an unattended consequence of weakening of ICANN governance in respective of whether you use a designated model or the membership model.

Let me explain. The CTWG has asserted that the empowered community would have control over the board in the following areas - - strategic plan, operating plan, budget and bylaws - - changes fundamental or not.

As consequence there would be no decision that the board can make in those (unintelligible) core responsibilities that cannot be rejected or stopped by this new community empowerment mechanism.

The CCWG proposal indicates that the board would always have the ability to exercise its own judgement after the community empowerment mechanism makes its decision.

But the proposal also states that if the community empowerment mechanism does not like what the board has done it can remove the board individually or collectively.

Hence, the new community empowerment mechanism in fact has the ultimate power to control the activities of ICANN. While as a community member I believe in the bottom (unintelligible) model.

I support the principals behind this objective. But I also believe that it's vitally important that the newly transferred powers are paired with the transfer of corresponding accountability.

Your proposal, in effect, creates two bodies - - one that is empowered and a separate one that is accountable. This in my view, breaches a fundamental principal of governance, weakens the overall structure of ICANN and is not sustainable.

Please insure that this unintended consequence must be avoided within your proposal. As I said before, do not take my ideas as a criticism but as an input and an objective (unintelligible). Thank you.

Mathieu Weill: Thank you very much Cherine. And I think this is a very valid point. It's been voiced by many several actual commenters in the public comment. And it's in captured in one of the outstanding items that we have to address which we call ASO A (unintelligible) accountability.

And which we sometimes label under the slogan of who (unintelligible) watchers and that's taken into account for our group. It's certainly something we need to bring forth in the model. I think it's - of the point you're making.

Thomas Rickert: Thanks, next is Samantha.

Samantha Eisner: This is Sam Eisner from ICANN. I have a couple of questions about the proposal. And I agree with Jordan that I understand this is not fully flushed out yet.

We do need the comparative materials that (Jordan) was referencing. And I look forward to receiving those. I do have a couple of question though. First on the springing is there any requirement of something that must happen before a member can spring.

I've heard suggestion that it would only be at a time when the board has done something that springing would happen. But I don't see any sort of conditionality stated within the slide.

So I don't know if at any time or just at a certain time after something happened. In terms of the IRP as a requirement, I heard (Becky) state that that might be something that's possible if we were to go to there and we had a membership model.

Would we have an effective way to keep members separately out of court on their own individual issues that they may wish to bring against the organizations based on their statutory rights?

We've heard discussions in here about legal advice that's been received on the model. I was wondering when we would have an opportunity to see that through the group.

I also noted that the document starts off with a statement that this is a low to no risk model for us to be considering. And I was hoping to understand what was considered in making that assessment and could we see that risk assessment?

And I just wanted to make sure that if we - from my understanding if we were still to go to the membership model of this - even if we had no members from the start and it was on the voluntary springing basis.

Just to be clear, we would have to modify the bylaws to allow for membership and to create ICANN as a membership organization from the beginning. So that would be worked. That would have to happen.

So there would be some complexity. I'm not saying that that's a gating issue or a reason not to do it. But just to make clear that that would be a necessary thing to do from the beginning.

Thomas Rickert: Thanks Sam. And Becky I think wanted to respond to that.

Becky Burr: Just a couple of quick responses. Sam, the advice on the ability to go to - send people to independent or dispute resolution rather than court has already been circulated a couple of weeks ago in the form of slides from me.

I'll recirculate them to you. Our understanding is no matter what we do we're going to need to make some bylaw changes. But that does not involve any - need to reincorporate ICANN.

It might have a, you know, might possibly be an articles change too. But there's no reincorporation requirement.

Thomas Rickert: Before I go to the next speaker, I'd like to encourage all of you to consider not only asking questions or criticizing what you think is not a way forward. But we heard Cherine say who holds the community accountable, and that there needs - that this is an unusual concept the way its being set up. (Sam) asked questions about the low risk and asked for a risk assessment.

If you don't - if you think that this is not the way to go - and we thought that a hybrid type model would be - would get some traction in the group. Please do make concrete suggestions as to what needs to be done. So if you think there is a risk with membership, let us know what the alternative is, right?

So we heard criticism. But if we want the model, we can't tell NTIA what the community doesn't like. We have to come up with something that the community wants. So we need to refine our requirements. We need to have something implementable. We need to have something that we can explain and something that we hopefully all agree on.

And let's not forget, this is a give and take. We're going to be equally unhappy at the end of the day. That doesn't mean that we have to go for a bad solution, right? But we need to see compromise at both ends of the spectrum. And what we heard during the last hour was to a great extent the repetition of arguments that we had heard before. So please do come up with concrete suggestions how we can move forward.

The next in line is Malcolm please.



Malcolm Huty: Thank you chair. Earlier I took the microphone to ask a specific question. Which of these models, if any, seek to provide a remedy - a legal remedy - for breaches of the bylaws other than the new community powers created by WP1?

You passed over that. And while you gave direct to yourself to give answers and ask - invited Becky and others to give answers to other questions that were raised; I didn't hear a reply to that question. It was not meant as rhetorical.

I would like to know whether the empowered SO model as an open by membership, or for that matter as designated. I believe the answer is no. Would the empowered SO model by membership seek to provide a legal remedy for other breaches of bylaws such as for example for ICANN failing to implement the IRP provided for in bylaws?

If you can't answer that - if you don't have any answer, then please say so and we'll look at it later.

Thomas Rickert: Well I mentioned earlier that we would need legal advice on the proposal anyway, so we would have to work on that. I'm not sure whether we have an answer on this, but I would suggest that we collect further input from the group first. But Malcolm, I had already taken note of your question last time when you spoke.

The next in line is Matthew Shears please.

Matthew Shears: Thank you chair, Matthew Shears with CDT. We're here and we've spent a considerate amount of time and effort in this process because ICANN's accountability is lacking. We are here because we need to enhance that

accountability for the future. And we generally agreed through the various public consultations and the work of the group that the community needs powers. And it also needs to be empowered to do so.

The value of Becky's model is that it has appropriately combined elements of the various models we've discussed to date. It allows us to - it brings us an approach that encourages the community to continue to work together as we do with the understanding that if the collaborative approach is exhausted, the community has an additional power to exercise. We should be looking at this model and the other models that we've discussed so far to see which one allows us to exercise those powers.

I agree very much with Jordyn. Let's go through the process of understanding how we get those powers exercised and which model we've discussed to date gives us the ability to do so in the most appropriate and effective manner.  
Thank you.

Thomas Rickert: Thanks Mathieu. Siva?

Siva Muthusamy: Siva Muthusamy (unintelligible) from India - from Internet Society of Indian. ICANN at present operates from the California Legal (unintelligible). This is an (unintelligible) that makes the directors and the executives already excessively cautious of what they say or do.

The proposals to introduce legally enforceable community powers would make the situation far more complicated, even more complicated. Another thing is that these proposals to introduce enhanced community powers, especially legally enforceable powers, presupposes that the community is balanced within. At that moment it is not.

So we have to proceed on this with caution. So far I see that the proposals for (unintelligible) talks about processes, counter processes, procedures, counter procedures, (unintelligible). You're taking ICANN closer to being (unintelligible). Please be cautious. Thank you.

Thomas Rickert: Thank you very much. Next is Jonathan.

Jonathan Zuck: Yes, Jonathan Zuck for the record. And I guess its tough being so far down in the queue because a lot of things get said. I guess I just want to reiterate that I think that it's a red herring to talk about trust in the context of accountability. I don't think they're the same thing or even related concepts.

I think trust is extremely important. I think trust is a very valuable commodity inside of ICANN, and it's a lot of how it runs. But if we are in fact talking about accountability, the only real accountability is the ability to hold to account. And so that's why - and we've used different words for it. People have said enforceability. I think we've been trying to say authority instead because in theory we're not trying to get to enforcement. As (Roloff) said, you know, that would be a very bad thing if we ever got to that point - if we ever got to court. And as the lawyers in the IPC were quick to point out, it would be a mess to even figure out how to go to court.

But I think the bottom line is that if what we all believe to be true is true - that trust will prevail and that everyone will do what we expect them to do, especially with these new mechanisms in place, there won't be a trigger that would get the required consensus from the community which historically has been a very difficult thing to do inside ICANN. That's another thing I think everybody continually forgets is how hard it is to get consensus.

And so what would need to be required for the community to have consensus would be very rare. And I so I think ICANN for the most part would continue as it does now but with additional accountability mechanisms in place, and only disruptions to normal course of business when something was serious enough to bring about community consensus. And as I say, that would be a very rare thing, and something worth listening to if it happened.

I also - I guess in my last four seconds want to reiterate that we do have a lot to do to improve the accountability of the community itself. I'm not sure that that's something we're going to get done in work stream 1. But it is something that is worked on quite a bit inside the ICANN process now whether it's through the use of metrics that I've brought up a couple of times, whether it has to do with periodic participation to allow better, you know, broader participation in the community.

There's a lot of things that are in process to improve the accountability of the community. It's not as though these things are mutually exclusive. But we do need to get work stream done - work stream 1 done in order to have a transfer. And then we can keep working in work stream 2. Thanks.

Thomas Rickert: Thanks Jonathan. Kavouss?

Kavouss Aresteh: Thank you fellows. I think we have to look - first of all I suggest you perhaps you're looking to (unintelligible) and then try to find out comments and have some reflection on that. Now earlier you asked for concrete proposal. Concrete proposal is that budget and operational (unintelligible) does not require empowerment and so on. And so they are not at the same weight as the bylaws. So you can see them differently. This is a concrete proposal.

Second one - you ask that we put clear (unintelligible) letter for the director of the board. You elect them at the time of election. Ask them please give (unintelligible) letter that you are in my hand. As soon as I won, sit down. This is not (unintelligible).

Increase the requirement. Increase the criteria. Increase the qualification but not ask them to give a (unintelligible) letter that I am at your disposal - that anytime that you want I step down. This may not be constitutional. Thank you.

Thomas Rickert: Thank you Kavouss. Chris?

Chris Disspain: This time it is actually me. I mean thank you. I put my hand up again because of what he said about concrete proposals and so on. So I wanted to say a few things.

We seem to be - to a certain extent we're talking around ourselves here. I was interested in what Jonathan just said. There are two sides to the same coin. It will never happen, so it's okay to have the power. It will never happen, so we don't need the power.

The difference is that it will never happen so we don't need the power just means we can stay the same. It will never happen so we can have the power means that we have to change. So the way that I look at it is what changes am I prepared to make that I would consider to be acceptable?

As I said in email to Becky, I think that this proposal is very interesting. And obviously there's a huge amount of work to be done. It needs to be dealt with. But at the moment I am leaning towards being persuaded by those who are talking about the budget and strap plan not being the same weight.

And because I'm leaning towards that, I'm leaning towards looking at this from a designator point of view. The main concern I have in respect to the membership point of view is - well, there are a number. But one is the necessity to reincorporate ICANN as a membership organization, or at least make substantial changes to make it so. I thought that was a necessity. Maybe it's changed.

And the second one is the statutory rights that once a member is sprung, that that member has. And I think those statutory rights need to be examined in some detail. I think Alan is correct, that in fact it is possible for a member or members to wind up to dissolve the organization under California law. And it is also of course also possible to bring an action that Robin refers to.

And once you're sprung, you're sprung. You're a member. There's no going back. Thanks very much.

Thomas Rickert: Thanks Chris. Cherine was after Chris. And then we have Alan.

Cherine Chalaby: Thank you. You asked for concrete examples. On Monday at the town hall I talked about my concern regarding the budget proposal. And one of the unintended consequences could be budget paralysis whereby members of the community can vote against each other rather than be accountable. So I'm going to give you a concern and also a re-concrete proposal as far as the result is concerned.

One of the concerns if there is a budget proposal that this would jeopardize the organization's ability to deliver on key commitments such as contractual compliance enforcement including issues relating to enhanced consumer protection and enhanced IP and right of protection other initiatives. The

budget paralysis would also risk the stable and continued funding of the IANA function.

My proposal is that a commitment from the IANA function should be separated from this budgetary proposal that you are saying and should be enshrined in the bylaws so that we have absolute guarantees of the continuing funding of the IANA function. Thank you.

Thomas Rickert: Sorry. Thanks Cherine. Everybody should hear that our thinking - with a muted microphone.

Next is Alan. I think Jonathan that was an old hand so you might wish to lower it.

Alan Greenberg: Thank you very much. If you want concrete proposals, mine is empowered designator. We talk - sorry, I've lost my train of thought now. We really have - if we're going to have any belief in this organization, we don't have a lot of control over who the NomCom selects. So NomCom selectees are untrustworthy by definition, even though the people on the NomCom are our own people.

However we select seven directors. We select them directly. If we do not trust one of them - in answer to (Malcolm)'s question, to take action against the board if the board is violating the organization's bylaws, we are in real trouble. But if you don't believe - if you don't trust them, then before you appoint someone, you have to remember the empowered ACSO is now a legal entity. It can have a contract. Have a contract with your director requiring them to take action if the board is violating its own bylaws. There's plenty of mechanisms to do it. Thank you.

Thomas Rickert: Thanks Alan. Theresa?

Fadi Chehade: Sorry. I didn't have an acrobat.

Thomas Rickert: That's Theresa with a lower voice now, right?

Theresa Swinehart: This is Theresa now.

Fadi Chehade: This is Fadi. Thank you very much for laying out this model. I would like to bring a dimension that unfortunately ended up being very close to what I have to do at the end. At the end of this, Strickling and I will have to be in front of Congress. So please let us not forget that everything we're doing here will have to pass through a political context.

And let me ask a very simple question. The lady from the GAC asked would governments or the GAC have the ability to become a member. The answer to that based on what we see so far is yes. And now the senator is asking me in Congress, Mr. Chehade, would governments having a membership position at ICANN give them more power than they have today at ICANN as an advisory body?

And my only answer will have to be - unless I wish to lie in front of Congress, which I won't do because there are also congressional staffers in the room right now listening to me. The answer is yes Mr. Senator. They will have more power. And he will ask me then, now will they have more power relative to others having more power today? And the answer is still yes.

And he will say isn't one of the key conditions Mr. Strickling said who is sitting next to you here in Congress, that governments will not replace us or increase their role here? And I will say yes, I know the conditions sir. So



hopefully the staffers in the back will not hear this. And hopefully the Senate will not pay attention to this. But the reality folks is that they will and they are. And we need to be very careful. We should not make change for change sake.

Now we have work stream 2. If we want to discuss things calmly as Jordyn was asking as well, there are many questions. There are many things we still need to think through. What is necessary to transition ICANN from where it is to a state where it is independent of one government's contract? That's our goal. We all share it. Let us not upset a consensus balance we've had for years.

And it distinguished us. It made us who we are - that we actually reach decisions by consensus through the good advice of our advisory committees including the GAC. If that balance changes with this model, our political process just became nearly impossible.

Thomas Rickert: Thanks Fadi. Mathieu would like to respond to that. But I'm conscious of time. We will now definitely close the queue after Jordin. We will have noted that we are past the hour - past the top of the hour. So we already dropped the explaining part of our session. But I'd like to save us some time for concluding remarks.

So after Jordin, the queue is closed. And Kavouss, even though you attempted, I'm afraid I have to be strict on that.

Mathieu Weill: Thank you Fadi for your thoughtful comment. I think I know our charter. I know the criteria that were laid out by the NTIA. And they're very clear. The organization must not be under the control of one or a group of governments.

That does not mean that the place of government if there's a community consensus could not be shifted or changed. So our goal - and I know it would be difficult - may be difficult to address in Congress. But our goal here is not to prevent questions in Congress. Our goal here - and that's going to be difficult. Look at the discussion we've had.

I've always said I have three goals, and this group has three goals. Come up with a proposal, find consensus, make it simple to explain to congress. And then we'll hand over to the ICANN board, to the US Congress for everyone to take their responsibilities. But we should not impose ourselves any extra criteria than the ones that were laid out when we started. And I think this is extremely important.

We need to find consensus in this group. We need to find consensus in the ICANN community. We need to get support outside of the ICANN community or around. And that starts with what Thomas was saying, and that a number of contributors actually started doing here is adding ideas that we can take on board to build this consensus - to say I was of the opinion of.

But because I understand the other perspective, I'm willing to shift. I'm willing to lower my expectation on this so that we get closer. That's really what we need - we're here to do. And I think it's extremely important that we stick to our requirements and try and fit something that we all can agree on.

And I know there are many expectations outside of this. We will not be able to meet everything. And governments have difficult decisions to make which part of them are theirs to make and part of them we will have to review. But I think it's important that we focus on bridging the gaps between our views right now. And then we'll see where the consensus has led us. Thank you.

Thomas Rickert: Thanks Mathieu. Next is Ed Morris.

Ed Morris: Thanks Thomas. I'd like to indicate my complete, wholehearted support for the empowered SO AC model - no reservations whatsoever. And let me tell you what's great about it I haven't heard anyone discuss today. It's truly bottom up. You guys aren't telling me in the NCSG you must become a UA. You must have a legal personality. That's our choice. That's bottom up. That's what we're supposed to be about. It is bottom up with hard enforceability.

So Fadi, when you go to Congress, if we take the let's all be friends model, some of us are going to be there saying there's no enforceability. It's just a bunch of garbage by this thing that you don't understand called ICANN. It has hard enforceability. It's bottom up. I won't call it (Becky)'s model because I know she doesn't like that. But it's a thing of brilliance. And for those who devised it, thank you very much.

Thomas Rickert: Edward, I wasn't even prepared to switch my microphone on after such a short intervention from you. Next is Greg - please.

Greg Shatan: Thanks, Greg Shatan. I also am generally in favor of the empowered SO AC model. I think it still requires further study and development. There are things I think we do need to clarify before I can give quite the same gusto and brio that (Edward) just did. But I am generally in favor.

I just wanted to respond very briefly to what Cherine said about the budget. I believe that our power that we proposed is the power to veto the budget which requires a super majority vote. So I think that the only way the budget paralysis would occur is if a vast majority of the community rejected the budget.

This is not the right - and I believe the budget actually goes into place unless it's rejected. We can look at those details. That's a soluble problem in either case. But it's not that the board - I don't believe we have a positive power of approval and we can hold up the budget. It needs to be voted on and rejected. Thank you.

Thomas Rickert: Thank you. Next is Jordan please.

Jordan Carter: Thanks. I just want to make three points that kind of riff off what Fadi's points were. The first one is that the reason we have to make changes is because the NTIA's ending its contract with ICANN. The contract with ICANN is a legally enforceable framework for ICANN accountability.

So if anyone is going to go to Congress and say hey guys, you know how there's been at least a legal accountability framework here? We're going to replace it with a voluntary one. I don't envy you selling that.

The second point I'd like to make is that when you do get asked by a senator is this model giving anyone more power? Probably because you're a much more accomplished speaker than I am, you'll say it a bit differently to this. But the message you'll give the congress is twofold.

First of all today the SOs and ACs at ICANN have different kinds of powers. GNSO, CCNSO, they make policy that the board sort of stamps at the end. The GAC gives advice on public policy issues. Tomorrow if this model comes in, they'll have all of those same powers. And the other powers that they'll have will be the same as well - the accountability powers that we've talked about.

So does this give the government more power? It gives the governments more power. It gives the community in every respect more power. And that is the heart of the multi stakeholder model that I am here to uphold. So please, can I urge you personally and all of the senior staff and all of the board members of ICANN - people like Chris Disspain and stuff.

When you're having conversations with politicians and government officials, don't close the door to this model. Don't lead to conclusions for something that we started to talk about on Friday. Give us the space to turn it into a full proposal.

Thomas Rickert: Fadi wants to respond directly.

Fadi Chehade: Yes. First of all I was not giving you an answer. I was giving you risk that you should consider. That's it. So don't accuse me of giving you an answer to a model.

For secondly, you made a false statement at the beginning. The accountability that is in the contract with the government today has nothing to do with this. It's all about IANA. This is way beyond what's in the contract with the US government today. Let's be clear on that. This is beyond that.

And the political risks we're facing are real. You cannot ignore them (Matchu). And you know that because you work for a government. So let's be very clear. There are political risks here. And if we simply say oh this is a perfect model but do not take the political risks with us, then we risk the transition and we take that responsibility with it.

Thomas Rickert: Thanks Fadi. I saw a few of you raising their hands. But you will remember that I had closed the queue after Jordyn. And I think we need to end the

discussion here. We will have another session tomorrow where we will continue the conversation. But I would like to take the remaining minutes. Hopefully I'm not going to take all of them to take stock of what we've discussed and suggest a way forward.

I think that there is risk being seen both in the - let me discuss this without mentioning any models - but there is a fear that we might have unintended consequences stemming from derivative lawsuits and statutory rights which might empower individual groups beyond what we have defined as a conclusive list of community powers.

So I think that's something that we need to take a look at in order to insure that an empowered community cannot bypass the processes that we have defined, i.e., that none of the groups can short circuit and move directly to enforcement mode if you wish without having proper consultation and consent in the community.

Also what we've heard is that we need to reinforce our commitment to discuss watch the watchers - the accountability of those that exercise community powers. I think that proved to be essential for getting compromise or consensus in this group.

Also I think that the two camps if you wish - those that want enforceable powers and those that want to base a model on trust are almost irreconcilable. I heard little willingness to compromise on these two ends of the spectrum. There was some movement. And still I'm not sure whether if we took what we had if we would not even get rough consensus with one of the models.

But it is our aim not to lose anyone behind, but to get consensus that everybody can live with even though not everybody might be fully satisfied

with what we're suggesting, which leads me to an observation that a hybrid model might still be the way to go. So I think that this idea of using a hybrid model that we discussed last Friday got traction because we would not switch to authority immediately. But we would retain the current structure or maintain the current structure, and start with a trust based model.

The question is then, where do we move from the trust based status quo, and where do we move from this trust based status quo? So the authoritative modes or the authority mode needs to be further defined. And I heard some movement for example from (Cabutz), from (Roloff) and from I think it was Chris who said that we can maybe sacrifice some of the authority for some of the powers if we just insure that the ultimate powers in order to make an impact or call the board to reason are kept, right?

So let's discuss that more. Where would we go in case we switch to a more formal mode? And that is not necessarily membership. That is maybe a variation thereof. Give that some thought in preparation for tomorrow's meeting.

The other thing is how do we connect these two worlds? There was a question of, you know, would it be sufficient for one group to switch on and then there's no point of return? So we might consider having some threshold, some arrangements whatsoever whereby we would need a certain consensus or threshold inside the community to switch from one level to the next. Because I think we haven't thought about moving from one stage to the other enough. And maybe by finding good solutions for these two areas, we can again - and this is something that I said last Friday - take the best out of all worlds to move forward.

My final observation is that we need to think more about where the power rests and who should have what powers. And that is the point that Milton made. We haven't discussed enough the granularity of votes. At the moment we've put votes into the SOs and ACs. I'm not precluding that we need to make a change there, but at least we need to give it some thought and come up with a rationale why we put the votes where they currently are in our draft proposal.

And lastly, who should have what powers, meaning how do we deal with the statutory powers? And while we need to interact with legal counsel to see whether such statutory rights can be waived or whether they can be suspended or whether there are other forms to insure that there's no excessive use of powers beyond what we intend to equip the community with, I think we need to go back to our email.

We did get an inventory of statutory rights that we could take a look at. And maybe the members of the group and the participants and the observers could actually take a look at the list and say what they - where their anxiety comes from. I think the anxieties don't necessarily rest with a certain terminology, but there are real life scenarios behind it.

And Cherine, I very much applaud you for coming up with the suggestion of putting the budget question for IANA functions into the bylaws. Put it there, make it fundamental, right, so that we have this weakness of the designator model or one of the weaknesses of the designator model on the table. And that maybe allows us for revisiting the requirements and compromising with a set of requirements - a revisited set of requirements. And after we've done a full analysis of the legal implications, come up with an implementable solution.



I think I should pause here. I would like to thank you very much for a very informative discussion. I think it was important for everybody to make their point. And we might not have too much tangible results. But I think we're now best placed to have a constructive discussion tomorrow and make good progress tomorrow.

Thank you everybody.

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