

DUBLIN – At-Large Ad-hoc WG on IANA Transition & ICANN Accountability  
Saturday, October 17, 2015 – 17:30 to 19:00 IST  
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OLIVIER CRÉPIN-LEBLOND: Ladies and gentlemen, I think we can start the session on IANA Stewardship Transition & ICANN Accountability. Could I please ask our delegates to get seated, please? Thank you.

So we're starting this session on the Ad-hoc Working Group on IANA Transition & ICANN Accountability. We have had weekly calls to feed the five delegates that we have on the cross-community working group on Stewardship Transition (the CWG) and the five delegates on the cross-community working group on ICANN Accountability (the CCWG).

As I mentioned to you this morning, we're going to be referring to the CWG and CCWG instead of calling them by their full name.

The aim of this meeting here is to really take stock of where we are in the ICANN stewardship transition part, and afterwards to take stock of where we are with the latest developments in the CCWG accountability.

This morning you... Or those people that were here and were not in the morning work working groups were shown a couple of slide decks with the process that was used with the IANA Coordination Group, the different operational communities, etc.

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We're going to go straight to the topic in this working group. If any of the newcomers have any questions along the way, please raise your card and we will be able to answer them. There's no concern about time. We have about 90 minutes for this. Hopefully we can take a bit less time than this. I think that's all the introduction part dealt with. Alan, do you want to add anything else to the introduction?

ALAN GREENBERG: No. I'm going to be speaking plenty, so I'm going to wait for any initial questions or thoughts and then we'll go into where we are today. Have you gone over in any extent what is in the proposal that was put out in August?

OLIVIER CRÉPIN-LEBLOND: As far as the CWG IANA is concerned, we went through what was in the proposal. We had a few diagrams. As far as the accountability thread is concerned, we did not. We're going to concentrate on it now. Maybe we might even be able to see a few slides from this morning, the accountability slides which we had this morning if you require them.

As far as the CWG IANA is concerned and as far as the IANA Coordination Group, otherwise known as ICG, is concerned, the CWG IANA has sent the report to the ICG via the board as it was

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mentioned. And the ICG has responded with a number of questions that it has sent to the CWG. Questions on a few details of the proposal, a few things that remain to be answered. One of them is service-level agreements, which are now service-level expectations, required for the IANA function. The other one being the question on the ownership of the trademark IANA.org and any other intellectual property that runs around that.

There seems to have been some amicable agreement that some kind of a trust or some vehicle can be created to hold those trademarks. Still a little bit up in the air, but it's not a showstopper for the transition to take place.

The additional questions which were asked were sometimes just points of ambiguities that were in the proposal. I can't think of any just off the top of my head like this. If any of my colleagues have any specific points that they'd like to highlight on the questions that were asked by the ICG to the CWG, then please feel free to intervene at this point.

So, really, today what everybody is waiting for is the conclusion of the work of the CCWG accountability. That's why there's so much pressure. As far as timing is concerned, the transition needs to take place before a specific time deadline. The reason being that in an election year in the United States, very little happens. And as you might know, there is an election coming up

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in a year's time or so. Is it about a year's time? So we do have a deadline by which the final proposal needs to be sent to NTIA. NTIA has to look at it. It might even ask questions. Then implementation will take some time also to proceed forward with transition.

That's the status as it is at the moment. Are there any questions on the IANA stewardship transition part? I don't see anyone putting their hands up. Oh, Tijani Ben Jemaa?

TIJANI BEN JEMAA:

Thank you, Olivier. I am a little bit surprised that the ICG didn't ask the three communities (numbering community, naming community, and the [standards] community), to have something more coordinated, to avoid any problem after the transition.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Tijani. Actually, the ICG did send that question. I have seen that question sent to the IETF (the Internet Engineering Task Force) mailing list, and the response... And I actually tried to even explain the reason for that question. Since I was subscribed to the list, I answered a couple of points. I think Seun was on that mailing list as well. But the response has been overwhelming in saying we've always collaborated together; it's always been informal; it needs to remain this way. If it's the

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choice of the IETF – and not being an IETF insider and therefore not having any [gravitas] whatsoever for anything that I say in the IETF, or Seun says in the IETF – the pushback was quite strong. They said we don't need to start formalizing things with further top-down contracts of some sort or papers that would push us in that direction.

Seun Ojedeji?

SEUN OJEDEJI:

Thank you very much, Olivier. You've expressed the response of IETF better than I could have done. I don't know why the IETF has decided to "not get involved in this process as much as they should" especially if we consider that they're actually the [inaudible] of all these things we call IP addresses and names, [inaudible], in terms of protocol, because they are the ones that actually [inaudible].

I'm very, very encouraged by the response of the numbers community in that they were very open to any suggestions or [inaudible] that will actually ensure this coordination whether formally or informally. But if IETF were just outrightly closed about it and it was just not... Nobody is saying that there is going to be a formal process, [inaudible] suggested, but actually it shows some level openness to anything that is suggested. It's

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quite discouraging and I think we expressed it on the IETF list; of course [inaudible].

OLIVIER CRÉPIN-LEBLOND: Thank you, Seun. Next is Garth Bruen.

GARTH BRUEN: Thank you, Mr. Chair. Garth Bruen, NARALO chair. I have to counter a statement you made about the need for the closing of the transition by a certain time because of the election. It has nothing to do with the election year being busy in the US. This is about our president who is term-limited who initiated this change and does not want to give the next president, whoever it is, the authority to reverse this initiation.

There's been an extreme amount of criticism within our national politics about this transition. There's been specific mentions within our legislature about compliance, in particular. This is really what's going on. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Garth. I have Tijani and then Sebastien. Tijani Ben Jemaa?

TIJANI BEN JEMAA:

Thank you. I will not speak about what Garth just said. I will come back to the coordination. What is asked for is not a new mechanism [inaudible] coordinations. It is to have the process, the proposals of the three communities, more harmonious, making the work of the PTI more easy. Not making it as it is three PTIs. This is the concern.

I think that the IETF didn't response to the question as it should be.

OLIVIER CRÉPIN-LEBLOND: Thank you, Tijani. Next is Sébastien Bachollet.

SEBASTIEN BACHOLLET:

Thank you very much. I'm going to express myself in French. Garth, I don't mind rewriting history, but Fadi Chehadé decided to leave in March. His term was supposed to be longer. It's not because he wants to say before or after that we have to rewrite history. The question remains from the beginning is we ask when that can be done. If it doesn't get done before the elections in the United States, it will not get done.

Now, I'm not saying it's never going to get done and it might not be done by the next administration or the next one. But in either case, it is clear that we have to take into the account the fact that the administration in the United States is going to change.

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Not in November, because it is when the elections take place, but the next year after that.

Really, the president has nothing to do with the timing. I think everybody should be concerned that we don't have issues with Congress and the American administration and we can put together a proposal that's the best possible. It must be our first guidelines. We should follow these guidelines and this is our work, the work has to be done in a few weeks, the weeks to come. It's not going to be easy.

OLIVIER CRÉPIN-LEBLOND: Are there any other thoughts? Alan Greenberg?

ALAN GREENBERG: Yeah. Just to point out that the IANA transition is not the only issue on the books right now. This whole process is being viewed as a test of the multi-stakeholder model. Whether we like it or not, it is. There are discussions going on in New York at the UN General Assembly about renewal of the IGF. There are a number of countries in the world that would be delighted to demonstrate, to be able to use this as a demonstration that the multi-stakeholder model cannot produce real results, and therefore the authority of ICANN should be diminished and taken over by other inter-governmental groups.

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Some people I know believe that is FUD (fear, uncertainty, and doubt). Other people believe it is a real issue. There's no point really in debating here. There are enough people within ICANN who believe that this is a real issue, that this is part of the driving force. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Alan. In the queue I have Kaili Kan, Seun Ojedeji, and Stefano Trumpy. First, Kaili Kan, please.

KAILI KAN:

Thank you. Yeah, my personal feeling about the transition from the US IANA to ICANN becoming independent is that, first of all, I feel quite fortunate that the Internet started off [inaudible] in the US. Anywhere else, probably the Internet will not be this good, this strong, in the world.

Also, I feel that we are fortunate to inherit governing structure of ICANN [inaudible] or wherever.

But on the other hand, over the decades that Internet has [inaudible], ICANN has grew stronger and stronger. So it's necessary to become more internationalized and become independent, just like it was a baby. But now we're grown up. So we will say goodbye to our parents or whoever, and we are grateful for that. But on the other hand, it's not directly related

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with Obama's administration, whoever [inaudible], because this has been [inaudible] and should be settled sooner or later, just like a young man saying goodbye to his parents. That's what [inaudible] about that.

Also, seeing the past of ICANN, the current governing structure, I do not feel confident about having some kind of a supreme [inaudible] the board, which because of the current look and the current structure of the board as well, as all the other groups including our ALAC, I feel that [inaudible] representation of the [inaudible] of the world. We, especially our ALAC, are here to represent the end users. And also even for the GAC. Well, the government is supposed to serve the people. I will say of the people, by the people, for the people – the governments, right?

Also, the commercial bodies, the companies [inaudible]. Also their sole purpose of existence is to serve the people. So therefore, I feel that both the board and our ALAC already has the best representation of the people around the world who use the Internet and who has a stake in the Internet. So I do not believe establishing somebody that will supersede the board, especially on behalf of the end users.

I am sort of concerned whether that super structure or agency could be taken over by some special interest group, because

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nobody knows about [inaudible] and especially not by the commercial interests, [inaudible] group.

So I would say ICANN over the years has shown its ability to evolve, but definitely we do not want to overthrow the current structure and [inaudible] some kind of a revolution, and then jeopardize the entire ICANN structure as well as the future of the Internet. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Kaili. That's actually a key point which I think we will be discussing in the accountability in a moment. That's a very good starting point. Well, we will get to it.

In the queue I have Seun, Stefano, and Garth. Sorry if I did miss you, Garth. I'm not sure what place you were in the queue. Seun Ojedeji?

SEUN OJEDEJI: I just want to highlight one aspect of the CWG. The question from ICG to the CWG. That as to do with the .ARPA. In respect to the response from CRISP, we already said actually they will prefer that [there are] correspondence strings within the .ARPA should not go through the IFR or also the CSC as it may. That question was pushed to the CWG to clarify whether indeed

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.ARPA will be part of the IFR processes or even the CSC processes.

In my own personal opinion, I tried to respond that we didn't respond to that question as CWG, and that is my personal view. So if there's somebody within the CWG [inaudible] thinks that that question was addressed adequately, it would be good to know. But that was my observation. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Seun. I don't know the answer to your question. What would you suggest as a response? Perhaps the way is perhaps to suggest a response on the mailing list and see if anybody else adheres to it. But if the ICG is happy, as Alan just whispered in my ear, then should we worry? Okay, thanks.

Next is Stefano Trumpy.

STEFANO TRUMPY: Okay, thank you. First of all, many of you know me as sitting in the GAC, but I finished my work in the GAC at the end of last year and now I'm representing At-Large in the EURALO as head of the first associated member that was the Internet Society [inaudible].

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It is very interesting, this. And also the discussion started when you [had] been talking about the timing for finishing the work. This is a very important thing and connected also to the elections that we were mentioning.

A few weeks ago I followed a meeting in the Senate of [inaudible] Fadi Chehadé talking with the senators that were concerned, and especially Republicans of course. They obliged Larry Strickling to say that maybe three months in advance of the end of the contract next year is not enough. So there is the plan, I think, because I heard Fadi saying that the project is to try to finish by next ICANN meeting in Marrakech.

Of course there are a number of objections, in particular of the Republicans, about the not yet any formal position. This is something partially good, if you like. But it is very important.

Then there was also in the paper saying United States commentary saying that IANA transition to many politicians is not so important. It's something that should go very easily, and of course the IETF was mentioned before. They want things functioning, and then not add complications. This is a very important thing.

But there are a number of people that are not so interested in IANA transition that are interested in [inaudible] to exist. This is the very important key point in this period, also not easy to

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explain to those that are not involved so much in DNS management and things like that. Thanks.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Stefano. Next is Garth Bruen.

GARTH BRUEN: Thank you. I think Stefano has to turn off the microphone. Thank you, chair.

I take heed, Sébastien, with what you say. Absolutely. I don't think that we need to rubber stamp any bad deals just because what might happen otherwise could be potentially much worse. I mean, certainly it would look very bad for the community, but what I'm saying is that this is our time to fight for a plan that actually works for consumers and to push for an ICANN that actually talks to consumers and listens to consumers. That's what I'm saying. And we shouldn't give up the details that make it important.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Garth. Next is Seun Ojedeji again. Kaili, did you have your hand up? Then please put your card down. Seun, you have the floor.

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SEUN OJEDEJI:

Yeah, thank you. I just want to give a follow-up on the comment Alan made. Yes, I think the simple response is if the ICG is fine with it, then it means that we shouldn't worry much. I just want to emphasize the fact that this is creating the fragmentation that we may want to avoid. .ARPA is just a TLD, and if the CRISP is asking for a string, a “sub-domain”, [inaudible] to be out of the review process of IFR, I think that is some form of fragmentation. I don't know how practical it is, especially if IFR is working on reviewing .ARPA as a whole. I don't know how particular it is to actually [inaudible] review [inaudible] not to affect [inaudible] .ARPA and so on and so, because it's a sub-domain.

So I think we have to face that reality that we are actually working towards a possibility of separation in the near future, because all these things are going – everybody wants to [inaudible] who need to be conscious of that. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Seun. Let's hope that we have a bit of steadiness in the future after all of this movement in all directions. I've got Alan Greenberg in the queue, and then we'll probably finish off on this topic with Christopher Wilkinson. Alan, you have the floor.

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ALAN GREENBERG:

Thank you very much. First, in response to Seun, .ARPA is technically just another TLD, but how it is used is not just another TLD and matters immensely to the addressing community. So if the addressing community wishes it to be used in a particular way and we are happy with it at this point and the ICG is happy with it, I don't think we need to do anything. That's my personal opinion.

Technically, .ARPA could be used as a normal TLD. I'm talking from the mechanics. And you could go to a website with it, but that isn't how it's used. So I'm happy to keep it in a separate way.

What I did put up my hand for, however, is to welcome Stefano here. Some of us know you from several lives prior to the GAC. I think we first met somewhere around year 2000. I don't remember exactly when. So, welcome. We're very much delighted to have you here.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Alan. Next is Christopher Wilkinson.

CHRISTOPHER WILKINSON: Regarding the risks of fragmentation, which Seun has just evoked, I think it's very important from the At-Large point of view to avoid and discourage fragmentation of the IANA

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function, if only because it would impose on a group like ours such great overhead in terms of minimal oversight and participation. I think that's quite important, and there are technical reasons also for discouraging people from trying to split up the IANA function.

But my main point was to follow-up on our colleague over there. I'm sorry I didn't catch your name. There is a shift in opinion in the last 48 hours away from... Or is it from Los Angeles? I'm not quite sure; I wasn't in Los Angeles. But there's a shift in opinion away from voting structures in the future member, however it's defined, towards a consensus of making process.

This is extremely positive, and I think it's an enormous advantage from the point of view of At-Large. We are a bit thin on the ground. I think Alan and Olivier have done a splendid job in recent months representing users' interests. But in the future, it could be quite near future, I predict that something like [CWG] will continue, and ICANN in some manifestation or other will have to take a lot of decisions to implement the new arrangements, whatever they finally turn out to be. And the fact is no longer a few [hats] on who exercise the vote means that the system is much more open to larger numbers of you to participate on mailing lists and conference calls and to genuinely make this a consensus-based decision-making process which includes the whole of the multi-stakeholder

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structure, including the user interests. It's an opportunity not to be missed. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Christopher. That actually squares of [inaudible] stewardship transition quite well and really puts us into the ICANN accountability part of the discussion.

As you know, if we don't have consensus on ICANN accountability, the transition will not proceed forward, since it's a vital part of the proposal of the CWG IANA as well.

So I guess for this, for a good introduction, I can turn the floor over to Alan Greenberg who has a deck of a few slides that he has presented in the First Canadian Internet Symposium. No, we are not in Canada. They have not taken over Ireland. Thank you. But they're working on it, of course.

Anyway, I'll hand the floor over to Alan who will take us through this. That should provide us with the status I guess just before where we are now, and then Alan, you'll probably be able to tell us what happened in the past 48 hours. Alan Greenberg?

ALAN GREENBERG: I will, thank you. I apologize to Tim who has seen this slide deck before. This is a presentation I gave. If you can read the date, it's

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the 24<sup>th</sup> September I think or something like that. About three weeks ago. It reflected the situation that day, and is a good start to reflect what it is that we essentially started with going into this meeting. If you can go to the next slide, please. That's just a bio from me. We don't need to look at that here. Is there any way to get that any larger? Okay, thank you.

Again, this is a primer for people who are not necessarily engrained in the ICANN model. But since we have a lot of new people here, I think it's worth going over.

We use the term multi-stakeholderism a lot. Multi-stakeholder is essentially is the different stakeholders come from different parts of the Internet community. It's a very wide group. They have different perspectives. Many are passionate about their beliefs. Many have long memories and axes to grind and are trying to fix problems from perhaps a decade ago or more. Many have territory to defend. There's large financial investments involved and some parties have very strong interests to try to preserve.

Now, we tout multi-stakeholderism as a good thing, but given all of those conditions, not easy finding common ground. We're asked to find a compromise that satisfies everyone and it's not particularly easy. Next slide. Next slide, thank you.

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This was a review of both the IANA transition and accountability.

There was a cross-community working group that included, similar to the CCWG, members and participants. It was representing not only the ICANN community, but other aspects of the naming that have impact to the naming community. So it included the RIRs. It included the IETF. It included ccTLDs that are not members of the ccNSO. It was quite a wide group.

We had a very difficult process coming to closure. What we ended up with is something I consider reasonable. I also consider it – and as does the ALAC, because we've said this clearly – it's more complex than it needed to be. It's more expensive than it needed to be, but it should be [inaudible]. Let's go ahead, next slide.

Accountability group was put together with participants largely within ICANN. It was charged with ensuring that ICANN is accountable to the community, of course without really defining what community is. Next slide.

Current ICANN structure. As I hope you all know, we have supporting organizations which are responsible for making recommendations to the board on their respective domains (gTLDs, ccTLDs, or addresses). We have advisory committees, governmental At-Large, security, stability, and root server system) which have responsibilities for making

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recommendations to the board and the rest of the community on pretty much things that cross the boundaries of the SOs or anything else that they think is important.

We have the board that is selected by the SOs, by the ALAC, and by the Nominating Committee, which is a misnomer in its own right because it doesn't nominate; it selects. Made up of people from across the wide community, both inside ICANN and outside ICANN. Slide.

So what's the problem? We select the board. We can re-select them or kick them out next time around. Yet, there is a real problem of trust. Next slide.

There's two typical board directors. You may know them. There's George Sadowsky and Chris Disspain. Those were photos taken just before they became board members. Next slide. It's a photo taken just after they became board members.

There is a perception that we cannot trust these people. We appointed them. They came from our community. They're not trustworthy. Now, at the same time – yes, excuse me?

OLIVIER CRÉPIN-LEBLOND: Sorry, Alan. Do former board members lose their horns? Because I can't see them on Sebastien.

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ALAN GREENBERG:

Maybe Sebastien never had them. No, we will not go off on those. Those are, in fact, to be quite honest, clip-on horns. But it doesn't really matter.

The most interesting part of this that we don't trust the people that we appoint to the board is most of the time we reappoint them when their terms are up. While they're there, we don't trust them. But when we have an opportunity to replace them, we don't. It's an interesting situation. Next slide, please.

So the board is not trusted, despite all of the things we said. They are perceived as being more concerned with the corporation than the stakeholders. Now, they are in fact have a fiduciary duty sort of to the corporation, but explicitly to the mission of the corporation which is subtley different.

There have been, however, times when perhaps because of what I would consider bad legal advice or the board listening to legal advice when they shouldn't have, they have made mistakes. They have done things that were not the way I would've done them if I was there. And therefore, some of the things that community have raised do have merit. So that's a reality. Next slide.

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The proposed solution – and this was what was published in August by the CCWG accountability, and it's now in the process of being revised – would essentially transform ICANN into a membership organization. Not a membership organization as it was in 2000 with individuals voting to select board members, but with a sole member, its complex construct. So essentially, there is one member. That member is composed of the ACs and SOs who can direct the member what to do. Different ACs and SOs have different waits. The proposed solution also strengthens and changes the mission and core values, partially to restrict ICANN to stay more on track and not to dabble into other areas. It has a much strengthened independent review panel, a much strengthened board reconsideration process, both of which have been heavily criticized over the years as being not adequate. Next slide.

Gives the members – that is, the ACs and SOs – who chose to participate... And that would likely have been the GNSO, the ccNSO, and the ALAC, possibly the ASO although the bets were not high on that.

OLIVIER CRÉPIN-LEBLOND: ASO is Address Supporting Organization.

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ALAN GREENBERG:

Address Supporting Organization. The SSAC and RSSAC, Security and Stability and Root Server System, had explicitly said they are advisory committees; they want to stay advisory. And the GAC probably was not in a position to make that kind of decision. Next slide.

Our concerns. The process is complex. Because of the lack of participation of many – four out of the seven ACs and SOs – we thought there was a potential for [inaudible].

For instance, many of the decisions we're looking at could be decided by a super majority. But if you only have three, a super majority is two. That means the GNSO and ccNSO, both of which are largely commercially oriented, although some of them are not-for-profit, and are definitely registries in their own right, would have the ability to exercise these powers, even if the ALAC [not]. And the other ones choosing to be silent.

So we had a real problem with that. There was a veto of the budget which we found very problematic, partly because it could put ICANN in a very awkward situation. The veto was not absolute in that we couldn't stop ICANN from spending money, but the process would say if we can't agree, we'll freeze it at last year's budget or maybe 10% more. There were various options being batted around.

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Given that the most likely budget problem ICANN will have is reduced revenues and not having as much money to spend, freezing the budget at last year's level, or perhaps higher, is probably not the most rational thing to do.

Some of the mission and core values were moved aspects of the public interest, which we objected to very strongly.

So we need better accountability. There's no question, because the board has taken action at times, ignoring the community. On the other hand, we need to be able to input into the board, but not control it. The community, in my mind, has on occasion exercised poorer judgment than the board has. If we look at the CWG proposal, we spent many months on what I consider personally – I won't attribute to anyone else – a lunacy proposal. And yet, there were a number of people around the table who spoke very loud and very long and convinced everyone else it was sane. That's scary, because they could do that next time.

TIM DENTON: What was the particular nature of the proposal, Alan?

ALAN GREENBERG: It involved creation of a new company that was sort of floating in space without any owners and without any membership control, and received its direction from another entity that was

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disconnected to it, but would somehow control it. But [inaudible] would not necessarily be controllable. I give you a subset. It gets worse than that.

Now, I must admit, I'm giving you my version of it and not the version, the wording, that other people might have used. Christopher is saying, without his microphone on, that it's not irrational if you presume it was a power grab. Given the number of proponents who were not in it for the power and believed in it [lens] adds to the irrationality. I'm not going to attribute cause to the insanity, but I believe it was insane. But that's just me, perhaps. Next slide, please.

And that's it. That's where we stood three weeks ago. Where are we today? The proposal at the time of that presentation was the... We were out for comment – or maybe it had just closed; I can't remember which. As I mentioned earlier, when ICANN has any issue that it wants to make a change, we always go out for public comment. There were many comments.

One of them was from the board. The board basically said, "We don't buy it. We support the intents, but we don't support the mechanism." They said it in a way which was not presented well and that added to the discord, the unhappiness of people in the CCWG. The people in the CCWG felt that this is a bottom-up process; the board cannot tell us what to do.

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Now, technically that's correct. However, if you approach this from an unemotional point of view, eventually the CCWG will have to make a proposal. It will be sent to the NTIA. The board will no doubt add some comments to it if it feels appropriate. The NTIA and Congress may or may not approve it. Let's pretend they approve. It then comes back to the board to implement the new bylaws. If the board feels that they have, in their fiduciary duty... Now, fiduciary duty is not about money, although the word fiduciary sounds like it's about money. It means they have to make decisions based on what they believe are the best interests of the organization, and in ICANN's case, it's addressing the mission and the security of the organization.

If the board in its best wisdom, right or wrong, believes that this is not good for ICANN, they have a legal requirement to not do it. So no matter how good the bottom-up process is, it ultimately is going to come back to the board to implement, and [inaudible] we're going to get the board on board, so to speak. We're going to get the support.

In any case, the board made its presentation. It didn't do it very well. There was a teleconference that ran on for three hours that was as badly done as I can imagine something happening. Or even worse. We decided on very short notice that we needed a face-to-face meeting and a face-to-face meeting was schedule in Los Angeles a few weeks ago. Two-day meeting. The board was

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already going to be in Los Angeles for a workshop they had scheduled. They canceled one of the days of the workshop and were going to attend the meeting with us. And it happened.

First day, due to bad planning or whatever, was not a very productive day. It just wasn't. The second day started off very productively. We had some breakout sessions. Some good work was done. Everyone was feeling really positive. And then the chair of the board made a statement, and it was received rather poorly. It was taken as... It was not intended to, because I've [inaudible]. But it was taken as a slap in the face in saying, "We're the board. We're not going to take any advice from you. This is what we'll accept. Take it or leave it." That's the way it was perceived. It was not a healthy environment. Many of us left Los Angeles not understanding how we were going to go forward.

Fast forward two weeks. A huge amount of work was done by working groups analyzing the comments, going [back to basics], saying, "Ignoring what the board said, let's go ahead and do our job properly." A huge amount of work has gone forward.

Came into... Where are we? Dublin. And held a meeting yesterday. It was as if the sky had opened and the sun was raining down. We are now in a position where there is a possibility – a good possibility – that we will come to an

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agreement on something that is likely acceptable to the US government also. Hard to predict coming out of Los Angeles, but nevertheless.

Now, what is the [essence of it]? The first major issue... And by the way, the board has not agreed to this yet. It is well-known that there are significant board members who are saying “over my dead body.” We’re hoping to convince them without resorting to death.

The essence of it is simply to change... Several things. Number one, a membership organization has some statutory powers under California law. We’re not going to debate whether it should be a California corporation. It is right now. Statutory powers include the ability of members to change the bylaws unilaterally, without approval of the board. Essentially, members can take over a lot of the fiduciary duties of the board. It allows members to set the budget. It allows members to dissolve the corporation. There are a number of statutory rights, which might be controllable. How well they’re controlled has not been tested in California courts. And a lot of fear into the organization.

For reasons as I indicated, the community does not always instantaneously express or do things that I think are necessarily

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for the good, even though they are thought to do that at the time.

So this changes... It removes membership. There's a concept in California called designators. A designator is someone who is allowed to appoint and remove board members. We are saying that there will be still a single mechanism like the single mechanism member, but single mechanism designator, which will appoint board members under the direction of the ACs, SOs, and NomCom. That doesn't change. There will also be the ability to remove directors should there be some belief that a given director or the whole board needs to be replaced.

The budget veto technically not allowed, but it looks like we're now talking about things which are close enough that people may be satisfied. A lot of it has to do with the fact that ICANN in the last year has instituted budget processes which are far more serving the community than they have been before.

The other powers are largely there that we talked about – the ability to approve certain classes of bylaws, the ability to reject other classes of bylaws that are changed by the board, the ability to – what is the other one? I think we've covered them all actually now.

So there is some concern in the board that the single designator model is not acceptable. It's probably the only one that might be

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acceptable to the CCWG and ultimately to the board, and we have a lot of work to do in the next day.

In terms of timing, despite the belief of some that we don't have a timing crunch, if we want to get the transition done in the timeframe that we have been looking at – that the NTIA is looking at – which is essentially before the election gets really hot, we have to have... It has to be a done deal. That is, everything has to be implemented or virtually implemented by about the end of January. It takes about a month, at absolute best to approve bylaws changes, because the board does go out for comments on bylaw changes and there is a process.

That means me pretty well have to come to closure, accepted by the ACs and SOs by the end of the year.

Now, there's a catch. The ALAC and the GNSO can hold votes intersessionally at their meetings or electronically, their monthly meetings. Most of the other chartering organizations, like the SSAC and the ASO, can also act relatively nimbly.

The GAC and the ccNSO have a larger problem. If we can present them with something that is very, very close to being finished by Tuesday, there is a chance they could approve it intersessionally in December. [If we] cannot give them something which is so close that they can talk about it and then vote later, then we are likely to need another ICANN meeting probably early December.

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There is a precedent when the changes were made to the current structure in 2002, there was a fourth meeting [of the year] held in December 2002. So there is precedent.

My prediction at this point is we're going to have something that's close in principle, but not enough detail to satisfy ccNSO and the GAC and we probably will need an intersessional meeting sometime in early December to make the formal approval. That's the best case. The whole thing could fall apart tomorrow. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Alan, for this very positive note at the end of your intervention. I know that staff is trying to get a hold of the—

ALAN GREENBERG: Excuse me. I am not predicting it will fall apart. It could.

OLIVIER CRÉPIN-LEBLOND: Thank you, Alan. I know that staff was trying to get a hold of the slides that Fadi has shared with the different timing scenarios and they'll be putting it on the screen if they've got some.

I was going to give the floor first to maybe if one of the co-chairs of the CCWG wanted to say a few words. Yes, Leon Sanchez, I'm

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looking at you, sir. Since you have been seeing this from another angle I guess as a co-chair, you've also been involved with some of the behind-the-scenes organizational issues of how to get this community to work and to listen – not only talk, but listen – to each other. Is there anything else you'd like to add on both the process or where we're going at the moment? Leon Sanchez?

LEON SANCHEZ:

Thank you very much, Olivier. I think that Alan just described the whole process really well. I would add very little maybe. Where we're standing now is that we did do a lot of progress between LA and today. As Alan rightly said, there is nothing set in stone. It could all crumble, literally. We're hanging from very, very tiny threads. Yes, thank you.

I think that the very unfortunate [episode] we left in Los Angeles with some statements by the board might be breached, in fact. Many have asked me which are our options, and I see... In my mind, my mindset is programmed to say we have no option; we need to pull this off and we need to make the transition happen. There is no chance for failure here. Because it is not only the IANA transition that is at risk or at play here. We're also talking about the multi-stakeholder model or role at large.

It is a very big responsibility, the one we have here in our hands. [inaudible] are outdated, so there's really not much point in

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actually going through them. It has not only outdated information, but also inaccuracies in what it is reflecting. So those messages can be misleading at this point. I don't think that it was set up as a misleading chart, but today it might be misleading because it's outdated.

We were in a very fruitful conversation with the GAC today. One of the most difficult hurdles to jump has been stress test 18, and some of the core values and commitments, especially the one—

OLIVIER CRÉPIN-LEBLOND: Can you please summarize stress test 18 in a sentence, please?

LEON SANCHEZ:

Yes. Stress test 18 refers to the provision in the bylaws that states that the board whenever not taking into account GAC advice should try to find a way to solve the differences between GAC and the board, and of course try to come to a common understanding as to a way forward to actually implement GAC advice. And if they don't, well they have to [inaudible] of course a rationale of why they are not following GAC advice.

What stress test 18 proposes is to have a change in the bylaws so that only consensus, GAC advice that is provided by consensus to the board, is duly taken into account and of course run through this process of trying to find a [inaudible] and a

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common ground to try to follow GAC advice. That of course is something that the GAC hasn't been really keen on because they say that they don't want the CCWG or anyone to tell them how they should provide advice to the board, either consensus or not consensus. It has been a hurdle that's been difficult to [reach] at this point, but I think that we might be seeing some positive feedback from the GAC in the short-term. Because even to the inside of the GAC, you have different positions. There are those that say that actually implementing stress test 18 would derive into a major participation within the GAC. That would force some GAC members that might not be very active to actually participate and to show whether they support or not some kind of advice. There is this other part of the GAC that are reluctant to actually implement this change. This is the story with stress test 18.

The other point with GAC is related to commitments and core values. I think that this is not really a big issue. I think it's easier to solve than stress test 18, but there's also a concern on language that describes ICANN as a private sector led organization. And of course this brings some concerns to the GAC as well, because they say, okay, if this is a multi-stakeholder environment, where do you leave governments in that definition of private sector led?

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I think that, as I said, this might be easier to [inaudible]. This might be a difference that's easier to [reach], but we definitely need to find this common ground on trying to wordsmith the adequate language so we can leave all parts evenly unhappy. Thank you very much.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Leon. Alan wanted to add one more thing to his description, and then we'll go through the queue. I have Seun and then Christopher and Stefano.

ALAN GREENBERG: Thank you. There was one other change in the breakout sessions this morning where I and some of my colleagues were not in this meeting that is a very substantial change that I didn't mention. The model that was proposed in August, which was a membership model, but it could've been a designator model, too, said that decisions are made by the community by each of the ACs and SOs that choose to participate having a certain number of votes. Each of their votes could be sub-divided. So the GNSO could give a quarter of their votes to the registrars, a quarter to the registries, a twelfth to the IPC (Intellectual Property Constituency), essentially in proportion to their representation. The ALAC could divide the votes based on RALOs or something like that.

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The different ACs and SOs would have different votes. The three SOs and the ALAC and the GAC were proposed to have five votes, the SSAC and the RSSAC two votes each.

The current model we're talking about is everyone essentially has a say in the matter. The previous model said to do certain things, you needed 67% or 75% voting in favor, and you'd simply add up all the votes in one direction or another and see how they totaled.

The current proposal as of this morning – again, not cast in concrete at all, but proposed by a small group – is instead of counting, we count how many ACs and SOs are for something and how many are against. Now, there may be some that are silent. For instance, to exercise the power to change a fundamental bylaw, which is the ones that lock in these new actually features, you must have four ACs and SOs supporting the change and not more than one objecting. So, two objecting kill it. Less than the right number of supporting kill it.

For some of the things that are less onerous, it's only three organizations. For things like killing the whole board, they're currently saying four must support it and not more than one objecting to it. There are counter-proposals that say the number should be higher (five supporting it) or any objection kills it. That is, if any of the organizations are either not supporting it or silent

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that we cannot kill the whole board. Well, remove them from their office.

So I think that is a very substantial change because it essentially moves from a voting scheme with a percentage to what we would more likely call consensus within ICANN. It also imposes a pretty strong minimum threshold. None of these powers can be exercised purely by one or two interests within ICANN. There has to be some general level of support.

So the numbers are subject to debate and may be right or may be wrong right now, but it is a position that is much closer to the kind of governance model that we favor within ICANN rather than what was being proposed before. I'm sorry I forgot that part, but it is an important change from today.

OLIVIER CRÉPIN-LEBLOND: Next is Seun Ojedeji.

SEUN OJEDEJI:

Thank you for the intro and for the comments. Two comments before I make my other comment. I think in respect to what Leon said, I don't think it's just the GAC that we have a problem about referring to ICANN as private sector led. I think it should also be [inaudible] as well, in the sense of private sector which is actually usually associated to business.

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The other thing is in terms of the GAC, I think one of the major issues [inaudible] very big good news if GAC actually accepted to [that wording], but I really doubt such [inaudible], especially unless they want to change the definition of consensus. Because, from my understanding, consensus within GAC at the moment makes everyone accepts, and if one country does not say yes, it means there's no consensus. [I don't know whether they changed that]. So maybe [inaudible] a lot of discussion or stress tests [inaudible].

Now to my major comment. My major comment is in relation to the way, the direction, the proposal is going to now, which is more towards the consensus approach which is good. However, the model itself which has turned into a sole designator approach is welcoming, at least compared to the membership. However, I think we also as ALAC needs to recognize that it is not – it is at best a compromise.

The other community has to see that we're actually taking that as a compromise, not necessarily that it is what we want, because it looks like... I've spoken with a few people, and it actually looks like we are pushing for designator as ALAC. But we are only taking it as a compromise, and [it should be] clear.

I also don't know we resolve to stick within the [SD] [inaudible] and SM is a sole member. I don't know why we decided to stick

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to those two models between two days ago and now. Maybe someone wants to explain why that happened, because I think some of the enforcement that [was discussed] were actually possible. We did, outside of the two models, and it's not [inaudible] because of the models that [inaudible] possible. [inaudible] the sub-group that actually discussed the enforcement aspect today, and based on what we had from [inaudible], it sounds like [inaudible] model. There is still the option for the board to actually give their own view in court, if we end up in court.

So I don't want to take much time in talking about this, but again, I think we need to communicate to other community members, other SOs and ACs, that ALAC is only taking as a compromise and not necessarily that we support it.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Seun. I know that a lot of people have put their cards up. I'll take them in the order that I've got them: Christopher Wilkinson, Stefano Trumpy, I put myself in the queue to ask a question actually in the same direction in the question you've been asking, Suen. And then we have Alan and Leon, who hopefully will be able to answer the question. We have only half-an-hour left, so let's have a timer as well, please. So next, Christopher Wilkinson.

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LEON SANCHEZ: Olivier, may I answer to Seun or should we...?

OLIVIER CRÉPIN-LEBLOND: I said we're waiting, because my question is going to go in the same direction as what Seun was asking. Christopher Wilkinson?

CHRISTOPHER WILKINSON: Okay. First, a general point about the community. I think all the SOs and ACs, including ourselves, should be modest about what the community is, vis-à-vis the outside world in the street or your own members in your home environment, the idea that the ACs and the SOs in ICANN ipso facto are the community and can take major political and technical decisions would not be widely recognized outside this environment.

I'd just advocate a degree of humility and bearing in mind I think it's most important for the ACs and SOs who have members that their own members are not the end of the story. All the ACs and SOs carry part of the responsibility to ensure that ICANN respects the public interest and the interests of [end users].

Leon, I wanted to refer [inaudible] text which I was reading last night, which is the drafts of the new core values. There are some ambiguities in fact which we need to be sorted out in that text

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because we have three levels of public interest now. The board is expected to respect the public interest. The board is expected to respect the public interest. But then there is a procedure whereby it says that the public interest must be determined by a bottom-up policy development process, whereas the GAC – the governments – are recognized as responsible for public policy.

This is actually really rather confusing, and I think in the CCWG we need to have a look at those texts and sort them out, because you can't have the board and the GAC and the PDP process all [using] their own versions of the public interest. I think in due course that will cause problems. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you, Christopher. Next is Stefano Trumpy.

STEFANO TRUMPY: Okay, thank you. Very shortly. Alan, you started with the word complexity. Actually, the complexity is increasing as much as we discuss this. But then you say that we should complete the work of the accountability possibly by next January. That is very ambitious, in my opinion, and I was scared a little bit of all your comments.

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Then the role of the GAC is certainly important this. The governments tend to look at definitions like critical resources or what is the mandate of ICANN and so on.

I hope, really, that it will not be a problem to reach if not January, maybe March or not later than Marrakech meeting [inaudible] the GAC.

My opinion is that since the government works in the interest of the citizens and the At-Large works on the same thing that our task is please make it simple. Otherwise, it will not work and the transition will not [inaudible]. This is only a recommendation from our side. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Stefano. I'm in the queue next. The question I wanted to ask Alan and Leon in the direction that Seun has already asked is, at some point, the ALAC did say they could live with a membership model. It wasn't their first choice. We weren't happy with it. But if all of the other SOs and ACs absolutely wanted the membership model, we could live with it. Has that changed now that we're speaking about the sole designator model, and it seems to be, according to what Seun has told us, we can live with the sole designator model but it's not the model that we want. Has this changed? Do we need to [inaudible] change here? Do we need to discuss what we really

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want? This is the question for both you and for Leon. And you are next as well. But first please answer the question and then you can do your other contribution.

ALAN GREENBERG: Okay. Then I may need two sets of timers, because you've asked a complex questions.

OLIVIER CRÉPIN-LEBLOND: You will have four minutes.

ALAN GREENBERG: Okay. In terms of the model, we did say that we could accept the membership model that was proposed with some changes, and the changes were substantive, but not to the model itself. I think that was true at that time. The writing on the wall at that time was that was likely to be adopted by most people and we didn't know the board was [violently] objecting to it at that point.

So I think it's true. I think if we were to take a vote again – and we may well on Tuesday – we will probably say the membership model is not something we would support today.

I'm not sure I agree with Seun about how much the single designator is a compromise. We were the ones who introduced

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the concept. So we may have a hard time backing away from it completely.

Is it the model that we would've have invented if we alone were creating ICANN accountability? No. But as I started off saying, all of these multi-stakeholder decisions are compromises, and although I wouldn't want it really repeated in the CCWG, we're compromising less than a lot of other people are at this stage. So I'm not particularly unhappy with it.

Yes, it's not perfect. It's not what I would've done if I were king, but I'm not king.

OLIVIER CRÉPIN-LEBLOND: What would be your perfect model?

ALAN GREENBERG:

I think we would've gone on much more what we were originally talking about as a trust model. Put changes in the bylaws right now. The board can unilaterally say the ALAC, the GNSO, the ccNSO, the ASO no longer appoint directors. We're appointing them ourselves. They themselves will propagate the [inaudible]. Oh, by the way, the NomCom isn't either. They could, but they haven't. Yes, they have acted a little bit high-handedly at times. I think if we had words in the bylaws saying that they shouldn't, they probably wouldn't.

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Now, would that control some future board that goes rogue, I think the expression is? It's hard to tell, but we are the ones who appoint these people, so I don't have that much worry.

So, yes, it would be different. This is a compromise with really high thresholds as we're talking today to implement these powers, perhaps making them un-implementable, except in extreme cases, which is exactly as [inaudible]. I don't feel all that uncomfortable with the model.

OLIVIER CRÉPIN-LEBLOND: And your second point in 90 seconds?

ALAN GREENBERG:

Okay. All right. The private sector, the history of that is the original ICANN statute, it was led by the private sector. It doesn't say led by. It says private sector, which is as opposed to government.

Now, if you go to Google and look up definitions of the private sector, you will find several. None of them are right. But one of the definitions is everything except [government]. Other definitions are business for profit, and then there's the volunteer sector. Some people include civil society as part of the volunteer sector. So you have government, private sector, volunteer sector.

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Definitions vary based on who's defining it. The usage varies based on country and culture. So it's not right to say we are not part of the private sector. By some definitions, we are. The group was trying to maintain the original words and define them, and some people now say, "Fine. Keep the definition. Leave the original words." I can live with that. I don't much care.

And in terms of Stefano's comment, it's much simpler than some of the other alternatives. Maybe we could make it simpler and still get compromise. I doubt it, but maybe. But there's only so much time. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you, Alan. A very small follow-up point from Cheryl, and then we continue down our queue. Cheryl Langdon-Orr?

CHERYL LANGDON-ORR: Thank you, Olivier. As I understand it, during our proceedings in the last couple of days, we've actually now agreed to remove the language with the words "private sector led" from the mission statement. So we're kind of talking a [inaudible] now, because we as the cross-community working group, have in fact removed that from our proposal.

ALAN GREENBERG: Sorry, I missed that.

OLIVIER CRÉPIN-LEBLOND: Thank you, Cheryl. Next is Leon Sanchez.

LEON SANCHEZ: Actually, that is why I wanted to respond to Seun at that stage because we could've saved a little bit of time. That has been removed. I didn't say that the GAC was the only discussing the private sector led issue. I just highlighted as one of the issues that we discuss with them in our co-chair GAC meeting today. So I didn't say that they were the only ones.

Then the designator, as far as I can tell today, seems to me the model that the ALAC would in fact support. You said if it's perfect. It's not perfect. I don't think it's perfect. But it definitely provides from the co-chair's perspective. I'm not speaking as an ALAC member now. I'm speaking with my co-chair hat, from the co-chair perspective. It is the model that would need the less change in our structure, the less change in our bylaws, and would actually provide the community with the powers that we are trying to vest into it.

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OLIVIER CRÉPIN-LEBLOND: Leon, when you say designator, are you meaning a designator per SO and AC or a single designator, sole designator?

LEON SANCHEZ: No, I am speaking about a sole designator.

OLIVIER CRÉPIN-LEBLOND: And explain what that means, a sole designator, how that works for the benefit of people here.

LEON SANCHEZ: Okay. So the sole designator would be that body that if needed and when needed is the one who has the power to enforce the community's rights. So what this model refers to is to modifying the bylaws, so that this sole designator has certain powers like removing the whole board, removing individual board members, approving fundamental bylaw changes, rejecting regular bylaw changes, and all the set of powers that we've been discussing in the CCWG.

So when you empower this sole designator with these kinds of powers and it comes to the point that you have a rogue board that doesn't want to go with or doesn't want to act according to the bylaws, then this sole designator would have the power to actually – well, after an escalating process because it's

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important to say going to court will be the last and ultimate resource. The chances to actually go to court would be minimal because there would be a whole process of escalation that would hopefully make us avoid going into court.

But should there be the need to actually go to court, then this sole designator would, one, empower to actually [stand into] court and have an action against the board, if the board should choose not to comply [inaudible], for example.

OLIVIER CRÉPIN-LEBLOND: Thank you, Leon. Can the sole designator become rogue or be captured?

LEON SANCHEZ: No. Well, of course anything is possible. Of course anything is possible, but here is that as opposed to the multiple designator model, single designator model is less prone to capture, because in order for each to actually exercise the powers, you need to have everyone agree to exercise the power. So you wouldn't be [prone] to capture as in the multiple designator, because with the multiple designator, any single SO or AC that is a designator would have the power to actually go to court and have an action against the board or against the organization, whereas in the single designator, you will have to have all the community to

agree and then exercise the power. I'm not sure if I'm explaining myself well. Is that clear?

OLIVIER CRÉPIN-LEBLOND: It looks pretty clear to me, hopefully. So yeah.

LEON SANCHEZ: Well, hopefully if I didn't convince you, I confused you.

OLIVIER CRÉPIN-LEBLOND: Thank you, Leon. We have someone who can actually add a few words to this, but first, Alan, you wanted to explain the term designator.

ALAN GREENBERG: As I said earlier, designator is a term in California law for an entity that can appoint directors. Appointing and removing directors is the only capability has, but we are taking the opportunity once we have a designator – the sole designator – who, through bylaws, give that designator other powers. So the ability to reject a bylaw, for instance, or – well, reject or approve a bylaw – is not a designator right, but it's something we may grant our designator through the bylaws.

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So it's a confusing term that some people feel the designator has other rights, but it's only if we choose to give them the other rights. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you, Alan. Now we have a queue. Sébastien would be next. I see a card over there. Is that Eduardo? Okay, so that would be... So it would be Sébastien, Jan, and then Eduardo. Sébastien Bachollet?

SEBASTIEN BACHOLLET: On that subject, when we talk about the model, we could do a little bit more work on the language in the words that we use. We try to give a meaning to the designator in ICANN. To remind you that the board, there are voting members and non-voting members. They are all designated by structures of ICANN that it is the NomCom or the SOs and ACs. All the ACs and SOs have a representative in the board. They chose one person who is on the board. There are four who don't, who cannot vote; and one who comes from [IETF], that comes from the outside of the board, outside of our own structure and these members participate within the discussions. The only difference between a voting member and a liaison is the fact that the liaison does not vote. But aside of that, the rights today are the same.

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I would be curious to see how lawyers decide and how they would designate the [inaudible] SSAC [AC] and how do they designate the people to be liaisons within the board. What is the role? The designators, they [design].

My question is unique, sole, scares the members of the board because that concept... I'm sorry, this concept is a little complicated. It takes me more than a couple of minutes. But the word sole means that you concentrate all the powers in one hand. Therefore, there is a risk of concentration; therefore a [loss]. There is a risk of capture. Then, therefore, in [our] mind, the fact that there is only one, it's to avoid this capture because altogether we will decide. That's why I spoke in French. [inaudible] used to say all for one, one for all. This is what we need. We need to be together. We need to have one voice that represents all. It would be, therefore, interesting to work on the term and maybe to change the sole designator model on something else. I don't know what it would be, but it would talk about community, togetherness, connectivity, where we play as a team and not separately. We are in the World Cup of rugby, for example. You miss one person to be in the [pack], for example. All of us together, we need to find the term to... How we're going to legally call that later is another story, of course. Thank you.

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OLIVIER CRÉPIN-LEBLOND: Jan Scholte?

JAN SCHOLTE:

Thank you, Olivier. Thank you for giving the mic, also. I'm not actually a member of ALAC, but I'm one of the accountability advisors to the CCWG for ICANN. You said I could shed light. I actually want to pose a question, but maybe the question will shed light. It's to Leon or to anyone else who can clarify this.

How is the designator, the sole designator model, different from the sole member model in such a way the board will accept the sole designator model in a way that it does not accept the sole member model? That's the crucial thing at the moment, I understand.

OLIVIER CRÉPIN-LEBLOND: Leon has waved his hands behind your back. Leon Sanchez?

LEON SANCHEZ:

Thank you very much, Olivier. To answer Jan's question, the fundamental difference between the sole member and the sole designator model is that when you have a sole member, the sole member also has statutory powers. It cannot be waived and cannot be constrained.

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And when you have a designator – a sole designator – the difference is that they don't have statutory powers. They will only have the powers that you provide them in the bylaws. They do not have statutory powers. So that is what it could make the board go along with the single designator as opposed to the single member.

OLIVIER CRÉPIN-LEBLOND: We're starting to have a discussion between lawyers. That's getting interesting. Let's turn [inaudible]. Jan? If I understand it, the board is objecting to the powers... That the community would have these powers whether it's by statute or by... No? No, okay.

LEON SANCHEZ: No. My understanding or my reading from the board's position is that they object to the single member because they perceive that that would bring some kind of imbalance and excessive power to the community without having the proper accountability. That is my reading, but that is my personal interpretation. I want to make this very clear. This is my personal interpretation. And this would be avoided under the single designator. But I repeat, this is only my interpretation.

OLIVIER CRÉPIN-LEBLOND: Alan, did you want to say anything on this?

ALAN GREENBERG: Members, under California statute, have certain rights, including the ability to change bylaws unilaterally, the ability to dissolve the corporation. The ability to close lights off in a room.

So membership implies a certain amount of power that can override the fiduciary duties of the board, whereas designator and other things empowered by the bylaws do not provide it.

Now, the board still has a problem with the single part. That we hope to counteract, because from my perspective, they're working on incorrect information. But that remains to be seen.

OLIVIER CRÉPIN-LEBLOND: Thank you, Alan. Jan, did you have a follow-up?

JAN SCHOLTE: Yeah. It sounds like it's finely balanced and that there's a lot of unclarity about the [specifics], exactly what is happening, which I guess if people are feeling insecure about what exactly it means, their tendency will be to be conservative and not approve. That strikes me as being an unfortunate position to be in.

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OLIVIER CRÉPIN-LEBLOND: Okay. Thanks for this. And we now have Eduardo Diaz. Seun, I noticed your card. I did notice it went up and down, so you did lose your space, and you came back in a bit further. Eduardo Diaz?

EDUARDO DIAZ:

Thank you, Olivier. I have a quick question. I'm confused. With a sole member or sole designator, are we talking about one person, a group of people? That's one thing.

The other one is what is statutory? I'm not sure what that is.

OLIVIER CRÉPIN-LEBLOND: Leon Sanchez?

LEON SANCHEZ:

Thank you, Eduardo. Thank you, Olivier. When we say sole member or sole designator, you're not talking about one person. You're talking about one legal person, which is different. So this is not just one SO or one AC having the whole power concentrated in it, but this would be a body that would include all SOs and ACs, but on the face of law, you would only have one single legal person. Okay?

I'm not sure if that answers your question regards to legal personhood, the entity exactly. Okay.

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The next question, statutory powers. Statutory powers are those granted by the law. It's a matter of law that grants powers to a person, and those powers may or may not be waived, of course, depending on the kind of rights. But in the case of single members, those statutory powers, I understand them to be unwaivable, so they would of course remain ready to be used and that is a concern for the board. And also, many in the ALAC. It's also a concern not only to the board, but many in the ALAC.

OLIVIER CRÉPIN-LEBLOND: Okay. Thank you very much for this, Leon. We are looking at the time. We're nearly finished with the time check. There was a timeline which was sent to me, but it's too detailed and it's not the one that we can look at now. Are there any other comments or questions on this? This obviously is a working session. We have Seun to close off the discussion, I think. Seun Ojedeji?

SEUN OJEDEJI: Just a quick one. I understand that when the member model was on board, there was a concern that a few number of the stakeholders will actually be exercising the power. I know that was a concern. Does going designator model mean that the other people that did not want to participate before have now agreed that they are willing to now participate, or do we still have that issue of some people actually exercising that power?

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OLIVIER CRÉPIN-LEBLOND: Thanks, Seun. Leon Sanchez?

LEON SANCHEZ:

Thank you very much, Olivier. Seun, that was a challenge that we had when we were talking about and when we were talking about multiple designators, because of course there were some – or there are some – advisory committees or supporting organizations that are not in the position to actually become an unincorporated association, like the GAC, for example. So that was a challenge to say, well, if someone is going to make the decision, how are we going to fit this into the decision-making process?

But today, in our breakout sessions, we did a lot of progress on this. We came to a solution which would include all SOs and ACs in the decision-making process, not of course of the exercising of the powers. The exercise of the powers would be carried out by the sole designator. Decision-making, the fact on whether we exercise the power or not, would be made by all of the supporting organizations and all the advisory committees within ICANN.

OLIVIER CRÉPIN-LEBLOND: Thank you. Sébastien, you had briefly put your hand up. No, okay, it was just a wave of hand. I had one last question, actually, with regards to the [spilling] of the board, the kicking out of the board of a single board member. Would that be done under the single designator model, and would that therefore require full consensus among the different SOs and ACs to get rid of a single board member?

The reason why I ask this is because it changes the nature of a board member to be kicked out of its seat because it turns them into a politician, effectively, trying to please their own community. If they don't please their own community, they might be kicked out tomorrow, even though they have this other... They have this fiduciary responsibility.

So there was a great concern on the board about this. Has this been resolved with the single designator model?

LEON SANCHEZ: It is a work in progress. I really mean. I can't say this is an agreement that we have reached in the group because we haven't. We are working on it. We made good progress this morning. What the working group working on that came up to was to have, of course, different thresholds. But the key point here is that when you're talking about single member removal, the appointing SO or AC will be the one to initiate the process,

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but it will need support from other SOs and ACs. So that will avoid or eliminate the risk of turning board members into politicians that need to please their crowd.

As I said, it's a work in progress, but so far what the group is proposing is a solution of the like of what I just described.

OLIVIER CRÉPIN-LEBLOND: Thanks, Leon. Alan Greenberg?

ALAN GREENBERG: My understanding, and maybe it's wrong, is the current thing on the table as of [noon] hour is that for a NomCom director, the community has to remove them. For an AC/SO director, the AC and SO that appointed them initiates the process. There is a relatively complex process that involves other ACs and SOs. The final decision is up to the AC and SO that approve... No? I thought that was what it was. I thought that was what it said.

In any case, whatever is on the table right now, the two directors who have been most vocally against what we were proposing have accepted it. So whatever it is, everyone seemed happy.

OLIVIER CRÉPIN-LEBLOND: Thank you, Alan. It's interesting, because yes, out of our four delegates on the Accountability Working Group CCWG that are

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here, two were saying yes and two were saying no. So that's great. Keep on talking in the next few days. I hope this has been a helpful session for everyone located here and everyone watching us remotely. We are going to have more sessions about ICANN accountability and IANA stewardship transition. We're going to have more updates. As you know, it's a work in progress, and I'm sure all of the people who are in those working groups cannot wait until tomorrow morning, or maybe later on tonight – I'm not sure when your next face-to-face meeting is – but cannot wait to continue the work.

Just from all of us, first I'd like to thank you for having spent those days and nights and so much time on this thread. I think there's nothing else really today.

But there's also another thanks. Maybe this time you want to do it, Alan.

ALAN GREENBERG:

No, no. I'll let you do that part. There is more to say. There's a meeting tomorrow morning – Monday morning – which is a public engagement session talking about this, with the CCWG talking about it to the general ICANN community, and then Monday afternoon is the CCWG session where maybe we get to tie the bows and make everything pretty... Or not.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Alan. I'd like to thank our staff for being here, the technical crew and our interpreters.

ALAN GREENBERG: And I'd like to thank Ariel for the new timer.

OLIVIER CRÉPIN-LEBLOND: Ding! Thank you. This meeting is adjourned. Have a very good evening, everyone.

ALAN GREENBERG: Now that it's adjourned, I have been—

**[END OF TRANSCRIPTION]**