

**ICANN**

**Moderator: Brenda Brewer  
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8:00 am CT**

Leon Sanchez: Hello, everyone, and welcome to the CCWG on Enhancing Accountability Meeting Number 39 on the 7th of July, 2015. We have a nice agenda for today. And we will be reminded, of course, as usual about the statement of interest if there is anyone that hasn't filled in their statement of interest so far please do so at your earliest convenience and please feel free to reach out for staff if you need any help with that.

The roll call will be as usual from those who are in the Adobe Connect room. And if there is anyone at this point that is not in the Adobe Connect room but is in fact in the phone bridge please take your name so we can add it to the roll call?

Keith Drazek: Good morning, Leon. This is Keith Drazek. I'm on the phone only this morning.

Leon Sanchez: Thanks, Keith. Staff, could you please add Keith Drazek to the attendance please? Is there anyone else besides Keith Drazek in the phone bridge?

Cheryl Langdon-Orr: Hi, Leon. Cheryl here. I'm not in the AC room yet but I will be joining shortly.

Leon Sanchez: Thank you very much, Cheryl. Anyone else?

Greg Shatan: Greg Shatan as well on way into the room.

Leon Sanchez: Thank you, Greg. Anyone else? Okay so I think roll call is done. And I don't know if Mathieu if you have already - yeah, he's logged into the AC room. So with no delay I'll turn to Mathieu for the next agenda item.

Mathieu Weill: Thank you very much, Leon. And hello, everyone, for this 39th call which will be - we'll spend a significant amount of our time listening to a presentation by our independent counsel. But before that we have a couple of synchronization and administrative items to make sure everyone is in line with the preparation for the face to face meeting in Paris in just a little more than a week's time now.

So first item is a quick update on the working party regarding their work plans towards this face to face meeting. And I don't know if Jordan is already on the line. I see Jordan...

Becky Burr: Becky is.

Mathieu Weill: Oh, Becky, you're - you've already joined, that's great.

Becky Burr: I have.

Mathieu Weill: I hope you have a lot of coffee with you. So, Becky, can you please start just informing about the upcoming calls you've set up for Work Party 2 so everyone has a view on this?

Becky Burr: Yes, we have calls set up for Wednesday so tomorrow and Monday to focus in on getting that actual work done. I have circulated to the group an annotated comment tool - I'm still missing the comments on reconsideration but I'm working on it and that should go out soon. But I hope in advance of - first of all, I hope people who can - who will try to make the calls and, second of all, hope people will get a chance to look at the annotated comment tool.

I think, you know, we have fairly discrete but some significant issues to discuss in terms of suggestions that came in on the mission core values and commitments statement and on the IRP and reconsideration.

Mathieu Weill: Thanks, Becky. Jordan, I know it's midnight your time now but can you still provide us a similar update of where Work Party 1 is and the next step?

Jordan Carter: Sure, Mathieu. Can you hear me?

Mathieu Weill: Yes.

Jordan Carter: Great. Okay so we had one call on Monday and another call on Wednesday, a call on Friday and a call next Monday. We're working through basically groups of volunteers preparing draft content to the second public comment report so they're redrafting the content in the first based on those public comment received and on the discussions in Buenos Aires and the working party is working through that live content.

We've gone through the AOC and bylaws stuff. Most of that was okay. And we're doing the community powers - the mechanism is a voting mechanism or a group of people gathering to discuss issues and the voting weights for the mechanism still to be worked through in the coming calls. And we'll come back to the AOC as well. So that's the kind of process we're on.

We're going to do that text updating before Paris and have that done (unintelligible) and then after Paris we'll do the updating of the public comment tool (unintelligible) responses to the public comments that were made from (unintelligible) one.

Mathieu Weill: Thanks, Jordan. And then we have Work Party 3 which has just had its first call yesterday. And maybe, Leon, you can update on how you're planning to address the work on Work Party 3?

Leon Sanchez: Yes, Mathieu, thank you. This is Leon Sanchez. We had our first call yesterday. And the long story short is that we'll be dividing work with regards to the emerging issues into three subgroups. Each of the subgroups will have a look at the current supplement that are already in place within ICANN structure to see - to make an inventory of those mechanisms that already take care of staff accountability, SO AC accountability and diversity.

And of course if we don't have anything in place we will - our next step will be to create a list of areas in which we can work to further discuss in our Paris meeting. And I think this is so far what we can report on Work Party 3. And well, yes, that will be it.

Mathieu Weill: Thank you, Leon. As you see I think this - there's a commentary in here of a lot of volunteer time being dedicated to the group and a lot of things to be produced ahead of the meeting in Paris. So I would summarize it that all

volunteers with a little bit of availability please join on deck. We really need everyone hands to have a successful meeting in Paris.

And while we're doing this I think a short number of key principles can help us focus on what really matters for moving our work further. One of this is probably to stay focused on the issues where we have - when we have wide support not to reopen the issues. And I'd like to remind everyone that we've had tremendous summaries of the public comments 1 that were produced ahead of Buenos Aires.

So when there's a discussion about whether we had - there was consensus on a point or we got feedback I would really encourage everyone to get back to those summaries and check what we agreed on on that purpose so that we don't get into debate whether there was a consensus, whether it was overwhelming support or shared divergent. We've made that work already; let's not reopen the discussions that will facilitate things.

Second aspect is we've - we've spent a significant amount of time at the beginning of our work defining what we think should be into Work Stream 1 or Work Stream 2. And this definition was that Work Stream 1 were the measures and accountability mechanisms that would enable the Work Stream 2 mechanisms to be implemented even if there was resistance.

And I think that's a useful tool to help us draw the line between what we need to address now and what we can address later. So I'll really encourage the rapporteurs and draft leaders of all kind to really use that as much as possible. And of course to have a productive meeting in Paris we will need to have the documents in advance. So we would - so the idea is to have a frozen date as we've done for the previous meeting.

And because it's a face to face meeting in Paris we think that a frozen deadline on Bastille Day, on July 14, is hopefully appropriate. So we will set this for July 14 at 2359 UTC as usual. And those are I think the three main items for us to keep in mind when preparing.

If we're going into the draft Paris agenda are there any comments on this update? I should note that there is a call for the stress test working party which is also planned for tomorrow. And where volunteers are more than welcome. There's also work on the stress test.

I see no hand raised so I'm moving forward to the next item on the agenda which is the first outline of what the Paris face to face meeting will be about. I did share a couple of ideas yesterday on the mailing list and basically to summarize the expected outcome is - oh I see that I have a question from Chris about what we mean by "frozen" so the idea is to freeze the documents that are supporting the discussion for the face to face meeting two to three days before the meeting actually starts so that everyone has an opportunity to review them and avoid, I mean, last minute submissions.

And, I mean, enable everyone to start thinking based on the stable document base. So I hope that clarifies the idea of frozen that we've used which has nothing to do with a specific brand and children entertainment brand in any way.

So back to the Paris agenda, so the outcome expected is that we could find common ground on most of the discussions that are still labeled as open so that we can draft a second set of proposals for Work Stream 1 in time for end of July and go to public comment 2 with clear direction.

We have - I have circulated a list of items which we believe and we have on our radar as needing some discussions in Paris that include the Work Stream 1 items out of the new working party - Working Party 3 on the emerging issues.

Obviously the discussions on the community mechanism, and we'll certainly have a significant session where we will ask any questions to the lawyers so a session about how we can find common ground on the way forward on the models as well as the modalities of the community mechanisms.

There's still a number of discussions open on the removal of board members or the recall of board members that we need to address. We are aware that we will probably receive contributions from some governments ahead of the face to face meeting in Paris; at least that was what was announced in the Buenos Aires communiqué from the GAC. So that's something we need to prepare on and at least allocate some time to understand these inputs and discuss the related issues.

We have a number of refinements to do on the IRP which obviously on our agenda. And that's a list of items that we are currently looking at and our intention so far is to build an agenda based on the topics that we have to address rather than reviewing the draft initial report line by line so that we can allocate more time to more contentious topics including maybe one session on Day 1 and one session on Day 2.

And so those are our intentions so far and open for discussion now the idea being to provide a more consolidated agenda by next Tuesday so a few days before the meeting. And that's where I'm calling for your feedback. And I see Kavouss hand is up. Kavouss.

Kavouss Arasteh: How the removal of the board is coming out of the discussions, what do you mean by that removing that so we don't - we no longer discuss the removal and the (unintelligible) removal we should talk about removal of individual or removal because people recall for the whole board removal for individual. Are we talking of removal of individual board that will be out of discussion or we discuss recall of the entire board is out of discussions?

And for each of which why? Why it came and why we arrived at that decision, how we have discussed that? Thank you.

Mathieu Weill: Thank you, Kavouss. I must not have made myself clear. I think those two items need discussion because they're both the individual board member removal and the recall of the whole board they drew comments in public comment 1 which were not unanimously supportive although there was a majority of support.

And there were a number of feedback that were asking for refinements or sometimes were not in favor of the measure so we still need to discuss both of these items. And I will note they're also mentioned in the CWG requirements. So they should be on the agenda. I was listing items that are - need to be on our agenda.

Kavouss, you want to follow up?

Kavouss Arasteh: Yes, that was a comment on our initial proposal but now we're reconsidering that initial proposal. We may drop the membership totally. If we drop the membership then we don't need to drop the recall of the board because that is the only way to do that. If, for the budget and so the financial and the strategic plan we do not follow that procedure anymore and put it on the



reconsideration if the reconsideration is not reflected by the board what else you can do. The only thing you can do is can remove the board member.

So I don't think that you could take that because in the mean time you're changing the process, the approach is being changed or is about to be changed. I see some other discussions today on the (unintelligible) and some strange term like semi-designator or (core) designator. So when we change that comments is no longer the carry forward. And then my question is that do we have a criteria when we take a comment or not?

You said that the majority supported and the minority opposed, are we taking the minority views or what? Because all we select a particular group of people when they oppose we take that one and we forget about the majority which are in favor. So there are many things that are not mixed up so how you could do that because your initial plan is now being changed so how you could take that? We are not the same path. Thank you.

Mathieu Weill: Thank you, Kavouss. What I take from your point is that, yes, there is a dependency between the discussion on the community model and those specific powers but I, once again, they need to be considered. No one is taking them off the table at this point. And but in the agenda we'll make sure we don't address these questions before the community model question.

There is no other questions. Then I think we can now move to the next agenda item which is the discussion with the lawyers. And I will move on to Leon for chairing this part of the call. Leon.

Leon Sanchez: Thank you very much, Mathieu. This is Leon Sanchez. And our (unintelligible) lawyers have prepared for us a slide deck in order to review the different models that we are discussing at the moment. It is quite thorough

presentation, its 22 slides I believe. It has (unintelligible) PowerPoint and PDF for your opinion. And I will kindly ask you to let the lawyers speak and do their presentation as a whole.

And that we make any questions or comments at the end of their presentation so we don't interrupt them and because maybe many of the questions that we might have can be answered through the presentation. So the approach would be to let the lawyers speak and afterwards we will be opening the floor of course for any questions or comments with regard to what the lawyers are presenting.

So with this I would turn now to either Holly or Rosemary. I see Holly has her hand raised already so, Holly, could you please take the floor?

Holly Gregory: So thank you, Leon and good morning everyone. We asked the co-chairs for the opportunity to preview - review the work that we've been doing post Buenos Aires to help prepare for discussions in Paris. We thought that it would be helpful for you to see the slides have a chance for us to walk through them with you and then everyone can think about it more and we can do whatever extra work is needed to have really good rigorous and informed discussions in Paris.

We do have the next slide. This presentation reflects our attempt to describe the two models that were proposed in Buenos Aires, to also discuss some of the primary legal issues that they raise and then to describe how the models could be implemented under California law.

If you go to Slide 3 we came away from Buenos Aires with a much better understanding of the community and how it works. You know, we've been

working with you all for about four months and it's been a steep learning curve.

In a number of ways certainly these are complex issues that you're facing both from a group dynamic perspective and really also from a legal perspective. These are not easy cookie cutter kinds of issues.

In many respects what you are asking us and what you're thinking about is chartering a new direction. It doesn't mean that it can't be supported by law; we think it can, but it means that it's complicated.

Now our role as lawyers is to help understand your goals and concerns and then to help you think about potential pathways and understand the risks associated with those pathways. I've said it before, I want to say it again, we don't have a view on what the right answer is. We don't have a bias in terms of the outcome other than to help you all come to an informed decision.

Now it was really helpful for us to be with you all in Buenos Aires. We learned a lot about how the community makes decisions. We learned that this community greatly values voluntary cooperation and trust and is generally leery of judicial enforcement.

While at the same time we also heard very, you know, very pointedly that the current accountability mechanisms in place now are insufficient for a time in which the IANA functions have been transferred from the US government to ICANN.

These concerns really underline the differences of opinion that we're hearing from you all in discussions and seeing in the email interchange. And we think that this is the challenge is to reconcile these views in some respects. And we

think this can be modeled - put on the table in Buenos Aires really do much to try to bring together some of the concerns, address some of the concerns and try to find workable compromise.

We can go to the next slide. We've tried to provide a graphic of what we call the trust and enforceability continuum and where the models we're discussing fit on this continuum. As you can see the two new models fit somewhere between what we have on the far left, which is the current voluntary cooperation model and on the far right, the membership reference model.

We can go to the next slide. I want to turn to the models. And I'm rushing through this so you'll all have time to go back to these slides and think about them.

But I wanted to turn to our two models because we've got a lot to cover. The empowered SO AC membership model relies on direct participation by SOs and ACs in a potential or actual membership body but it doesn't require legal personhood and it would allow opt in regarding legal status and actual membership at any point in time.

The empowered SO AC designator model formalizes and expands on the current role that the SOs and ACs play in selecting directors and would add on to that powers for the exercise of community power also without a membership body.

Both of these models respond to concerns that were raised about the lack of enforceability of the current voluntary cooperative model and both of these respond to the concerns about the avatar concept that was provided in the reference model that was described in the initial proposal.

We can go to the next slide. Both of the models have common elements and I think the primary common elements are that they rely on the SOs and ACs to operate much as they do now. And they rely on, you know, the ICANN board officers and staff to abide by bylaws.

So it has sort of the best of a cooperation model but also with some - both models with significant enforcement underpinnings. The enforceability in these models is enhanced from - through either direct rights or indirect rights around the powers that were described in the initial proposal. And you'll see on this list we've added one additional power, it's the one in brackets, and that's simply the power to reconsider or reject board decisions that relate to the reviews of the IANA function. And that's because that's one of the CWG dependencies. And we just wanted to make sure that it didn't get lost in the shuffle and was front and center.

Now for designators and for entities that are not legal persons some of these powers are subject to indirect enforcement. But some are direct. For the membership model more of these powers are direct. And I think in many ways it's the primary difference between the two.

We can go to the next slide. If you look at the empowered SO AC membership model the bylaws would provide that ICANN is a membership body if one or more of the SOs or ACs chooses to become a member. But nobody would be required to become a member and you could opt in at any time.

Now of course becoming a member does require legal personhood but this would be established in a way that whether or not you become a member or decide to participate as a nonmember participant your number of votes, your power, your influence in exercising the community powers would not change.

The door of course would remain open for SOs and ACs who elect not become legal persons and members to choose at a future time to do so.

So if you go to the next slide it's our effort to briefly describe some of the legal issues that comes to the top of our minds when we think about this model. And I want to say at the outset, although we're identifying legal issues we think a number of these legal issues can be solved for - and you will hear Rosemary a little later in this presentation talk about how this model could be implemented to address as much as possible these kinds of legal concerns. But we think it's important that you understand the legal concerns and therefore what we need to solve for.

One concern is will members and legal persons (unintelligible) legal power due to the statutory rights of members and the enforcement of power of legal persons. Of course (unintelligible) rights can give rights to concerns about capture by one or more groups.

Another question that we had is it possible to even draft valid bylaws that provide participants with the same rights as members. A third issue is if only a minority of the SOs and ACs become members can they use statutory rights to disadvantage the others - the participants? And are there ways to protect against the impact of a potentially revolving membership?

And finally, are there ways to protect against certain statutory rights of members like the right to dissolve the corporation and the right to bring derivative suits? You can go to the next slide.

Chris Disspain: Holly. Holly. Holly. Holly, its Chris. We just missed - we missed the whole of that slide - viewing the whole of that slide.

Holly Gregory: Okay. Let's put it back up.

Chris Disspain: Sorry. We need to go...

((Crosstalk))

Chris Disspain: We need to get - that's the one we need to...

((Crosstalk))

Chris Disspain: ...that's what you were just talking to.

Holly Gregory: I was talking to that. I'm sorry. I was explaining the concerns about differential rights about bylaw validity, about the risk of capture, about how do you handle revolving membership and the concern about member statutory rights, the right to dissolve the corporation and to bring derivative suit.

Can we go to the next slide now? Slide 9. So now let's turn to the empowered SO AC designator model. It would give the SOs and ACs specific rights in the bylaws as third party designators. The bylaws would give each designator the direct power to appoint and remove a certain number of individual directors. The bylaws would also give designators as a group through the voting and a community mechanism the powers to reject amendments to standard bylaws upon a community petition process, to review and reject all amendments to fundamental bylaws and to cause recall of the entire board.

The bylaws would also give the designators as a group the indirect but enforceable power to reject the budget and strategy and operating plans and to reject board decisions that relate to the review of the IANA functions.

Now what's important to understand is that for these indirect powers the community would be relying on the ability to trigger community consideration of board recall as the primary enforcement mechanism which we believe is a very powerful and coercive enforcement mechanism.

We can go to the next slide. As with the membership model the SO AC designator model raises legal issues that we will need to work on through implementation and again you will hear from Rosemary on how we believe you can create this empowered designator model that works through these legal issues. Again, you have concerns with differential rights. We're on Slide 10. Differential rights, enforceability concerns, the impact of arbitration and standing and probably most importantly would there be sufficient enforcement of the designator rights to satisfy the CWG dependency.

If you go to Slide 11 you'll see that community powers would work as they're contemplated to work in the reference model. And if you go to Slide 12 there's some more detail about the community powers and how they would be enforceable primarily through encouraging would an internal binding review process - the IRP process. And we think that it can be given significant teeth so that it is used as the primary way in which disputes on these kinds of issues are resolved.

We can skip over to Slide 13. So we're going to turn now to Rosemary and she's going to present the ideas that the two firms have been working on the past week and a half about how the model could be implemented and how some of the concerns that have been identified as legal issues could be addressed.

Now we need to emphasize that in Buenos Aires as these models were raised there wasn't a whole lot of detail around the specifics of how they would



work. And so what we're trying to do in this next part of the presentation is really provide some of that detail.

We hope that you will agree that the detail we're providing is in keeping with the spirit of these models but of course as we've needed to drive into detail we've had to make some modifications to aid in implementation. So with that note, Rosemary, I'm going to turn it over to you.

Rosemary Fei: Thank you, Holly. So next slide please. I wanted to start - that would be 5-14 - I wanted to start by just very briefly reminding everyone that what we have now is a model where the board has full control over ICANN subject to the mission statement in the Articles of Incorporation and Bylaws. And a duty to act in ICANN's best interest.

We do have the provision in the bylaws that certain SOs and ACs and the Nominating Committee appoint directors but not the power to remove them, at least not clearly. And so the - and the powers to amend the articles and bylaws are solely in the hands of the board. Next slide, please. I didn't want to spend too much time on what we have already. I think you know it better than we do.

So as we turn to implementation we realized that the - one of the problems that was mentioned in the legal questions slide that Holly discussed earlier with the membership model was that we would be trying to draft a membership structure, a legal type of corporation, with a period where there might well be and maybe even an extended period no members.

And under corporate law that was going to create problems because we would be giving powers that the law wouldn't allow us to give except to members, and we wouldn't have any.

So what we - the more we thought about it we realized that in fact both models start with a voluntary compliance phase. And that voluntary compliance phase looks very very much alike. And in fact everything in the box on this page, bylaws enhancements, applies to both and then at the bottom you see that there's a little bit of difference between going to a designator model versus going to a membership model.

And when I say "going to" we have everything in place for the membership model when we put this whole thing in place. And then essentially at some point there's a trigger, as you can see at the bottom where it talks about under specified trigger conditions a membership would - the membership structure would bring into action.

And prior to that both models are essentially relying on the rights that can be given to non-members, which is kind of like saying designators, in order to enhance the rights for the SOs and ACs, strengthen the IRP, put in place the community voting mechanism that has been discussed and that was on one of Holly's earlier slides. And so you can see here the list of things that would be done.

We would add the right to remove directors that the SOs and ACs now maybe have but we want to make sure they have clearly stated in the bylaws. We would give the power to veto amendments to articles and bylaws to the participants in the community. Other than that the entities would be able to maintain their current forms whether or not they're legal persons. We believe at least one of these entities of these groups is a legal person already for example.

And then the bylaws would add all the detail of the community mechanism, the voting allocation, etcetera. As I said, it would strengthen the internally binding IRP process and channel disputes into that process and expressly not require that groups be persons in order to initiate an IRP or participate in an IRP. Although obviously if you ever get to the point of judicial enforcement outside of ICANN you would need a person at that point.

We would also want to consider, this is one example here, whether the community should also be given other rights such as rights that are typically given to members and could be given to nonmembers like the inspection of records. And there might be others that we would want to kind of carefully go through.

In this phase both models would have a springing resignation letter that each director would sign as part of becoming a director that would have triggers set forth in the letter that says, I resign if any of the following happens. That letter would be held by - not by the director but by ICANN some representative of ICANN.

And one of the triggers would be a no confidence vote by the community mechanism in the event that the board fails to give the community the seven powers that the bylaw says the community is supposed to have.

Designators, as sort of a belt and suspenders approach, designators would also be required by the bylaws and maybe even by contract we want to think that through more, to recall all the directors if the community mechanism so directs and only if the mechanism so directs is - so you don't have - you could have this - we haven't drafted it yet so you have some detailed decisions to make down the road.

But the idea is that the designators have some agreement about when they will exercise their rights to recall directors individually or their obligation to recall them all at once.

We did not think through at this point, and I don't think it's our job to think it through, but we believe that the community will need to think through the Nominating Committee status and role through all this whether you want to treat it just the way all the other SO and ACs are treated or whether it gets differential treatment because it's not the same kind of body as they are.

And then as I noted, at the bottom there there's a difference if it's the designator model the empowered SO AC designator model then any of the SOs and ACs could opt in at any time. If it's not a legal person it could opt to become a legal person. And if it already is a legal person it could opt to enhance its ability - sorry, it could opt to enforce powers given in the enhanced bylaws.

And on the other hand if it's - if we're in the membership version of this, again the SOs and ACs could opt at any time to become legal persons or if they already are they would have the ability to enforce. And if trigger conditions were met, and I'll get to those on the next slide, actually I think another - probably Slide 17 - then ICANN would be converted to a membership structure and various other changes would happen because of that.

So I don't know - don't go to Slide 17 yet, I was just referring to that. Now we want to be on Slide 16 please. Thank you.

So this slide looks at details a little bit more what happens in those two little statements that were at the bottom of the prior slide. So first of all if we look

at the empowered SO AC designator model, what happens, again as I said earlier, each SO or AC can determine at any time, that it wants to become a legal person in order to be able to enforce rights unless it already is one. And it gets to decide what type of legal entity to become. That's not going to necessarily - not everyone has to do the same thing.

Once they have legal personhood or if they already have legal personhood they have the ability to seek enforcement in court to - of binding IRP decisions for claims that they have that they want to enforce that arose after their personhood existed.

So you're not going to be able to go back forever and say something that happened before we became a person, we now want to enforce. But assuming that the IRP decision is something that you would become a person at the time the decision was issued then you'd be able to enforce it. And there would be no other changes.

Some of the - as Holly said earlier, these models were modified by us in order to I think the phrase that was used in Buenos Aires was drive them as far as we could drive them, push them out as far as possible to do what you wanted to do. But that doesn't mean that we were able to get 100% of everything. I think any choice of model is going to involve tradeoffs.

And so while we addressed all we could within the way the legal framework works, there were still some things that remained and that's what this right hand column talks about.

Those SOs and ACs that either cannot or won't become legal persons are just not going to be able to ultimately enforce their rights. On the other hand other SOs and ACs that do have personhood would be able to enforce so there are

certain kinds of enforcement issues where you don't need everyone to be able to enforce, anyone could do it.

And then if it's to do with directors that an SO or AC wanted to appoint and there was some problem with recognition of that new director then that director would have the standing to.

And because it's not a membership structure the SOs and ACs cannot have the reserved powers that can only be given to members to be able to reverse board decisions like approving the budget strategy and operating plan or implementing review panel recommendations. But there would be the indirect enforcement that Holly mentioned just not direct enforcement.

If we then turn to the empowered SO AC membership model, staying on Slide 16, again each SO AC determines for itself when and whether and what type of legal entity to become and that could include selecting an individual to be the member.

And then this is the trigger. And this is one of the things that we had to do to solve some of the big concerns we had with how this model would work otherwise. Rather than what the community proposed in Buenos Aires, rather than having it become a membership organization as soon as any one member was willing to become a member, we thought that something like a majority you could obviously set this higher than a majority, or even lower than majority but we picked that as a sample of how we think this would work.

A majority of those SOs and ACs decide both to become legal persons and to become members then we would flip ICANN into membership status as a membership organization with members and all the statutory rights.

And that includes the right to reverse board decisions on the budget, the (unintelligible) and the strategic plan. And the direct right to veto bylaw amendments. And members have standing by law.

So some of the remaining problems and complications with the - as far as we could drive the empowered SO AC membership model, is that we couldn't see a way to avoid drafting in extensive future provisions that would take full advantage of all of the membership provisions in the statute.

We don't think that you want to just leave it to the default regulation of the statute because from what we understand there's a lot of areas where if you become a membership organization you would not want the statutory default. So we'd need to really create that full set of membership bylaws that would become activated on a trigger.

And because once - if it were triggered those entities that had chosen to become persons and members would suddenly hold all that member power, that is the nature of a membership organization. And that would put the non-member SO ACs, the ones either that couldn't or wouldn't become persons or chose not to become members would be at a disadvantage.

We looked at the concern regarding derivative suits that members are given the statutory right to bring. And it's unclear at this point how we would be able to really robustly limit that ability for members to essentially end run the process that you want all suits to have to go through.

And because members have so much power over an organization there is a risk that members could capture the organization those, you know, one - if there were very few members as I said, that's why we put in the trigger to say

at least you have a majority, you know, it's the power to dissolve the corporation, which is quite a lot of power if you only have one member.

And that - we aren't clear that because of the limitation on voting agreements among members we aren't sure that exactly how we would limit that. We certainly haven't decided we can't but that is something we would still need to work on.

So that's the overview of a more granular version, a more tied into the legal framework version. The next two slides, starting with Slide 17, which you can turn to now please, what we've tried to do here is the first column lists the various powers that the community has been discussing and includes the CWG dependency last one - on the next slide, which you don't need to go to yet, it's just there. So we've got all that same list of powers from the earlier slide.

And then the first column after the list of powers is how that power would be exercised and possibility to enforce it when you are in that first phase the voluntary cooperative phase, the phase that's closest to where you are right now, which we called quasi-designator, but it would be stronger than where you are now. So that's what it looks like, the first column would apply whether we're in the membership model or the designator model.

And I'm not going to go through all these powers, by the way, I'm going to let you know that this is here and how it's structured and explain it a little bit then you're going to get to look at it later over time.

Then you would either move, if you want the membership model then you should look at the middle of the three columns, that's labeled enforcement



phase, empowered members. And it talks there about a little more of the detail of how we would attempt to implement that right.

And then the last column is for the designator version, the designator model and how it would look there. And you'll see very frequently in that last column that the first thing is the same mechanism is in the voluntary phase. What that reflects is that moving from the first column to the third column is not a big change. It's just someone decides to start enforcing their powers by becoming a person and then exercising rights under the bylaws as a person.

Whereas the difference between the column that's pre-enforcement phase, the voluntary phase, and the membership it never says same mechanism as voluntary phase. And the reason is we're - the whole point of converting into membership status is to take full advantage of all the powers that members have under statute and so we're shifting away from a voluntary model and really focusing on a membership model and that whole set of membership bylaws provisions that I mentioned.

So I think that's all I'm going to say for now both in the interest of time and making sure we have enough time for questions. But obviously if there's a particular power that you're interested in or you just want to study this whole thing I think it will give you a lot more information about how we envision the mechanics of each model working at each point in time either before we become - have a membership model and before anyone is trying to enforce from a really purely voluntary versus once we're in a more of an enforcement phase.

Holly, I'll turn it back to you for the last couple slides.

Holly Gregory: Well, thank you - thank you, Rosemary. And we don't really need to go over the next couple of slides, they're really just reminders of, you know, things we already know. Some of the guiding principles that were set out early on in the proposal with respect to, you know, where we can keep it closer to what we already have if there's a value in that. We also put down sort of the kinds of considerations that were spoken of in Buenos Aires over the last couple slides.

If you go to the next slide, in the appendix slides, keep going. That slide. We tried to - we have not populated this. You'll see we did not check any boxes. We think this is the kind of thing that you may want to think about and go through in Paris. And there's another slide, Slide 22, takes the factors that we all considered in Friday when we had in Buenos Aires when we had the lengthy discussion of the various models that had been put on the table at that point.

These are just the kinds of ways in which you were analyzing those proposals. And again we thought as a reminder you may want to at some point come back to this and look and talk about how each of these potential models does under these different criteria.

That being said, look, we know we've just provided a huge amount of information. And the reason that we had asked for the opportunity to present this in a purely direct and seamless way was to put it out there ahead of Paris, give you the slides ahead of Paris. As you'll note in the notes view of the slides there are links and references to the legal memos we've provided you in advance so that you can also look at that material if you have questions.

And that way people can come to Paris with sort of a common baseline around information on these models so that they can be discussed in much greater detail. And I thank you for your forbearance in giving us the time to do this

today. We look forward to addressing questions both here if people are ready to have questions or in - and/or in Paris when we see you next week.

And with that, Leon, I'm going to pass it back to you.

Leon Sanchez: Thank you very much, Holly. Thank you very much, Rosemary. This has been most productive presentation I think. And I see some comments in the chat box already endorsing this too. I have taken note of a couple of questions in the chat box. I see that the people that raised those questions have all raised their hands up so I of course turn to the queue. And first in the queue I have Malcolm Hutty so, Malcolm, could you please take the floor?

Malcolm Hutty: Thank you. And first can I say thank you to Holly and to Rosemary for this very comprehensive presentation which I'm sure everyone will find extremely useful.

The comment that I would make actually goes back to the original scope. Right at the beginning in the Slide 2, the overview, it says that you took as your starting points seeking to address the concerns raised as to the impact of the various models for implementing Section 5 of the CCWG's draft - initial draft proposal, the community powers.

I think - I'm afraid I think that in asking you to take that as your starting point we have erred. We should have asked you, I believe, to consider how the two models will impact on the whole proposal, not just Section 5 of the proposal. Section 3 of the proposal on the principles, the mission and core values and so forth, and the Section 4, on the appeals mechanisms, which includes the crucial IRP on which so much of our proposal rests, are also very important and we need to understand the impact of - well to what extent the two

different models can deliver on those elements of the proposal as well as on how they can deliver Section 5.

Now I noticed that in - that you do make a brief passing reference to a difference between the two. On Slide 16 under the empowered SO AC designator model, under problems and complications, you say that the designator model does - would not have the reserve powers of members to reverse board opinions such as to require the implementation of an IRP decision. So I think that would be something that would be an important thing to pull out.

But because the scope has been focused on only Section 5 and not also Section 4 and Section 3 that is rather being buried in the detail. Now your slides at the end, Slides 17 and 18, go in (unintelligible) between these models. But again, those community powers in Section 5 plus the one that you've added from the CWG but without adding the consideration of how we would implement the - or the difference in the impact on the implementation of, for example, the IRP, so that bit that you call out in Slide 16 I think you would have given greater prominence to if you'd been asked to - so set a broader scope.

And I think it's important to draw that out. So I wonder if it would be possible before you present this in Paris to slightly recast this with that scope so as to draw that out more clearly. Thank you.

Holly Gregory: So, Leon, this is...

((Crosstalk))

Leon Sanchez: Thank you for that, Malcolm. Yes, Holly, actually I was going to turn back to you so, yes, please.

Holly Gregory: So, Malcolm. Those are great points, absolutely. And I want to ensure you that we considered those issues as well but in the interest of time we believe the issues that are posed by the sections you cited are far more straightforward and they are not as impacted by the differences in these models hence our focus has been on the more difficult areas. But we absolutely agree that any of this needs to be looked at ultimately holistically.

And so there was no intent to ignore those issues rather we're focusing on the things that we are struggling with the most. So, you know, and certainly in Paris we can add some more detail around how those other issues are impacted. But again, I want to assure you that we are well aware of that, we have done this whole project over the last week and a half with the initial draft proposal that our right hand thumbing through it to make sure that we understand how things interrelate. But thank you for that, Malcolm.

Malcolm Hutty: Thank you.

Leon Sanchez: Thank you very much, Malcolm and Holly. Next in the queue I have Tijani. We do have a lot of people in the queue and a lot of questions so if you can keep it as concrete as possible it will be much appreciated. So, Tijani, could you please take the floor? Tijani, you might be on mute.

Tijani Ben Jemaa: Do you hear me? Do you hear me?

Leon Sanchez: We do now, thank you.

Tijani Ben Jemaa: Okay, thank you very much. Thank you, Leon. Tijani speaking. Thank you.

First of all I'd like to thank the legal team for the work done and for this more or less comprehensive presentation. I would like to ask if the escalation is not decided by the community - the whole community as described. Does that prevent any member to have the legal status and to do the enforcement he wants?

Second question, I heard about a third model, is it possible to give us an overview of this? Thank you.

Leon Sanchez: Thank you very much, Tijani. Holly or Rosemary, would you want to answer those questions?

Rosemary Fei: I'm going to - Rosemary - answer the first part of that question. I just wanted to talk about the mention of the third model. You know, we as lawyers take our direction from our client. And one of the challenges here is that we don't yet have a client who was quite speaking with one voice as we're trying to understand goals. But we're learning and we're also learning about the group's way of interacting and working. And we're trying to be very respectful of that.

We do have an idea that we think is worth exploring and that could simplify some things. But unless the community - the group asks us to dig down and study it and provide it detail around it to you we thought it was both, you know, presumptuous and premature of us to offer it up.

So with that being said if the group asks us to provide more information about another way - and we don't see it as a separate model really, we see it as a slight modification, if you will, to the two current models that you're talking

about. And it really has to do with, you know, when we talk about legal personhood, where do we want to focus that?

Both models that we are talking about now think about legal personhood as being something that SOs and ACs might wish to have to improve their enforceability to become members and to have greater assurance around how they exercise rights.

The other option that you may want to consider at some point in time is not worrying about SOs and ACs ever having any kind of legal personhood but thinking about the community having legal personhood. And we think it's a fairly simple thing to do but I will leave it there for now.

Leon Sanchez: Thank you very much, Holly. Next in the queue I have Robin Gross. Robin, please take the floor.

Robin Gross: Hi, this is Robin. Can you hear me?

Leon Sanchez: Yes we do listen to you.

Robin Gross: Can you hear me okay? Oh okay. So, all right, I've got a question and thanks so much to the lawyers for these really (unintelligible) and comprehensive overview. But I've got a question. The way the empowered designator model is described in these slides is that it must be requiring a right of rejection with respect to the budget and the strategic plan. And I'm wondering to what extent can we build out a preapproval right so we don't have to get to needing to reject ultimately but all be on the same page before we get to a final decision.

So, for example, the way gTLD policy is made it's an ICANN bylaw that the process is it goes through the bottom up working groups and then it goes to

the GNSO Council where it gets approved and then it goes to the board where it gets approved. And this is a process that's in ICANN bylaws right now.

And so I'm wondering to what extent can we create some sort of a similar preapproval right on those two issues that are currently described as needing a rejection right? Because I think we have another option here. Or maybe we don't but I'd like to at least explore that a little bit. Thank you.

Leon Sanchez: Thank you very much, Robin. Holly or Rosemary.

Holly Gregory: This is Holly. You know, I certainly think that there is - I can't think of a reason why you couldn't have some kind of preapproval right. But we were simply taking the budgetary review and rejection as described from the initial proposal. We weren't trying to rethink all of the ways in which you've described the powers to date that you want.

To us we were sort of taking it that you've described the powers the way that you were most interested in asserting them. So to us that's, you know, if you all want to look at that we're happy to look at that but to us that was sort of a change that wasn't on the table for us to start delving into.

Leon Sanchez: Thank you very much, Holly. I have next in the queue James Gannon.

James Gannon: Hi, it's James. And so first of all thanks to Holly and Rosemary, they did a really great overview of the various things that are going on at the moment is very helpful. And so first of all I think there's been lots of questions the possibility of the first (unintelligible) that the Council came up with independently on their own thinking. And I'm not sure what way it works, if the members have to put a formal call to the chairs for that to be.



If there's anything that we can do here where we are now I think that we need to just put it to them formally that we would like them to look into it as (unintelligible) cross community from it.

In the interest of time we have - I have some questions and I've been talking with some people since Buenos Aires about various things that are going on around models. A couple of us have actually come up with a list of a couple of questions so for the lawyers also questions that we think the community needs to answer ourselves. So in the interest of time I'm not going to go through them now, what we'll do is I'll send them to the list after this call.

But at a high level I've set out three scenes that I think we should be thinking about. And they're not exclusive so definitely more (unintelligible). So the balance of powers between the SOs and the ACs is a very important point that we need to look inside our own community event see what our levels of risk and acceptability around the balance of power is. And for each SO and AC their future work and how they're going to work going forward.

And also obviously the most important for many of us is the enforceability where our boundaries lie on enforceability, are we happy with a fully voluntary enforceability model? Do we need to have that one settle to the rejection besides the recall of board members or the whole board for enforceability? Or do ultimately we feel that we need a full legal jurisdictional enforceability mechanism. And that's something that everybody needs to have a strong think about as we go through the model particularly in Paris.

Because this a good few questions and they are more detailed so after the call we'll send those to the list - the set of questions.

Leon Sanchez: Thank you very much, James. Those are indeed good questions. And I think that many of those questions are - need to be answered by us as a group. So, yes, it would be very helpful if you could send this to the list so we can feed the discussion. And I don't know, Holly, or Rosemary, do you have anything to add to James's question?

Holly Gregory: I don't have anything. This is Holly. I don't have anything to add. Perhaps, Rosemary, I don't know if you have a comment? We do look forward very much to receiving the list of questions. We will certainly do whatever we can between now and Paris to try to provide further clarity.

Rosemary Fei: I would just add that what I think James has identified and I think you also, Leon, indicated is that how you choose between these models, this is something Holly said at the beginning, we're not prejudging what level of enforceability you need. It took us a while to understand that when you talked about having a right you didn't necessarily attach to it the way a lawyer in America does, ultimate enforceability, meaning you can go to court and get that right enforced.

And the anything short of that wasn't really a real right because it's not enforceable. And now we realize that's not how you think about and that there are - for you there's levels of enforceability and you can have a right that maybe relies on almost no ability to enforce it but really relies heavily on that voluntary cooperation that's worked for you for so long but in the presence of the NTIA.

And so I think that is for the community, for CCWG, and then the community I guess, to resolve, not for the lawyers. We're trying to make it clear how enforcement would look, what level of enforcement you could get for each of the rights, what the mechanism would be and how far it would take you. And

then you all have to do the balancing and decide on balance where you want to be with enforceability.

Leon Sanchez: Thank you very much, Holly and Rosemary. And in queue I have Jonathan Zuck. Jonathan.

Jonathan Zuck: Thanks. Jonathan Zuck for the transcript. Thanks again for this presentation. I'm a little bit reminded of the old Mark Twain saying that I would have written a shorter letter but I didn't have enough time. And so a part of me would really love to see the two slide version of this that basically looks at the concerns that have been raised. And a start of some of this as at the end of the presentation I'm just a little worried they're a little too binary the way they're displayed out there.

But as you just said, the community is a little bit mixed about how important enforcement is. But if there was a way to reduce this down to a question of preferences as opposed to a question of fact, which we find ourselves completely - we will go into several meetings after this one and completely disagree about what it is we just heard today.

And I'm wondering if there's some way to say, look, those - this particular model has a greater likelihood of X happening that some expressed concern about; the cost of eliminating that risk is Y, which others have expressed concern about, so that people can really focus on what their concerns and preferences are and less on the details of each of these plans.

I mean, that's my - I guess I would love to reduce this to a few questions about priorities that the community can then grapple with in an ideological way as opposed to constantly being mired and disagreeing about the facts of these different proposals. Thanks.

Leon Sanchez: Thanks, Jonathan. Any reaction?

((Crosstalk))

Holly Gregory: Yeah. I'd like to react to that. I agree. I agree that there's, you know, so you're seeing in part sort of the sausage being made, the length of the slides is in part a measure of our effort to word through these - what are, as I said, these are very complex issues. This is not simple stuff. And often there's not a clear legal answer. And we're trying to extrapolate how we think the law would apply if a particular issue was raised.

We do think - I do think - I like your idea of saying well what are the questions now that we need to focus on to help us focus our thinking and our discussion? And if you'd like Rosemary and I could come up with a list of maybe three or four or five questions designed to try to guide further discussion or maybe to test, you know, where the group is that we could use in Paris.

But I - well taken a set of comments and critique around this presentation. Appreciate it. Thank you.

Jonathan Zuck: And again, it's not a critique, it's just...

((Crosstalk))

Leon Sanchez: Thank you very much, Holly.

Jonathan Zuck: ...the advantages of disadvantages or pros and cons or something like that I think might guide our conversation less into the realm of disputing what was

said and more about what various people believe are the final (unintelligible).  
Thanks.

Leon Sanchez: Thank you very much, Jonathan. I will now close the queue after Chris Disspain so we can have further discussion of the third model. And next in the queue I have Kavouss.

Kavouss Arasteh: Yes, without any qualification of presentation, I'm total disappointed. We come back in April at the beginning of this process the lawyers pushed for membership and today they pushing for membership. They present three things at the end they come that if we want to have something work go to the membership. So I don't think there's anything new in this presentation.

This presentation was totally passive. We should have a slide by a slide asking the people to comment. But it did not allow that. We have 14 minutes of presentations unilateral and there was no room for the people to talk. When we said something in the chat there were few people that (unintelligible) it's extremely useful. We have learned a lot. We are not school boys; we are not coming here to learn something. We are going to have something which works. So I'm very sorry, this is not useful at all. And I interrupt the phone and I cannot listen anymore to this discussion because it is totally counterproductive, is totally counterproductive. Thank you.

Leon Sanchez: Thank you very much, Kavouss. So no questions to the lawyers on your side. Next in the queue I have Tijani but first would the lawyers want to react to Kavouss's comments?

Holly Gregory: I don't have any reaction.

Leon Sanchez: Okay, thank you. And if there is anyone to blame for asking the lawyers not to be interrupted is certainly me so I take the blame on that. Tijani, you're next.

Tijani Ben Jemaa: Yes, thank you, Leon. Then I am sorry but perhaps my first question wasn't answered or perhaps I didn't hear it. I asked about if there is not a community decision about the escalation does that prevent any member. And I understood it does not - any member to - or any SO and AC to become a legal person and to do the enforcement it wants?

Leon Sanchez: Thank you very much, Tijani. Holly or Rosemary could you please take the floor to answer Tijani's question?

Rosemary Fei: Sure, this is Rosemary. I think that there is an issue for us with the membership model. One of the (unintelligible) on Slide 16 where we talk about the membership model, the bottom half of the Slide 16, it talks about members being able to bring derivative suits beyond suits anticipated to enforce the IRP. And it's not clear yet how strongly we'll be able to limit that.

So we're having some trouble dealing with ways to prevent a single member from being able to take - exercise member statutory rights. And the next point - bullet below that is related to that. That's why we have suggested that you would delay conversion to membership status because it gives so much power to those who are members compared to those who are not.

Now if everyone becomes a member we will have less concerns with the second bullet but that - sorry, let me number them correctly. The fourth bullet in that column - could I have Slide 16 so people can see what I'm talking about please?

The fourth bullet under Problems and Complications of the Membership Model, we can reduce by delaying membership status, conferring true membership status, until there's at least a majority or some other threshold of groups that are willing to become members.

What our concern was was that if one person can trigger membership status then they have all the powers of a member if no one else chooses to join at that point. But the third bullet in that column, the one about being able to bring suit, for example, it's difficult because these are rights given to members in the statute. We are not yet sure how completely we could constrain that power.

We believe that we can largely channel the internal process toward the IRP. In fact, we should be able to do that with respect to almost everything. But should someone decide to go around it we're still working on how we would constrain that.

((Crosstalk))

Leon Sanchez: Thank you very much, Rosemary. Thank you very much, Rosemary. I hope that answers Tijani's question. If not we can of course continue this offline. And...

Holly Gregory: Can I add one more thing please, Leon?

((Crosstalk))

Leon Sanchez: Yes of course, please do.

Holly Gregory: Thank you. I think what we're seeing is that the membership model unquestionably gives the community the strongest amount of control or ability to control the board. And that's the way that the statute is drafted which is members can override board decisions, for example. And there's no one else who can under this statute.

So when you hear us - if that is your priority, which I'm not saying it is or should be, but if that is your priority that will drive you to the membership model. It is both the strength and the weakness of the membership model because all that power goes to whoever is a member. And doesn't go to anyone who's not a member.

And so the designator model, in my mind, and I'm not supporting or trying to say which one you should pick, but as a legal matter, the designator model avoids some of that extreme power in the membership. But you might think that extreme power is exactly what you need and exactly what you should have. And I'm not saying it's not.

Or - but what the designator model then has is the weakness of not being the membership model, which is there's some things you can't force the board directly to do although what I think we have come up with is some very strong, very heavy sticks that the community would hold to allow the community to not just get the board's attention but really make what they want to have happen, happen. It's just indirect because it's not membership.

I think that responds in part perhaps to maybe Kavouss's comments as well that if what you think is that you need the most power you can have then it's pretty clear that you have to go to some form of membership model.



And actually the third model that we were talking about, having the community be the member rather than any - a series of members that are the different components of the community, is in part, part of our thinking as a way to address this putting so much power in the hands of just those who are members versus those who are not.

Leon Sanchez: Thank you very much, Rosemary. I will have two more people in the queue and after that we will jump to elaborating on the third option. So if you could please keep your interventions short that would be very useful. Next in the queue I have Izumi. Izumi, could you please take the floor? Izumi, you might be on mute. We can't listen to you, Izumi. I will go to Robin and then we'll come back to you.

Robin Gross: Hi, this is Robin. Can you hear me?

Leon Sanchez: We do listen to you, thank you.

Robin Gross: Okay, thank you. So I have a question about derivative lawsuits under the membership model. And this is something we haven't explored very much but I think we really should know what we might be getting into. I noted earlier in the presentation the lawyers said they didn't think they would be able to limit a member's ability to file derivative lawsuits. If I - please correct me if I got that wrong.

So I'm wondering what does that really mean on a practical level for ICANN and for the community, the threats of derivative lawsuits? Are we going to have a situation where board members or staff or members of the community in general could be under threat of litigation if decisions are made that they don't like? I really don't know the answer to that question but I think we need to have some discussion about what it could mean. Thank you.

Leon Sanchez: Thank you very much, Robin. Holly.

Holly Gregory: So great question, Robin. And I think it's something that we can also explore in more detail in Paris if you'd like. But I'll speak to it a little bit here. So derivative litigation is something that's available to a member to say that I'm - because the board is not taking action vis-à-vis a potential claim that it has on behalf of the corporation I as a member am going to step into those shoes and bring an action on behalf of the corporation. That's why it's called derivative. It's really an action by the corporation but the member has the right to bring it.

The kinds of suits that are typically brought as derivative actions or actions are suits that involve a claim that a board is somehow acting inappropriately vis-à-vis the bylaws, vis-à-vis fiduciary duties, or that a subset of directors, one or more directors, was acting in breach of fiduciary duties.

And derivative actions are where the corporation has - meaning the board itself - has really declined to bring that action and so a member is forcing that action. There is a risk that, you know, what we haven't yet been able to nail down with any certainty is whether we could have the bylaws or contracts - really bylaws provide that these kinds of inter-corporate disputes must be brought through an IRP binding arbitration mechanism.

There's some case law in Maryland that suggests that you can have binding bylaws that require arbitration. But it's not fully clear in many states and there's some significant question in states like Delaware around whether that's true. I believe California is, at the moment, silent.

So we could attempt to draft an IRP and a bylaw that says you must use the IRP for inter-company disputes. The question is whether a member would be

successful in going to court and saying my statutory rights are much more powerful than this kind of bylaw provision and trump the bylaw provision. And we just don't know how a court will decide that.

So it's an issue we need to raise so that you're aware of the potential risk. I think to the extent that the community really does value sort of voluntary cooperation and can look at the IRP as something that we think most of the SOs and ACs, who will be the members, would use, if they had faith that the board would feel bound to it then I think some of the risks around derivative suits goes away.

But the difficulty comes when you get in a severe dispute there is a risk that someone is going to try to run right to court and I don't know that we can prevent that for members with any great surety. So with that...

((Crosstalk))

Leon Sanchez: Thank you very much.

Holly Gregory: Thank you.

Leon Sanchez: I'm sorry. I'm sorry, Holly.

Holly Gregory: No that's fine, Leon. I was through.

Leon Sanchez: Thank you. Thank you, Holly. We have a question from Izumi Okutani with regards to how exactly does the community person could work. So if you could please provide us some feedback on that, Holly or Rosemary, would much appreciate it.

Holly Gregory: So I'll start out and then if, Rosemary, if you'll chime in because I know that both of our firms have been thinking about it a little bit. So we haven't sort of gone full bore on it because we've been waiting on instruction before we did that.

The notion here is a fairly simple one which - and it would - it could work with either the - in any of the kinds of powers we're talking about and enforcement mechanisms that could work, what you would do is all of the SOs and ACs would participate in this community mechanism that we've been talking about meaning a place where the votes come together and are given (a set). And instead of having SOs and ACs be legal persons for enforcement purposes or for membership purposes, you would make that body the legal person that would be the sole member of ICANN.

It would function just exactly as you've been contemplating the community mechanism would function. It's not an avatar; it doesn't need a set of officers and what not. Whatever the vote of the community is would be the vote of the single member in regards to the powers with respect to ICANN. And so we think it could be a very simply mechanism to give the enforcement.

One of the lovely things about it is it means it adds to the statutory powers that come with membership. Those could only be exercised if the majority of the SOs and ACs through their voting powers decided through the community mechanism that they should be exercised. So the only member that could bring a derivative suit would be this sole member, which would be a function of a vote among the SOs and ACs, and therefore it's very unlikely that they would ever decide to bring a derivative action. The same with respect to issues like dissolution.

So it's a fairly simplified taking of the empowered SO/AC membership model and saying instead of worrying about membership for individual SOs and ACs and worrying about legal personhood, we could pump it a level. We think we could provide it through the bylaws. There wouldn't be a lot of formal, other kinds of formal documentation. The bylaws would state that the community mechanism is to be recognized as a legal person, and, you know, I think there are details to work out but that's the basic construct. Thank you.

(Rosemary), do you want to weigh in?

Rosemary Fei: Sure. I think you did a fine job, Holly Gregory:, so I will leave that. With respect to the single member model, the third model, I'll leave it at that. I think Izumi may have been asking about legal personhood. I'm not sure if she meant only for the entire community in the single-member model but maybe a little more detail about what it would take for one SO or one AC to decide okay now we want - we need to enforce the right, we see it coming down the road, we want to be a person.

It would be a resolution of the group saying we want to associate to hold this right under the bylaws. And we would draft the bylaws in such a way that such a resolution would be sufficient, we believe, to confer legal personhood. What kind of legal person is it? I'm not trying to hide the ball. It would be, because that's the default when you're not a corporation and you're not a partnership and you're not a legal limited liability company and you're not any, you know, limited liability partnership or any of the other forms we have, the last remaining form is an unincorporated association.

But it's not the unincorporated association that was referred to as an avatar that's separate from the SO/AC. It's the SO or AC itself saying we are going to

have the level of intent to join together for a purpose that is sufficient to confer legal personhood status on us under these bylaws.

León Sanchez: Thank you very much, Holly Gregory: and Rosemary, for this. I see that there are many questions being raised in the chat box already. So I think it would be good to address those questions as well. I do have Chris Disspain on the queue, and Kavouss. So I will go to Chris and Kavouss, and then we'll jump back to the questions in the chat box if you'll allow me. So, Chris, could you please take the floor.

Chris Disspain: Thank you. León. And, Rosemary and Holly Gregory:, thanks for explaining that. I'm - I think that's - it's really interesting. All I wanted to do was to ask you if you could perhaps provide us with, between now and Paris, maybe just sort of an overview of how you think it might work and whether you think it butts up against some of the same problems that exist with a membership model generally or whether you think some of those problems don't exist with being a single member.

I quite like the concept of us having a sort of like a, you know, a group. I'm just a little wary about whether we are solving the issue of how people can join that group if they need to be legal persons. But I'm not dismissing at all, and I would really appreciate it if you could just maybe do a sort of brief analysis of how it meets some of the criteria or maybe has problems with other ones.

León Sanchez: Thank you very much, Chris. I don't know if that makes (unintelligible) from Holly Gregory: and Rosemary. I think they will be providing us with this information for sure. So next I have Kavouss. Kavouss, could you please take the floor?

Kavouss Arasteh: Yes. I think first of all you three chairs and co-chairs are fully responsible to us. I assume your responsibility ordering all these work. This is number one, because many people they don't agree. First of all, the SO and AC they are not fully representing the entire community but they have no alternative accepting those seven.

Among those seven, two of them are out and there will be more probability that only the main one single member if that famous so-called membership go ahead. And we have seen a lot of problems that if one single member is authoritative for the entire process. So we are working totally on theory but not on practice. And we're producing or manufacturing a product but we cannot sell it unfortunately.

We should be quite clear when we have the document in Paris to be understood by the people that we are not going back to the thing that was not clear. So that is the situation. We should be quite clear to the community that we do not push them, that that is that. The only possible way is membership. We have to see what is the more practical, what is more pragmatic, and what is workable. And not on the theory but not on idealistic - going to realistic. So this is the situation.

Unfortunately we have not made any progress at all. We just expand whatever we have. We expressed that in a different way but exactly the same idea when we are talking of membership model. I'll repeat that. This is not necessary that for the budget and for the status plan we go to empower to the community to reject that. With reconsideration, it is possible to do that. If the reconsideration doesn't work, you have the possibility to remove board member.

So we have to simplify the matter and not push the community for something which doesn't work. Maybe you don't listen, that's all, but we think that there

would be maybe even not any single membership at all. I see only one of the seven communities would be a candidate for membership, at least a maximum of one, but that's one I'm not sure that will remain. So I don't think that this membership would have any client. Thank you.

León Sanchez: Thank you very much, Kavouss. We do listen but we are also obliged to listen to everyone. So one of the people that we're listening now is NTIA secretary Larry Strickling, and he clearly stated that we must explore all models available. And as far as we can tell, we are doing this exercise by coming back not only to the membership model but to the designator model, and the lawyers will be speaking now on a third option.

And no one is deciding anything at this call, of course. We should be looking into the different models back in Paris, and hopefully then we will be able to call for consensus with the group. And this of course implies that the whole group will be taking part in the decision and not only a couple of persons. So your comments are very well taken into account, and we will continue to of course evaluate the different models that we obliged to by our charter and fulfilling the positions by the NTIA as well.

So now I will go to the questions in the chat box. I see a question from Robin on how we protect minority rights on this model that was being described. So if - could you please, Holly Gregory: or (Rosemary), answer to that question with regards to minority rights in this model that was just explained to us.

Holly Gregory:: Yes I think the issue of minority rights comes up under any model. I'm not quite sure that I see any differential vis-a-vis the model, although some of the models provide opportunities for actual capture by minority in certain circumstances.



One of the things that I know that you've been talking about already vis-a-vis protecting minority rights is thinking about in what circumstances do you need some kind of supermajority voting threshold for key decisions. Another way in which minority rights can be given voice is through some kind of IRTTP mechanism.

I think we need to do more work on that under any of the models to make sure that we understand what minority rights we're seeking to protect and how they're being protected. It's a very good issue and I don't think we've really addressed it in any of the models, including the reference model that's been put out in the initial proposal or quite frankly in the current voluntary cooperation model. Thank you.

León Sanchez: Thank you very much, Holly Gregory:. I see (Rosemary)'s hand is up. (Rosemary)?

Rosemary Fei: Yes, so the concept of the single-member model is that we move the membership status from the individual SOs and ACs that choose to become members and we move it up to the whole community, as Holly Gregory: described. And the - some of the comments I'm seeing on the chat go directly to what I was saying earlier about when you compare the designator model and the membership model and where the power is, the membership model gives power to the members and it gives it to each member and to the member collectively.

So now, you know, that's comparing it to the designator model. The membership model has more power in individual members and in the membership than we can give to designators. Now when we look at comparing the lower level membership to the single-member model, we see the exact same thing happening, which is that the power is no longer, if we

move up to having the whole community be the member, the individual components of the community just don't have those powers anymore because they've now been put into the collective.

And that is again both what you might like or dislike about the single-member model. You might like, for example, that now we don't have to worry about one SO or one AC holding tons of power, because it's not a member. It will have no member rights. It may have other rights that can be given in the bylaws, but it won't have the statutory rights of members, which we were so worried about.

So you might like that the power has been raised. You know, it's now at that single-member level and not in all the individual groups, but you might also not like that, because you might have liked that one member could have a right to inspect documents and not have to worry about any other members agreeing with it. Now you don't have that because you're not a member anymore at that level, the membership is the single body.

So I think some of the - it is good that the questions that I'm seeing asked about these really go to the heart of each of them and their pros and cons. And you asked us to push the two models as far as we could toward what we understood you wanted, but that doesn't mean we reached it, as I said earlier. All these models are going to involve tradeoffs, and it depends on what you want to tradeoff.

And by you, you guys have to come to some kind of consensus, because not any one of you gets to decide what the right tradeoff is. You have to somehow agree as a group which of the models provides the best tradeoff, but you are identifying in your discussions of them, which I hope means that we've done a modestly okay job of describing them so far, and we will try and do better for

Paris with more time and with maybe a third model on the table, but you are getting what the differences are between the models and what they offer and don't offer in each of them.

León Sanchez: Thank you very much, Rosemary. I have two more, perhaps three. I have Tijani and Mathieu. So I will turn to Tijani. Tijani, could you please take the floor?

Tijani Ben Jemaa: Thank you, León, and thank you, Rosemary and Holly Gregory:. This third model of this new model seems good for me, but I'd like if you don't mind to have the same analysis work that you did between the designator and the membership model that you did for us on those slides, if you can do the same and assure us what are the problems solved by this unit member model, what kind of - what are the problems that will be solved by this model. I understand it more or less by your speech here, but it is better to add to it and for that I will be sure what we are dealing with. Thank you.

León Sanchez: Thank you very much, Tijani. Holly Gregory: or (Rosemary), do you want to react to that?

Rosemary Fei: Yes please. That's a great idea, and we were not authorized to present the new model to you at this stage. We've obviously given it some thought and we would be very happy to present slides so that you could compare all three models. For example, we could add a column to the chart that was towards the end of the presentation. We could prepare slides that would be, as much as possible, laying out the pros and cons kind of the way we did in slides 15 and 16. We'd be happy to do that.

Tijani Ben Jemaa: Thank you.

León Sanchez: Thank you very much, Rosemary. Next one here I have Mathieu. Mathieu?

Mathieu Weill: Thank you, León, and thank you, Rosemary and Holly Gregory:, for the outstanding work. I think we'll have to decide on what - whether we certify the question on this third model. I have noted on the chat and in various other discussions mentions of options relating to using the delegate option and would like to ask you for advice whether this - whether you think that this would be a valuable option to also investigate and why or if this approach you think would not provide a lot of benefit compared to the existing one currently being investigated.

León Sanchez: I'll give it to you.

Rosemary Fei: I'd like to respond.

León Sanchez: Yes please do.

Rosemary Fei: We - actually the delegate option was raised quite early in the process, and if you go - I can't give you a site off the top of my head but we could certainly dig one out, where we discussed the delegate option. And what we said there is basically that the way the statute - first of all, outside of a religious corporate context -- and there's a separate set of rules for religious corporations -- outside of that, delegates are representative of members. And so really a delegate structure is just a refinement of a membership structure.

I realize that the way the statute is drafted could make you think that it's actually a different thing, but in practice it's not used that way. The way delegate structures are used is where you have such a large membership that you can no longer practically expect members to even meet. And member meetings are a key part of most membership organizations. They haven't come

up in our discussion, because you're talking about such a small number of members, five or seven, or even one. So membership meeting doesn't mean much in that context.

But where you - the typical membership organization - and for example when people have wanted to talk about being able to allow members of the public to become members of ICANN, you would certainly need, you would absolutely have to design, some kind of a delegate structure, because you can't get all the people who might choose to become individual members of ICANN into a room or even many, many Adobe Connect rooms and huge conference calls. I mean it gets totally unmanageable.

So a delegate structure is designed to channel those membership rights through these delegates who represent the members. So I don't see, and when we looked at this quite early, and that's - I don't blame anyone for not remembering because it is buried, but we were asked a question about delegates very early on and addressed it and concluded it was not - did not appear to us as a legal matter to be an act tool to use in this situation.

León Sanchez: Thank you very much, (Rosemary). Next in the queue I have Avri and (Ed). We are almost reaching top of the hour, so I would kindly ask you to keep it short so we can then turn back to Mathieu for closure. Avri, could you please take the floor?

Avri Doria: Okay thank you. This is Avri speaking. I'm very interested in hearing more about this community as a single member model. I'm especially interested in hearing some exposition of how it might work and for example how seats within that might be fairly picked in terms of - and fairly picked so that the wider communities that aren't already insiders have some voice in it, and what kind of thresholds it would need to make decisions to be in a basis where itself

couldn't become a mob and go rogue and basically still self-destroy the organization.

So I'm interested in hearing more but I don't quite understand how it saves us from some of the pitfalls that I currently believe are the case in the membership model. Thanks.

León Sanchez: Thank you very much, Avri. I think this will be something long from the lawyers, but if you could please provide quick feedback and then for course we will be discussing this in a more wider way. And I just would like to point that the queue is now closed with Alan Greenberg, so we'll close the queue with Alan. So would you like to react to this, (Rosemary) or Holly Gregory:?

Holly Gregory:: Yes, this is Holly Gregory:. Look, Avri raises a good point but I think it's that we have to consider for the other models as well and that is the point of how you are defining community. We - the proposal, the reference proposals, speaks of SOs and ACs primarily as entities that are exercising voting rights, decision rights, within the community mechanism. And I take it from Avri's question that she has concerns about this.

So this concern about the broader community, the non-SO and ACs parts of the ICANN community, plays out in a much broader fashion and has - and is something to consider for all the models that we have under discussion. It's not unique to a sole membership model, to an empowered SO/AC membership model, or even to a designator model. And I just put that out as clarification from (unintelligible) it would be helpful to have additional guidance.

León Sanchez: Thank you very much, Holly Gregory:. Next in queue I have Ed, and then Alan Greenberg, and then the queue is closed. I see that Robin raised her hand

but we're almost at the top of the hour so I would kindly ask if you could continue this offline or if it's really, really fast then we will certainly allow you to raise your question, Robin. Ed, could you please take the floor?

Edward Morris: Thanks, León. Hi everybody. Rosemary, I want to refer you to the February 7 memo from Jones Day entitled "Initial Responses to the Community Working Group California Law Question." And the reason I want you to do that, perhaps not on this call but perhaps on list, is Jones Day states clearly -- I'm quoting -- "Alternatively the community determined that ICANN should modify its current corporate structure in a less dramatic manner" -- referring to membership. "ICANN's bylaws could provide for the appointment of delegates under California law. These delegates could have some or all of the authority of members."

You just told us well you can read it that way but that's not how they do it. Jones Day disagrees apparently. When you take a look at what delegates could provide, we could have all the power of memberships but we could get rid of things that people don't want, perhaps derivatives or the dissolution of corporation. So I would ask that you take another look at the delegate structure and explain to us why your view and the view of Jones Day is different. Thank you.

Rosemary Fei: May I...?

León Sanchez: Thank you very much, Ed. Yes you may.

Rosemary Fei: We were aware of the Jones Day view when we came to our conclusion. And you're correct, the two firms disagree. And I can provide...

León Sanchez: Thank you very much, Rosemary.

Rosemary Fei: We can go into more but I mean I think for purposes of this, you're right, we do disagree.

León Sanchez: Thank you. Maybe it would be good if we continue this offline. Then I have Alan Greenberg. Alan, could you please (unintelligible).

Alan Greenberg: Thank you very much. I just want to raise a concern I have and I think we need at some point to focus on it. We have a moderately small number of ACs and SOs to begin with in ICANN, so the superset of those who are going to participate is not a large number.

Based on what a number of the AC/SOs have said or implications of how they are organized, the number who will actually participate -- and this is true in the designator model, the membership model or the community council -- is a much smaller number.

And I think we have to focus on that as we make our decision, that we may be working with a very - a significant subset of the overall ACs and SOs and understand how that - what the implications of that are in making our choice. That's all I wanted to say. But I think - I don't think we can ignore it because we're talking about what may be a very small number. Thank you.

León Sanchez: Thank you very much, Alan. Any reaction please, Holly Gregory: or Rosemary?

Rosemary Fei: Well I certainly agree that that's a concern that the community should consider in evaluating any of the models, who is going to participate and in what form at what level, participating, is that satisfactory. So I think it's a good point.



León Sanchez: Thank you very much, (Rosemary). Last in the queue is Robin Gross. Robin, could you please take the floor?

Robin Gross: Hi. Can you hear me?

León Sanchez: (Unintelligible).

Robin Gross: Okay. I'll be very brief. I just have a quick question for confirmation about what's on the table, what we're looking at in Paris. So I just wanted confirmation that we are looking at an empowered designator that explores preapproval rights for budget and strategic plan as one of our options since we're exploring all of our options and of our alternatives, that that's one that's on the table, and hopefully we can have some discussion about how far we can get under that potential model. Thank you.

León Sanchez: Thanks, Robin. Any reaction to that, Holly Gregory: or (Rosemary)?

Rosemary Fei: I think that we are expecting the leadership team or this group or whatever to tell us what you want us to address on the table.

León Sanchez: Thank you very much.

Rosemary Fei: (Unintelligible) whether - I mean there have been a lot of people asking for an awful lot of stuff during this call, and I'm not sure which ones, you know, there's consensus around investing more legal time looking at. Do you want us to look at delegates, do you want us to look at preapproval powers? I think there's a couple of other ideas that have been floated. We can do whatever you ask us to do, although obviously our time is limited, so the depth in which we can do any of it is going to depend on how many things you ask us to look at.

Holly Gregory:: And in addition if I can add to that, we've heard interest in expanding out our discussion of the members - of the sole member model. Again, (Rosemary), I agree, what we need is for the group to provide guidance (unintelligible).

León Sanchez: Thank you very much. There's an echo, so if you could please mute your mics if you're not speaking. I will now turn to Mathieu, and I do believe we will be clarifying a couple of questions and work for the lawyers at this point. I see the (unintelligible) have her - their hands raised, but unfortunately we are already at the top of the hour, so I would kindly ask for your consideration on taking this offline. And I will turn now to Mathieu. Mathieu?

Mathieu Weill: Thank you, León. Very shortly because we are already at the top of the hour and to answer independent counsel question about what's the next steps and what the group - what we feel the group is requesting, I think number one I sense traction to certify the further investigation in writing of the model with the community as a single member, taking into account the various questions that were raised in the chat and during the call that were related to this model.

So I think we have sufficient traction for that and that will be valuable ahead of Paris so that we can also have this on the table before we define what we move - what the reference model we use for the public comment two.

The second thing which I would like to ask independent counsel based on this call is that we take a suggestion that was made to have strengths and weaknesses recap of the analysis on the now three models. That would certainly help us focus on the benefit and the concerns that are associated with each model rather than only preference.

And saying that, I would stop there at this point in terms of additional requests because I sense that the delegate option is triggering legal controversy. So I

don't think we should go any further because otherwise we're going to get conflicting legal advice on the model and I mean no consensus can be built on conflicting legal advice at this very early stage. So it's too uncertain to proceed and I would suggest we ask that this is not an option that we're going to proceed on because of that.

The second item is Robin's suggestion about preapproval rights. I think this would be a change in the requirement of our initial proposal. So before any certification of that in terms of legal research, I think we need to get back to the requirements and the power discussion in Work Party 1 because I remember a number of objections to preapproval rights for budget and strategy plans, which were related to potential budget paralysis and duration of the process to have the budget approved, which were the concerns voiced by many, especially in the meeting at Istanbul.

So for the preapproval rights discussion I would turn back to Work Party 1 and really encourage everyone to focus on what was the feedback we got in the public comment on that matter. And I think that would be the action items that I would suggest that we take from this call, which was extremely useful in my opinion to get a broader view but also a different understanding of the various implications and a good way to set the stage for product committee in Paris.

And so I would - with that, León, I don't - I see many hands raised but I think many of them are old hands. So I'm a bit confused about whether these are reactions to these conclusions or anything.

León Sanchez: I believe, Mathieu, if I may jump in, I believe that some hands are old hands. And I see - I assume that hand is an old hand, Robin, of the old hand, and Kavouss' hand is also an old hand.

Mathieu Weill: To answer - I can answer Kavouss' question in the chat. Yes, out of the meeting in Paris we must have a reference model. If we don't then I mean our timeline is just broken. So that is going to be one of the key efforts in Paris.

Chris Disspain: Mathieu, Mathieu, its Chris. Could you answer my question? I just want to be clear. I heard you say that there is some - there's a legal dispute on a particular thing, we need to take that off the table. What thing was that?

Mathieu Weill: That was the delegate option.

Chris Disspain: Okay thank you. That's fine. Understood, thank you.

Mathieu Weill: And regarding Robin's question, as I said, I think the question about preapproval of budget and strategy plan is currently - is more a requirement question and a change in the requirement as we define them and we got public comment on, and I think there needs to be a requirement discussion if it's necessary, but it's too early to get legal research done on this until we have confirmed whether our requirement is preapproval right or veto right.

And so far we've always advocated and pushed forward requirements that were veto rights on the budget and strategy plan, so a significant change like this I think should not go straight to the lawyers but rather be discussed at the requirement level.

Chris Disspain: Mathieu, it's Chris again. I'm sorry to interrupt you but can I ask that we check with Holly Gregory: and (Rosemary) that they are clear that they have what they believe to be clear instructions about what to do between now and Paris? I think it's important that they understand what it is they want us - we want them to do.

Mathieu Weill: Rosemary, Holly Gregory:?

Holly Gregory:: Yes so what I understand is that you'd like us to work on the strengths and weaknesses of the three models, including the single-member model that we talked of today and do a further presentation on how that one might work as well. I wonder - and that's my big takeaway, those two aspects of the work to do.

I wonder if you also want us to try to come up with a set of questions that we might ask you all to think about to help think about what direction you might be going?

Chris Disspain: Yes.

Holly Gregory:: So we could, you know, sort of guide the discussion to almost like a decision tree. If you decide it's this, then this, then this. Because it helps us get to a more focused reference model.

Chris Disspain: I think that's an excellent idea.

Mathieu Weill: Okay.

Holly Gregory:: But that's what I heard. I heard the preapproval rights, we need to wait until the group comes to some consensus about it, whether it's something they would rather have. And also on the delegate issue, that's on hold unless you tell us that you want more.

And if I may say, I don't think Rosemary was saying so much it can't be done, I think she was saying that from what we understood early on, it was a model

that you folks weren't that interested in because it didn't involve some of the key issues that you were concerned about, one being how does an SO or AC control delegates. But in any event, just throw that out there.

Tijani Ben Jemaa: And if I may ask that all this could be sent prior to Paris meeting that we can read it before the meeting.

Mathieu Weill: Yes, Tijani, I think we should apply the frozen deadline for end of July to that input.

Tijani Ben Jemaa: Excellent.

Mathieu Weill: And we might - we will confer with the independent counsel whether there is a need for a sort of interim update between chairs and lawyers to answer any clarifying questions they may have, but we'll work towards trying to provide this in advance of the meeting. Now that we have some clarity about this model, I think that would be easier.

Okay? I think with that it was a very dense call, a lot of food for thought, and certainly many things that I'm sure we'll get back to the list and discuss. And I'd like to thank everyone for their questions, our independent counsel, (Rosemary), Holly Gregory:, but also the whole team behind them, for working expeditiously in providing us such a clear presentation. And I look forward to talking to all of you very soon. Thanks everyone.

Man: Thanks everybody. Goodbye.

León Sanchez: Thank you everyone.

END