

ICANN

**Moderator: Brenda Brewer
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2:00 pm CT**

Jordan Carter: My name is Jordan Carter, rapporteur. It's the 10th of July at 1900 UTC in the year 2015 in the Julian calendar. We've got a pretty simple and straightforward agenda today. I'd like to say, as I said last time, thank you to all the people who have been doing work on these papers. And we - I think we all acknowledge and respect the fact we're working under rather intense time pressure. And so the fact that we're having anything to discuss on these calls as short notice is quite wonderful.

I'll just add one item to the agenda - in the review of the agenda and - which is the - a quick review of what we're going to talk about on Monday's call as well. So that'll be an Item 5.

And for the roll call I think we've always, in these calls, used the attendance in the Adobe room plus anyone who's made a note if we've been keeping a list. Does anyone else have anything else they need to add to the agenda today? We'll do an any other business item right at the end as well so that's a small thing don't worry about adding it now, we'll be able to deal with it later.

And I don't see any immediate hands up so let's crack right on into the second item which is the community powers paper on the budget and the strategic plan which my understanding is that Jonathan Zuck has drafted so I don't know if, Robin, you've had a chance to engage or look at that because it's 7:00 am on Saturday. I haven't read my email so I'm no up to date.

But, Jonathan, I'd like to invite you to take the floor and to take us through the changes that you have made on this first draft of version 2 of the budget powers.

Jonathan Zuck: Sure, thanks. This is Jonathan Zuck for the transcript. So I did go ahead and try and make changes but it's just a strawman because I was clearly making some decisions about things that we did not reach any consensus on or anything that I could see as I dug back through our transcripts.

But if you recall the lion's share of the concerns that were raised - well first I should say the lion's share of the comments were supportive of this community power so I mean, we were on the right track and most people think that it would add to accountability. There was literally only one detractor and so mostly it was an expression of concerns associated with the exercise of this power and sort of practical implications of an intransigent board and an inflexible community that might lead to a kind of deadlock.

So probably the two things that I would say are the most frequent comments one is there was a lot of folks that made an effort to say let's get the - improve the creation process so that this power isn't necessary. So, I mean, that was probably one of the most prevalent statements in the comment. Let's get improved interaction between the board, the staff and the community as the budget and strategic plan are developed so that this power is not even used.

So I was trying to find a way to kind of base that sentiment into the document without going too far into, you know, narrative pros about it because a lot of that discussion is something that we already mentioned would be shifted to Work Stream 2. So what I wanted to do was emphasize its importance and then remind the reader that it's serious and that the work group took it seriously and that it's a part of the plan for Work Stream 2.

And then the second issue that was most prevalent was just about deadlock and how to break deadlock and what that kind of complexity that would create. And the most recent comments about that is actually Sherine's comments that was circulated recently with excellent responses I think from Jordan and Mathieu. So that was sort of the basis on which I was trying to create these edits.

And the proposed responses, if you recall, that we agreed to was to look at the planning process to improve the quality engagements in Work Stream 2. There was the notion of the CCWG considering to limit the number of times a planner or budget can be rejected. A couple of folks brought up the idea of sort of capping this process somehow. And I tried to embody that as well.

And then the caretaker approach, again, came up which I think is probably better dealt with in Keith's draft. So that's sort of the background, if you will. So then looking at the document itself you can see the changes. I don't know what the best way is to proceed, whether it's to read them aloud or let people read them.

But one of the things that I tried to suggest in the first paragraph here is that it's important to deal with this before the beginning of the implementation of the new strategic plan or budget. So I was trying to get at the notion that this was important to do because the processes that currently exist to kind of

unwind a strategic plan or a budget after the fact won't necessarily get the job done given financial commitments that might have been made, etcetera. So that was what that first line was about, financial commitments are made on behalf of the organization that are difficult to unwind after the fact.

I then, in the second paragraph, said that often these budgets and strategic plans are put to the community without sufficient detail to fill - to facilitate thoughtful consideration and so there's a number of instances where, you know, it's a sort of a general heading and it's not enough information to actually know how outreach spending or internationalization or something like that will be spent so a greater specificity.

And something specific about that that we already had mentioned I brought up toward the front was in the CWG Stewardship proposal that there needed to be much more transparency and clear itemization of the costs associated with the IANA function. So I brought that up, that's actually a statement from the previous draft from below. And then continue with the line as it was.

So then where I start trying to address some of the concerns is here in new Paragraph 3, the numbering changed here somehow, so - and so what I was trying to do was emphasize and agree with the majority of the comments that the process by which budgets and strategic plans are developed must be enhanced to include greater transparency and community involvement earlier such that the community buy-in is a byproduct of the process.

Improved interaction between the staff, board and communities potential for strategic planning within a multistakeholder organization, a considerable effort to improve these processes is embedded in Work Stream 2 plan. Successful reform in this area will render this new power nearly anachronistic as the community will have been an integral part of budget and strategic plan

developments. Barring such community involvement the power of the community to send a budget or strategic plan back to the board for reconsideration is essential.

So that was my attempt to kind of deal with a fairly high frequency comment which was let's fix the process before it gets to this point and - but we won't be getting around to that yet and so given that we need the ability to send the budget back.

Then there's the description of the power and then I said that there would be community consultations as there are now that could form the basis of a rejection. And then I also - and this might be a little bit redundant, I think we end up saying this several times, but it's important to note that this recommended power does not enable the community to make direct changes to the budget but rather to halt its implementation and return the budget to the board for further refinement.

And then the rest is the same. Then further down here in what's numbered Paragraph 5 I said it's been suggested in the initial public comments that perhaps the community should be limited to two rejections of these plans per cycle before resorting to other accountability mechanisms in order to avoid paralysis.

I suspect this will be a topic of our conversation today. I chose to interpret these comments to mean that that limits on the number of rejections would actually be a requirement to escalate and not a requirement to acquiesce on the part of the community. I don't know if that's how they were intended but that's how I chose to interpret them. So that's embedded in that language.

The requirement is designed to prevent an endless cycle of new revisions that could theoretically lead to unnecessary delay. So that's in this next paragraph is about dealing with this issue of constantly bringing up new points. Again this was already addressed in the initial draft but I tried to bring home the importance of this in preventing the deadlock that was again one of the more frequent concerns raised in the public comments. So the idea that you have to get it all - all of your issues out there at first is one more mechanism that we've embedded to try and prevent deadlock.

Then it's expected that the reforms of plan development process contemplated in Work Stream 2 would render the use of this power highly unlikely but should inefficiencies to this implementation surface, the details could be subject to review - by several review of the ICANN accountability and transparency, the ATRT review that would come on schedule would - could review this if it turns out that it really was leading to a bogged down process since the actual implementation power needed to be revisited. Again, it kind of goes without saying but I was trying to address that concern.

And so then finally the last thing that I did was actually add another question in open - questions and open issues, do you believe there should be a cap on rejections of a particular plan by the community for requiring escalation to other accountability mechanisms to prevent paralysis?

So that's kind of how I dealt with the fact that we hadn't reached some consensus on that notion of cap so I thought we'd toss it back out to the public. So that's basically what I did. I don't know the best way to lead the discussion but I'm happy to take questions or discussion about this.

Jordan Carter: Yeah, I think as the drafter, Jonathan, you should manage a queue and a general discussion. And I think we start off for the general is get the (fines) down. So that's...

((Crosstalk))

Jordan Carter: ...say now and leave it to you to manage the queue.

Jonathan Zuck: All right. Then I queue up Steve DelBianco.

Steve DelBianco: Hey, Jonathan. Thank you for the good work on this. The Business Constituency, which is where I represent, was one of the ones who raised the question of running an organization on month after month after month of a continuing resolution like last year's budget. And a number of the BC members are US citizens and they kept pointing out the continuing resolution being the method that's used in the United States.

So we characterized it as a pejorative term, continuing resolution, because as you said in the text, it's operating without an authorized budget. But it isn't really paralysis in the sense that it's still funding its operations, it's just funding it at last year's levels without any authorization for this year.

And I wonder whether as we tee this up for the CCWG and the next round of public comment if we can be as clear as we can that paralysis isn't really the downside here, the downside is an organization that runs on last year's budget. That's my first point.

And my second and only other point is that the back and forth between the community and the board really becomes under the control of the board. Let me give you an example. If the board proposed a budget, the community with

a 75% vote said no. Well then the board is at its discretion to make a few changes and come back with a new budget. Nowhere in our procedure do we force the board to act in some period of time.

And in fact if the board was happy with last year's operating budget they might not respond to us and instead just run under the continuing resolution of the prior budget. Is that okay? I don't expect you to have all the answers but if that's okay we could end up with a rejection followed by well nothing.

There's no way for our mechanism to force the board to hurry up and come back with a revised proposal. Thank you. And good work.

Jonathan Zuck: So thanks, Steve. And I guess I'll just quickly address that. I take your point that maybe we should try to de-energize some of the vocabulary that's used in the comments by not - by shifting the notion away from paralysis to continuing resolution or something like that.

I guess my concern is that I think - I could certainly foresee instances which the community would not be happy with last year's budget. I mean, I would say that that was maybe true this year. And so the - giving the board the ability to simply just relax and operate on last year's budget may not be, you know, what the community would be interested in. But I'm - obviously that's open for discussion. But that's my first reaction.

Steve DelBianco: Yeah, and Jonathan, I wasn't loving that either but I wanted to point out to you that unless we write something that forces them to come back with a new proposal we had handed them the ability to just sit on last year's budget.

Jonathan Zuck: Right. That's probably true. Alan, go ahead.

Alan Greenberg: Thank you. Two points. On that last issue working on last year's budget is not problematic because they were trying to raise the budget and we don't agree. If, on the other hand, they were happy with the status quo and we were trying to lower the budget because we believe that income is lower and it's prudent to lower the expense budget then sitting on last year's budget gives them free reign. So it is something to consider, you know, how important it is a different issue.

Jonathan Zuck: Well it may not just be lowering or raising, it maybe actually be reallocation that...

((Crosstalk))

Alan Greenberg: No, no I understand. I'm simply saying that, you know, if our intent is to try to lower any particular thing then last year's budget - running on last year's budget does not achieve that. You know, just an awareness issue.

I read somewhere in the last 12 hours, and since my last teleconference ended 12 hours ago I'm a little bit confused as to where I read it. There was some wording somewhere that talked about being able to refuse a budget after it was passed but before it comes into effect. Is that in your document or is it somewhere else I read that?

Jonathan Zuck: Yes sir it is. It's in my document.

Alan Greenberg: Okay. I'll point out that we've had at least one case in the last few years where the budget was not approved until sometime in July. That is, there is no period of time after which it's approved before it comes into effect. And just asking, is that something we have to be concerned about because clearly a board could effectively delayed approving the budget until it's already in effect. So...

Jonathan Zuck: That's a good point.

((Crosstalk))

Alan Greenberg: ...raising the issue.

Steve DelBianco: Did we lose Jonathan?

Jonathan Zuck: No, I'm here.

((Crosstalk))

Jonathan Zuck: Can you still hear me?

Alan Greenberg: Yeah, I can.

Jonathan Zuck: Okay. So that's a good point about that period maybe not existing. I'm not sure how to handle that so I'm switching back and forth between the screen with the queue and it and taking notes on this so maybe it'll be better for me to go back and look at the transcript for this than to take notes and manage the queue at the same time. Greg Shatan, go ahead.

((Crosstalk))

Alan Greenberg: Jonathan, just one more thing. Although I know people don't like the trust-me model we may not be able to make everything 100% bulletproof.

Jonathan Zuck: Yeah, I agree.

Alan Greenberg: I'm done.

Jonathan Zuck: Greg, go ahead.

Greg Shatan: Thanks, Jonathan. Greg Shatan for the record. I think one thing that I like and what I see here but clarifies some of the concerns that have come up repeatedly on the paralysis point is that the budget does not need our approval; we have the power to reject it. And it's kind of an extraordinary power that requires a super majority action on the part of the community, however the community is embodied for that purpose.

So I would encourage us to stay with that and not to move to an approval process where the budget would have to actually go through a positive step of community review and approval every year in order for it to be enacted. I think that would be a mistake in practice. It might sound good in concept but I think that this strikes the right balance and allays the right concerns and gives us the power to hopefully to move things.

I think we do need to consider the idea of kind of pocket vetoing the veto by just going off of last year's budget. And we may need to have some kind of cure for that so that they can go off the same budget year after year as we, you know, frantically veto them. But I suppose at that point we turn to other and sterner methods, you know, such as spilling the board or taking away their milk and cookies. Thank you.

Jonathan Zuck: Thanks, Greg. So certainly this plan does not suggest in any way that we would create an approval system for the budget because I think there is consensus that that would start to be onerous and really undermined the role of the board right. But the -- there was a great number of comments that said that we need to improve the communication between the board and the rest of

the community and staff as these things are being developed so that the budget or the strategic plan aren't a surprise that would require a power like this to be used, right. That came up often in the public comments.

And so I encourage you to look at this and make sure that I've captured the spirit that you're after correctly. But the idea is simply that let's improve in whatever the best way is because we're talking about Work Stream 2, let's improve the processes by which these things are created, how the consultations are managed because there are consultations today and incorporated especially if this power -- the need for this power would be substantially alleviated, right?

So I mean, that's really the goal of the text I put in there is to suggest that we take that notion that let's improve the process in the front-end seriously and that if a part of Work Stream 2 for the time being we really need to have this power in order to, you know, create accountability for the board.

So do look and make sure that the text I've got there captures the spirit of the draft but that is the fine line that I was trying to walk. Jordan, go ahead.

Jordan Carter: Thanks, Jonathan. I worked in a membership organization, and the CEO of it. If our Council proposes a budget in theory the members are meant to approve it before it takes effect. Their annual meeting is three months after the start of the financial year. There's never been a situation where the Council has passed a budget that the members are going to reject because they very well know that the disruption that would flow from that would be intolerable and difficult for the organization.

So, like with all of these powers this is a matter of incentives. By the board knowing that there's a backstop for this community to be able to send a budget

back for reconsideration the incentives on them to listen to community input and to make sure it's taken into account the first time are considerably raised because the stakes are raised if they don't.

So like all of these powers I think we're discussing, the point is shifting the incentives and the messages and the reallocation of authority into the Internet community rather than leaving it sort of standard in the board. And it would have an entirely beneficial effect.

I just wanted to add a couple of points. This power is meant to be at the budget and the strategic and operating plans. And I think our drafting needs to broaden out the way it's talked about a little bit because in my mind, and the kind of job I do, it's the strategic direction that is actually the most important. And I don't think anyone could tell you that having an unlimited number of returns of a strategic plan would pose a problem for ICANN.

And so if we have a discussion in Paris that really leads to concerns around the budget one possible thing that we could explore is limiting the number of returns of the budget but not of any other aspect of this because the operating plan and the strategic plan are less time sensitive documents by definition. So I just wanted to raise that on the table.

The other point I wanted to make from a drafting point of view is that I do not think we should be asking the same questions of the community in our public comment 2 report that we did in our public comment 1 report. I think that that would be confusing and somewhat disabling for it as a community. I'm hoping that we can come up with a list of key questions that are on point and they really help people focus on the critical decisions.

So that's just a drafting thing to take into account later. And I wanted to add my support to the fact that we need to have a part of this process that requires the board to respond with an updated budget proposal in a timely way. And finally, Jonathan, thank you for doing the drafting here.

Jonathan Zuck: Not at all. So I'm happy to come up with new questions. I wasn't sure whether or not we wanted to preserve the existing ones. So I just added one new question but there are certainly others that could be useful.

And next in the queue is Robin.

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

Jonathan Zuck: Sure can.

Robin Gross: Okay great. So I think we could build this out even more particularly in the bylaws where we talk about that consultive process that they community and the board should (unintelligible) I know we've talked about doing that in Work Stream 2.

But I think it's worth putting in Work Stream 1 just because it's so important to this process, the budget and strategic plan approval process, that I think that it's not an enormous amount of work but it's really important to actually get that nailed down and get it into the bylaws because it fits in the bylaws if it isn't actually followed properly we've got a bylaws violation and some enforceability mechanisms that way that we can rely upon to try and ensure that that both the board and the community would be on the same page.

So I think just trying to include some processes in the bylaws that even -- particularly when it comes to the empowered designator model because you

can get enforceability with a free approval process much more easily than you can with the rejection process. And I know there are some for whom the concern of enforceability is paramount. So I think we need to explore that trying to get the most enforceability possible out of that model.

So I think that having more meat on the bones and looking at different options for achieving the same goal would give the community even more to think about and to ultimately decide what's the right approach for us to take.

Thanks.

Jonathan Zuck: Let me say back to you what I think I heard so that we can discuss that, Robin. Are you suggesting that what we currently specified will be in the Work Stream 2 which is enhanced processes for interaction between the board, staff and the community and the creation of these documents should be moved out of Work Stream 2 and into Work Stream 1. I guess that's the first question. Because right now there is this -- there is some consultation that happens, it's just not binding, right?

And so I think the current document suggests that the current consultation will at least act as a way for the community to express their concerns that might form the basis of a rejection. But it's not -- there wasn't anything in the current plan or in our current plan for Work Stream 1 to really reform the development process of the budget or the strategic plan. So that's I guess my first question.

And then did you also say you were in fact a fan of an actual preapproval which Greg had expressed some concern with but Jordan seems to be more sanguine about. So are those two statements accurate from - summaries of what you just said?

Robin Gross: Well I wouldn't say that I'm in favor of a preapproval but I think that it should be explored when it comes to the empowered designator model because that gets us more enforceability. So I think that - I think that it should be something that we look at particularly because people had said enforceability is such a concern so just getting the community and the board on the same page in an enforceable way we might, it sounds like, have more teeth if we do it as a preapproval with respect to the empowered designator model.

I don't know that you have to do it that way. The membership sounds like you don't at all. But just in terms of exploring all of our options like what Larry Strickling said we were supposed to do, if we can have different ways of getting to the same place...

Jonathan Zuck: Yeah.

Robin Gross: I think we should put them out there and see what people like better.

Jonathan Zuck: Yeah, I mean, I feel like it's a real effort to design a process - a community engagement process for developing the budget and strategic plan that we won't get done in anything but bulleted form. So maybe it's a question of constructing some interesting questions about that. But I think I'm with Jordan, it would be very difficult to move into Work Stream 1 but let's keep going. Steve DelBianco.

Steve DelBianco: Jonathan, on Page 2 of the document, this returns to the point we discussed earlier upon the back and forth between the board and the community on the budget. There is a line in there about it's been suggested in the public comments that perhaps the community could be limited to two rejections.

That came from the BC. And even in the BC we were not even clear what it means when you hit the limit of two. Does it mean that after two the board just gets the budget it wants because the community is out of objections? Or does it mean that the board better just settle in and act as if they're going to have run on last year's budget for the next eight months?

So I don't want to imply that that BC question in any way suggests that it solves the problem because it doesn't solve the problem. And without some more explicit discussions of what it would mean to run out of rejection we would create the impression that we have this current solution in our document and people would think that we've got it solved but we don't. You limit the number of rejections the implication is, what, the board gets its budget or runs on last year's. Thank you.

Jonathan Zuck: So, Steve, thanks for the comment. I mean, this is what I raised at the beginning. I took a much more aggressive interpretation of it and it wasn't just the BC that made that suggestion. How I chose to interpret it was neither of those that you just described but that in fact it would be incumbent on the community at that point to escalate to its other accountability measures after two rounds. In other words...

Steve DelBianco: During the escalation are they running on last year's budget, Jonathan?

Jonathan Zuck: During the escalation they're running on last year's budget? Yes. But in other words it would trigger a discussion about changes in the board is what I was trying to imply.

Steve DelBianco: I would - I agree with that so go ahead and put in the text that after two rejections last year's budget would be the rule while other accountability measures are pursued. How about that?

Jonathan Zuck: Right. I can clarify that. I thought that that was sort of a given from the other things in the document but. So, I mean, I don't know if everyone agrees with that either. I'm happy to hear you do but I had - I anticipated it might be controversial the suggestion that after two rejections the next discussion would be about removing board members. And that that's how I chose to interpret the notion of (unintelligible). How do other people feel about treating the suggestion that way? Or, I mean, I guess - I don't know whether or not an IRP would come into play or if it would be something more severe at that point.

Highlight the text for debate in Paris. Yeah, I'm happy to do that. I'll try to reduce this to a few questions then that we need to discuss, does that make sense, Jordan?

Jordan Carter: Yeah. We haven't talked systematically about how to represent our work to the Paris meeting. But I think it would be helpful if maybe at the top of these documents if we're doing one for each power because they're nice and short to read, right? It might be helpful if at the top or at the bottom there's like a just a little box grayed out that says these are the key questions to discuss or the key things we've changed.

Jonathan Zuck: Yeah.

Jordan Carter: Just to help draw people's eye. And they'll see the check changes as well but to prevent any kind of slipping things through or anything. But that'd be helpful I think.

Jonathan Zuck: When we were - release white papers to the media we often do a discussion point and things like that so same thing. Matthew, go ahead.

Matthew Shears: Yeah, thanks. Thanks, Jonathan. Matthew Shears for the record. Just on that last point on what's the incentive for getting the board to talk and to negotiate with the community on the budget, my only concern about the notion of incentivizing them to do so by decreasing the budget is that one of the issues (unintelligible) in this discussion is the issue of going backwards and forwards on the budget could bring instability and uncertainty to operations within ICANN.

I think if one starts to say, well, you better come to the table, otherwise we're going to start decreasing the budget then I think that might be yet another argument against the power as a whole. So just one comment on that.

But my second - my other point is that in the third paragraph, which is the new one that you've put in there, the last line there talks about barring community involvement and the power of the community to send a budget or strategic plan back to the board for reconsideration is essential.

But the bulk of the text in there talks about Work Stream 2 in a way that it does not characterize or suggest what Work Stream 2 successful reform in Work Stream 2 would actually mean or equate to. It worries me a bit - that phrasing just worries me a little bit. I think it would perhaps be better to say that the powers that we're asking for now as a part of Work Stream 1 would stay in place and until the community is satisfied that the work in Work Stream 2 to ensure further interaction by the community in the strategic plan and budget development is in place and adequately accounts for the powers in Work Stream 1 or something to that effect.

Jonathan Zuck: Well and I'll look to clarify that. I mean, what I tried to say is that it - I have to find where I said it but I said that it would be much less likely to be used at

that point that - because, I mean, again the comments we're saying well rather than do this improve the process on the way in, right? And so I guess I was trying to get the point of we're doing this and making a plan to improve the process on the way in which will render this much less likely to be used. So that's - I didn't mean to imply it would go away, I was just trying to create a transition away from that narrative about Work Stream 2 back to the need to do this in Work Stream 1.

Matthew Shears: Okay, I'm happy to make suggestions if that will be useful.

Jonathan Zuck: Sure. Did I encapsulate your concern though? Is that what your concern is that the - I'm implying that we'd get rid of this once those reforms took place?

Matthew Shears: Yes, and there's no real measure of what success would be in Work Stream 2. And the fact that, you know, I have concerns about when work in Work Stream 2 does actually get underway for how long it would actually take and what it will result in. So I think that's why reinforcing the importance of Work Stream 1 work going forward until it's considered to be adequately accounted for in the Work Stream 2 process I think is key. So that was...

Jonathan Zuck: Yeah.

((Crosstalk))

Jonathan Zuck: And I wasn't even trying to imply that. I wasn't implying that it would ever go away simply that its utility would be, you know, that its importance would be diminished after that but that we would leave it in place. But I'll try to go through that again and see what points of parity.

I have Jordan Carter again.

Jordan Carter: I just - you said something before, Jonathan, where you said that I seemed lax about preapproval of the budget. I just wanted to clarify that I don't feel relaxed about that at all. I think that...

Jonathan Zuck: Okay.

Jordan Carter: ...we've set these community powers up in a way that they leave the fiduciary responsibilities and the actual responsibilities to things like proposed budgets and so on in the hands of the board. And I think we have adoption of minimal change here and that's part of why I don't think that a kind of preapproval thing is a good idea subjects - the qualifier I'd add to that is whether - if we end up with a designator model then we'd need to look at how those interact.

The other point I'd just, you know, the point about the drafting of the text I think we are going to have to do quite a bit of drafting consistency between now and when we publish the report so there may be changes in the words there but we certainly shouldn't be trying to change the comments at some point.

The last point I'd just like to make is that we have 20 days until we have to finalize our Public Comment 2 report. I would like us to have been in a position to improve the processes around budget and strategic planning but I'm firmly convinced that nothing we could do between now and then would be anything other than token. And so I really think that we - going beyond our mandate for what's required in Work Stream 1 if we were to try and incorporate that work. So I have to sadly disagree with Robin on that point.

Jonathan Zuck: I think I agree with you. Thanks, Jordan. Avri.

Avri Doria: Yeah, this is Avri speaking. And I want to argue, actually, in favor of - and very much in keeping with Jordan (unintelligible) what is the minimal change we can meet on what was proposed that answers a comment we got. So the comment we got from the Business Constituency and others is but what does this achieve if they can just reject it twice and then live with next year's budget.

So that's why I'm proposing and I'm trying to do it formally now as opposed to just on the list, the notion that the budget does (unintelligible). Now that is a disincentive and it is one that can be automatic. I don't believe it's confusing as I think Mathew was indicating to - going forward for the staff because they know - they know that if that budget doesn't get through then there's going to be a decrement and they start figuring out how to live with that decrement.

I don't know why Steve thinks it's a bad idea. But it's obviously not something we want to happen but it is something that keeps the group from being sort of complacent of hey, you know, last year's budget is fine, let's not deal with this nonsense and just, you know, go forward with the budget as we planned.

So I would really like to ask people to give a deeper consideration to that kind of automatic disincentive. But, yes, no one likes it and that therefore makes us more likely to be able to come to some sort of accommodation between those that are rejecting the budget and those that are proposing the budget. So I just wanted to put in an argument for it. Thank you.

Jonathan Zuck: Thanks, Avri. Steve.

Steve DelBianco: Yeah, 10% per year has the elegance that's appealing to an engineer like Avri and I because it's a single step, it's unlikely to be enough and it's more likely to be too much from time to time. I'll just give you two examples.

If you read the Ion article - Ion magazine article that was in our bags in Buenos Aires, it's probably the best thing in that bag I have to say, there was an analysis of the ICANN budget and how it has ramped up its spending for the new gTLD program and that if you look at the current run rate of revenues they are way more than 10% higher than the anticipated revenues next year.

There's going to be a significant expenditure cut at ICANN because the revenue is not there to support it. So I'd really - the 10% is completely arbitrary and it might well be way too low a number to incentivize ICANN to make the cuts they need to make. They might just as well say fine, we'll live with the 10% cut and get the money we need from raiding our reserve funds. That doesn't serve any of our purposes.

And to fast forward into the future, we may need an ICANN that ramps up its compliance spending in a big way. And the fact that they won't do so and the budget keeps getting rejected by the community well then suddenly they cut 10% more and a big chunk of it comes out of compliance so instead of getting our way because they - we wanted them to spend more they get to say, forget it, I'll spend less.

So I know these are just two scenarios out of many. And you can probably manufacture scenarios where the 10% incentive would have just the right effect. But it feels like it'll always be either too much or too little, it'll hardly ever be just right. And I think we're better off with Zuck's idea that after two rejections let's stop playing this game of ping pong and move to other escalation measures of community powers. Thank you.

Jonathan Zuck: Thanks, Steve.

Jordan Carter: It looks like we've done talked ourselves out, Jonathan.

Jonathan Zuck: Anybody else have any more comments on that subject but I will - I'll highlight that particular point as one of the discussion topics for Paris.

Jordan Carter: Thank you for that work and thank you for that conversation, that was a good discussion, people. And hopefully we can pick up some of the debates with the larger group in Paris, and something more broad than the fab 14 we've got today.

Okay the next agenda item is - has gone right out of my head, it's Keith Drazek's paper on the removal of individual board members if I'm not mistaken...

((Crosstalk))

Jordan Carter: ...recalling the whole board. Keith, are you here?

Keith Drazek: I am. Can you hear me?

Jordan Carter: I can hear you, yeah.

((Crosstalk))

Jordan Carter: Go ahead, same pattern, introduce us to the paper that you've got and then we'll discuss.

Keith Drazek: Great. Thank you, Jordan. And, hi, everybody, this is Keith Drazek for the transcript and the chat. So I tackled the community power 5.6 which is the recall of the entire board. The discussion document that's on the screen that I circulated to the list a few hours ago is really just that, it's a discussion document. It's not at all intended to reflect something that is ready for prime time with anybody other than this group and ultimately the rest of the CCWG in Paris.

To facilitate the discussion I pulled in the summary from our public comment review so the blue text that you see in front of you right now on the screen is the summary text from our public comment review. Then I added a couple of things, one is the red - the last bullet in red there where it refers to the CWG dependencies.

So I just want to run through this real quick just to refresh everybody's memory as to where we are and then we'll get into the details of the actual text.

So the public comment questions were: Do you agree that the power for the community to recall the entire board would enhance ICANN's accountability? Do you agree that the list of requirements for this recommendation? And if not please detail how you would recommend amending these requirements?

The public comment summary on recalling the entire board included responses 391-419 in our table. There were a total of 28 comments in the section, 25 comments suggested agreements. That's almost 90%. Three were divergent and six noted concerns. There was no confusion noted and there was broad agreement that this power would in fact enhance ICANN's accountability.

That said, the areas of concern that were raised I think were very legitimate. And the key main issues or concerns would be - there was this question about the threshold; we had suggested 75% or 80% as possibilities. The majority of the responses were supportive of the 75% number as being appropriate with 80% receiving a couple of indications of support but it was definitely a minority view.

And finally another main issue or concern that was raised - and this was sort of a concern - was unintended consequences of risk and instability. And I think this is something that we need to take very seriously.

So the specific concerns that were raised in the public comments were basically a point that spilling the board should be in fact a last resort after all else had failed. And I think that's clearly the intention of this community power.

The need to clarify the circumstances that would lead to a board spill. Several comments really highlighted the fact that because this is such a significant step that the circumstances that would trigger or lead to the spilling of the board need to be better defined, that it shouldn't simply be left completely open.

And that we need to clarify the details of continuity measures so in other words, you know, this gets to the point of, you know, what happens after the decision is made? Is there a caretaker board? How do you appoint the members of the caretaker board? Is it something more like, you know, a vote of no confidence and then a subsequent call for early elections? You know, I think there's a range of views on exactly the process or the procedure that would be followed.

And to be fair, we were not specific enough in the first round of - in our first proposal. And that is something that will require quite a bit more work. And then finally I added the bullet point of a concern because it was in fact raised by the CWG transition in the public comment response is, you know, does the CCWG proposal meet the dependencies in the CWG proposal?

And in the public comments the CWG comment suggested that it appeared to, in other words that what we had proposed in the first draft would meet the CWG dependencies but this is an ongoing item that we need to track.

So let me pause there and see if there's any questions or comments just on my summary or the introduction and then I'll get into the more detailed references and the actual language of the proposal. So any comments or questions at this point?

Okay seeing none then let's move on.

Alan Greenberg: It's Alan. I've got one quick comment.

Keith Drazek: Sure, Alan. Go ahead.

Alan Greenberg: Yeah, just as you're going through the next part to highlight there were a number of comments, certainly verbal ones, and I'm not quite sure to what extent that they were in the public comments, that would it be easy and a quick process to name a new board. And if you look at the processes that we have in place, the only ones we have in place by both the NomComm and the AC SOs, it could take close to a year.

And I think as we go through and propose a caretaker board we need to make sure that the organization can keep functioning for a relatively extended

period of time where there may be new crises and things going forward that we have to cover. So thank you.

Keith Drazek: Yeah, no thank you very much, Alan. And I completely agree with you 100%. And that is an item that I was going to refer to as we move on.

Alan Greenberg: Okay. Thank you.

Keith Drazek: But thank you again for raising that because I think that is absolutely one of the issues that was raised in terms of the continuity measures. And let's get into the detail and we can talk about it, you know, in more specifics. So the first paragraph - first sentence there under 5.6, power recalling the ICANN board, and I'll refer to it by the numerical indicators that we use.

Paragraph 240 says, "There may be situations where removing individual ICANN directors is not seen as a sufficient remedy for the community where a set of problems have become so entrenched that the community wishes to recall the entire ICANN board in one decision."

So a number of the comments raised questions related to the first part of that sentence where it says, "There may be situations." And several of the comments indicated a need to be further specific or to clarify what those situations may be.

So there maybe some who feel that we should just leave it, you know, completely open but there are clearly others who feel like we need to be a little bit more specific or clear as to when we think this type of a mechanism might be used. So I'm just flagging that as something that we as a group are going to need to focus on. I don't think we can necessarily decide that today.

We can certainly discuss it if people want to. But that's one area where we're going to need to apply some additional focus.

So I'm going to pause for comments and questions as we go through this rather than waiting until the end. So if anybody would like to weigh in on any of these points as we go please raise your hand. Jordan and then Steve.

Jordan Carter: Yeah, I think one of the reasons we left that (silent) was because of - in the reference model - in the Public Comment 1 report because there was a membership contemplation in that the members don't have any restraints on the reasons that they can appoint directors. And neither do (unintelligible) designators. So it was about being consistent with that.

That doesn't mean we can't put in the bylaws some cir if we like it just means those criteria wouldn't necessarily be enforceable in either model. But I'm relaxed on that because in part it would be a statement of intent. So if we were to end up saying that this power would be used where the board collectively is governing the organization in a way that was inconsistent with the bylaws or incompatible with the community's wishes or whatever I'm not too (fuss). But in reality - in hard edged reality I don't think it makes any blind bit of difference whatsoever so that's why I'm relaxed.

Keith Drazek: Okay. Thanks, Jordan. And I think that makes sense. I guess my response to that is that maybe a pointer here to ensure that we're sinking this with whatever the model becomes, right, whatever the model ends up being is that we'll need to make sure that this point about the criteria or the specific situations would need to be consistent with what's permitted under that particular model.

Okay Steve and then Alan.

Steve DelBianco: Steve DelBianco. Keith, I'm not as relaxed as Jordan on this one because I believe that our May 3 proposal deliberately did not specify specific criteria that had to be met or principles that had to be met, a standard that had to be met for a board recall.

I actually recall discussions we had where we said you cannot anticipate every possible reason and you should not constrain the shareholders from dumping the ownership of the management any more than my members could dump me for any reason at all. Remember the red hair - red herring that we came up with at some point.

So I don't think it was driven by the reference model of membership or designator; I thought it was driven out of a genuine desire to do it that way. And therefore when the public comments get analyzed, and Keith makes the little purpose note on Number 11, honestly if there were several commenters who thought we ought to have criteria you can't measure that against the commenters who supported having no criteria because anyone who said they supported the proposal to spill the board without getting into specifics is literally supporting the idea that it's an unconstrained spill the board proposal.

So I don't think you can count the number who thought we ought to have criteria and balance against some other explicit number. And I don't think we should say that it's unconstrained because of the membership reference model. There was more thinking that went into it than that. Thank you.

Keith Drazek: Thanks, Steve. And I think that's, you know, a reasonable recollection. I guess the point though is that we may need to apply some further effort around this point or this question because there were some questions asked and I think that it's something that we may need to address somehow. And maybe it's not

to actually set specific criteria but it's more to further explain the thinking behind what you just described. So thanks, Steve.

Alan, you're next and then we'll move on.

Alan Greenberg: Thank you. I support your conclusion you just came to. Now I've gone on record saying I don't think this is a power we should have because I believe the selective removal should be able to address any issue. But if we do have this I think it's essential that we not have specific criteria.

Number 1, we're not going to be able to guess ahead what they're going to be. We do not want something that someone can appeal and take an injunction saying we've done it wrongly. And it's hard to come up with the right criteria. We could say well the board has unanimously voted against something that we, you know, for something that the community thinks is patently wrong, then that's a reason to object - to kill the whole board.

But I think it was Avri earlier said it's good thing we're not on the board because we can come up with all these cunning things a board could do. Well a board could have, you know, round robin, pick a random person to not be the unanimous - to not agree with the rest of them so that there's never a unanimous decision and they could avoid, you know, that particular criteria.

So I think it's essential if we're going to have this power that it be unrestricted by some criteria which we could have to demonstrate and prove and not have people gaming it. Thank you.

Keith Drazek: Thanks very much, Alan. And thanks, Steve. This is exactly what I was hoping to get out of this discussion was...

Alan Greenberg: I'm Alan, by the way.

Keith Drazek: Didn't I say Alan? I'm sorry. What did I say?

Alan Greenberg: Steve.

Keith Drazek: Oh I said thank you, Alan...

((Crosstalk))

Alan Greenberg: We could all be Steve and that would make it a lot easier.

Keith Drazek: Actually I must have broken up because I said thank you Alan and thank you Steve. But sorry about that sorry for the confusion.

Alan Greenberg: Maybe my end broke up. Sorry.

Keith Drazek: So I just wanted to just wanted to note though this is exactly the type of exchange that I was hoping to get out of this discussion. And it will help me take the next step to prepare the documentation for the broader discussions with the full CCWG so thank you.

Let's move on then to Paragraph 241. It says, "Beyond the power set out, above, to remove individual directors," that's referencing the earlier part of the proposal, "this power would allow the community to cause the recall of the entire ICANN board. The community would initiate use of this power on the petition of 2/3 of the SOs and ACs in ICANN with at least one SO and one AC petitioning," etcetera, etcetera.

Now I want to take a moment because - and, Alan, you've mentioned this several times I think in the past several weeks including in Buenos Aires, is the concern that what if we end up with a very small number of SO or AC participating. And this gets to the question of participation in the community council or whatever we're going to call it, and how we deal with non-participation or abstention.

And I know there was previous discussion on this point. But this is something I think we need to spend a little more time and effort around is the discussion of the 2/3 of the SOs and ACs and make sure that as we update this section that it is, again, in sync with the model, whatever the model ends up being.

So let me pause there and see if there's any discussion on this point. Any questions or comments? Okay, Alan.

Alan Greenberg: Yeah, this is not one in this case I agonize over. If we have no, you know, only one SO and no ACs who are using their privileges then we don't meet the criteria and we shouldn't because one SO should not be able to kill the whole board.

So I think it's one of these self-limiting things that, yes, it may restrict the use of the power, but if that small a part of the community feels strongly about it then it rightfully should restrict the use. So I'm not concerned at this level.

Keith Drazek: Okay. Thank you, Alan. Jordan.

Jordan Carter: Sorry, I was on mute. I am - I think we should keep the very high threshold to initiate use of this. And in terms of whether people participate or not, I mean, 2/3 of the SOs and ACs, out of 7 is a bit of a strange ratio, right? But setting that aside, this essentially means you need five of the seven to petition to even

start the consideration. Maybe that's too high. But it has to be high whatever it is. So I think that having a high threshold to start this process is fine.

Keith Drazek: Okay, thanks Jordan. And I should note that there was only one comment out of the 28 that were submitted that actually called for the ability of one group, you know, one SO to be able to trigger the power. And so one out of 28 is clearly a minority. And I think there was strong support across the comments except for that one for this to be a very high threshold so I think that's certainly consistent. Alan.

Alan Greenberg: Thank you. At a either pedantic or anal level I think we need to be clear whether it's 2/3 of the SOs and 2/3 of the ACs or 2/3 of the sum.

Keith Drazek: Okay, noted. And agree. Okay any other comments or questions on this before we move on? All right, very good. Next item, 242, "After a petition is raised there would be a set period of time for SOs and ACs to individually and collectively deliberate and discuss whether the removal of the board is warranted under the circumstances."

And so the question here is set period of time that we need to define what we mean by set period of time. I don't think we necessarily need to, again, decide that today. But it's a flag for further work and something that we need to drill down on because that was one of the questions that was in fact raised as a possible, you know, concern about, you know, the circumstances and the continuity measures is if this is going to happen that it needs to be better defined.

Comments or questions? Avri.

Avri Doria: Yeah, Avri speaking. A question I have in reading this is if we're going through all of this is there any point at which we should have a deliberative period with the board perhaps it's during this once petition is raised and we are deliberating shouldn't there be some deliberation or some discussion with the board about what we're proposing before we do our voting?

Keith Drazek: Okay. Thanks, Avri. I think that's a good question. And, you know, it sort of gets to the point of, you know, telegraphing the intent and to say, you know, hey board, we're in effect casting a vote of no confidence and we're going to be initiating this process. I would expect that prior to this point there would have been quite a bit of communication and that it wouldn't be a surprise to the board that the community would be this unhappy.

But I think it's reasonable to suggest that there might be, you know, sort of a built in time period or check point between the community and the board around the, you know, before actually having to initiate the process.

Avri Doria: Yeah, this is - if I can continue? They might have an impression that something was happening but once the petition is set then, I mean, then it's on the table. So I think it's only fair and reasonable that there should be some kind of discussion, that they should be able to defend their position before we vote.

Keith Drazek: Okay, thanks Avri. That was, yeah, I think that's certainly worth - sorry - worth further discussion. There wasn't anything specific about that in the public comments but, again, it does sort of get to the question of, you know, how do you handle the process and how do you, you know, reduce the potential for risk and instability? So I suggest we do, you know, discuss that a little bit further. And Jordan is suggesting that we note that as a point to discuss in Paris so agreed.

Okay, Avri, is that an old hand? I think it probably is.

Avri Doria: It is and I wasn't near my computer to put it down, sorry.

Keith Drazek: Not a problem. Okay next item on the agenda, 243, this talks about the percentage of - or the threshold for exercising the power. Again, 75% was - there was strong support for 75% and the language available within the community mechanism that I have highlighted, is, you know, it raises some questions and I think, again, we need to make sure that we sync this up with whatever the model ends up being.

And we need to further define the meaning of available within the community mechanism. And to make sure that we're in a position to address non-participation of SOs and ACs. So, again, not something that we need to dwell on at the moment but, again, something I think that we need to address. It's related to the earlier topic that we discussed.

Alan, I saw your hand go up. Feel free to jump in.

Alan Greenberg: No, you've covered it. Said, first we have to determine the other one then we can put better words in here.

Keith Drazek: Yeah. Yeah, yeah, exactly. So and again I'm just trying to highlight the areas that are going to require I think further work based on the public comments and as we move forward.

Okay, moving on to what used to be 245, if we scroll down. I have removed 245, which was the reference to the alternative option for the threshold at 80% because I said there were only a couple of supporting comments for 80% and

a strong majority supported 75% so I think that we can take that as sort of strong enough guidance from the community that 75% is the number we should be working with.

Okay, assuming no comments or questions on that move on to 246. And one of the reasons - while this topic was easy it was an easy assignment for me because there was strong support, there wasn't much divergence of the topic itself. It was a little bit more challenging because there were a lot of open issues that we had and sort of the ongoing work that's enumerated in 246.

So I've tried to identify maybe some paths forward here or at least to acknowledge the concerns that were raised in the public comments. So, "Ongoing work in the CCWG Accountability will flush out how to implement this community decision or power through the ICANN members," of course we have the word "member" there, we need to be cautious that we sink up, "and to deal with transitional matters raised including at least the following: a phase of caretaker behavior by the outgoing board while new members are elected."

So I've just added by notation, "A minority subset of public comments reflected concern about the caretaker board concept including potential limits on the pool of available candidates, discomfort with allowing the spilled board to remain in a caretaker capacity and potential instability during the transition phase. And several comments emphasized the need to carefully plan for an define the succession process to limit instability."

So those are two points, you know, I think that came through in a number of the public comments. And I know that we've had conversations on the list with CCWG members as well as board members and others about the concerns of instability and risk by the unseating of a seated board. And so

we're going to need to I think spend some time either before Paris or in Paris or both, trying to further define what the process would be for dealing with a caretaker board in the unlikely event that the ICANN board were in fact spilled.

Let me pause there and see if anybody has a comment. Alan, go ahead.

Alan Greenberg: Yeah, I implied this before but I'm not sure I said it clearly. This caretaker board maybe there for a moderately long period of time. And I don't think - although I think we have to define with some level of care what the caretaker board can do, I don't think we can limit it to approving expenses and assigning, you know, whatever expenses the board has and naming auditors.

ICANN is going to keep on running, it could be for a long time, there could be other crises coming up other than the one that caused the board removal or perhaps that caused the board removal has to be dealt with. This is not really going to be a caretaker in the sense of very, very limited function for a limited amount of time.

So I think we're going to have to need a little bit of time to think about that or - and take some time to think about it, rather, and be more specific because I think people are reading into it a very limited function board and I'm not sure that's realistic. Thank you.

Keith Drazek: Okay. Thank you, Alan. Understood. Jordan, over to you.

Jordan Carter: Thanks, Keith. I'm a supporter of the caretaker board concept. I think one of the things that we need to do is specify both its kind of mandate, it's composition to how it comes into being in this situation and we have to specify the nature of the replacement process. I certainly didn't contemplate

that where the community (unintelligible) the board it would instigate the normal approval process, which takes a very long time.

I always had the view that it would be - it would have to create an expedited appointment process for such a situation that applied to the NomComm and to all of the other appointment sort of designation bodies. And I think we do have to do that as part of the implementation; I don't think we can shy away from that.

We have had legal advice firstly that the board is the board and it has fiduciary responsibilities, I don't think anyone is arguing about that. But there is no problem in us setting out very clearly what the expectations are for that convention about what this board is meant to do and not do. And of course if it starts doing things beyond that it simply would speed up the appointment process for the replacement board no doubt.

On the question of the CEO, which has come up, is this the right time to discuss that, Keith?

Keith Drazek: I'm sorry, say that again?

Jordan Carter: The matter of the CEO and whether they form part of the caretaker board or being removed?

Keith Drazek: Yeah, that was actually a point down below...

Jordan Carter: Yeah.

Keith Drazek: ...but we can certainly skip to that now if you like.

Jordan Carter: Oh no, okay, I don't want to skip ahead so I'll save that for later. But I think basically when we were discussing this in Istanbul Holly in particular was like this is a very standard thing which you can work out quite easily and we can do that. So I think this is one of those things where do need to bring to bear the experience of the law firms to deal with this kind of problem. It's not a remote or a unfamiliar one. And we do need to get a bit of work from them in fleshing out how this caretaker board would work so I think we should requisition that advice.

Keith Drazek: Okay, thanks Jordan. Agreed. At what point would we do that? Is that something that you would pass along to Leon or just in terms of logistics, how do we make that happen?

Jordan Carter: Can we note it as an action point for Jordan to approach the co-chairs in respect of getting legal advice on the caretaker board question?

Keith Drazek: Yeah.

Jordan Carter: And if that's listed as an action point it comes through on the notes.

((Crosstalk))

Jordan Carter: I'll do it. In fact I'll start writing the email right now but that just puts it on the record.

Keith Drazek: Okay, very good. Thanks, Jordan. Okay let's then move on to the next item, the next sub bullet, which is a need to elect alternate board directors in each board selection process. And so I guess, again, here this is, you know, very much related to what we just described about, you know, the three items,

Jordan, that you noted need to define the competition, the mandate and the process for, you know, a replacement or caretaker board.

And I think that points relates directly to that. And we need to consider the concern that's been raised about the potential limitations on the pool of candidates, you know, from within the community or without.

Next item referred to future work around a predefined subset of the community that could function as an interim board. And here the idea that if we, in advance, had, you know, whether it's a list of candidates or a list of potential positions that would take over that that would ease some of the concerns about uncertainty but it might raise other concerns.

So let me pause there. And under that I noted, you know, perhaps the chairs and vice chairs of the SOs and ACs and the NomComm could be pre-designated to take over in this unlikely occasion.

Another item that Adam Peake actually raised with me offline on email is the possibility that the non-voting board members could remain on the board as sort of at least the core of the caretaker elements to be augmented possibly by others, for example, the chairs or vice chairs of the SOs, ACs and NomComm. Again, just sort of open suggestions and discussion points. But it's the thought of, you know, predetermining who the board members might be.

Let me pause there. Jordan, I see your hand, I'm not sure if that's new or old, and then Alan.

Jordan Carter: It was old.

Keith Drazek: Okay, thank you, Jordan. Alan, over to you.

Alan Greenberg: Okay, I support what Jordan said in the chat that he would strongly oppose the liaisons taking over as voting board members. If there was indeed group-think going on that they could well be just as susceptible.

I question the item Number 2 I think, a need to elect alternate board directors for each selection process. Was that implying that when we pick a board member we also pick a fall back who would take over if we kicked the first one out? Is that the way that's being read?

Keith Drazek: You know, Alan, that's a great question. And I'm not sure. I'm not sure what that meant. That was actually listed in the, you know, in the original proposal. I don't know if anybody happens to recall. I see Jordan put his hand up so maybe that's...

((Crosstalk))

Alan Greenberg: Yeah, let me make my comment and then we'll go to Jordan.

Keith Drazek: Yeah.

Alan Greenberg: I would strongly object to that. If we were so wrong in picking our directors, we were probably just as wrong in picking the alternates.

Keith Drazek: Yeah, fair enough. All right thanks, Alan. Jordan, over to you.

Jordan Carter: I'd be fully opposed to that as well for a different reason which is, you know, what kind of incentive does it put on this pending alternate person to start making trouble for the current incumbent. I think that's an incentive to madness.

What we were trying to do I think with this list of things in the report was just to give a signal to the community that we were thinking about these things and there had been a proposal from somewhere at some point that electing alternate board members - if memory serves it was something that Tijani said in Istanbul. But I'm not a detail-memory kind of guy so I might have the wrong person attached to that concern.

((Crosstalk))

Jordan Carter: I'm strongly, strongly opposed to the liaison board member suddenly getting voting power on an interim board. Can you imagine what Congress would say if we said that the chair of the GAC suddenly had one of the four votes in the ICANN board? I think that's a dead letter before you even start talking about it publicly.

So I think that we need to - we need to make sure that this process doesn't remove the CEO from their role as CEO but the rest - I've already written an email to the co-chairs asking whether the general point about this is needed or whether further specification is required from us (unintelligible) it's from the lawyers on how to do this best.

Keith Drazek: Yeah. Okay, thanks, Jordan. Jonathan and then Greg.

Jonathan Zuck: Yeah, this is Jonathan for the transcript. You know, in the movie The Untouchables when the judge realized that the jury had been bribed he just swapped juries with another court room. So maybe we just find a complementary organization and borrow their board for a while to be the interim board.

So I guess this is more of a general comment that's occurring to me as we're having this discussion. I feel like this entire discussion sounds - helps to reinforce the notion that spilling the board is no simple thing and that it's not something that we would do lightly, it would have a lot of complexity associated with it. So I have to say that personally - the conversation we're having right now kind of reinforces my desire to have, you know, enforceable accountability that along the way to spilling the board just because of what a difficult mechanism I think this will end up being viewed.

So that's just a general observation from this discussion as far as the sort of transactional accountability is more important than people may even perceive.

Keith Drazek: Okay. Thanks, Jonathan. Greg, over to you.

Greg Shatan: Thanks. Probably going to reinforce rather than add anything truly new. But, you know, I also have to say that the idea that the liaisons could, A, stay on the board, and, B, somehow become the board seems like the exact opposite of a good idea.

It seems to me that those liaisons also need to be spilled as well. I mean, they are appointed or they come from, you know, in some fashion the SOs and ACs, many of them do. I mean, there are a couple that don't like I think the IETF liaison. So I guess the issue of spilling the board gets to be interesting when it gets to the couple of board members who are not appointed by either a - the community or the NomComm.

And in essence might not be removable unless they agreed that they are removable along with everybody else who are more closely linked with members of the ICANN - official ICANN community if you will which the IETF is not quite in that same sense.

So, you know, I would, you know, vehemently oppose that. And I see Steve's suggestion in the chat that maybe there needs to be a new board slate selected at the same time as the spill takes place and that needs to be kind of a necessary predicate to getting the spill actually enacted.

And that may be, you know, a good idea. But I think the best idea is to ask those people who have spent, you know, years, decades even dealing with things like board spills and our corporate governance honchos, aficionados at Sidley and Adler to weigh in on how this, you know, typically takes place especially if it's being done at an extraordinary point as opposed to at a predetermined annual meeting; probably requires a special meeting of the members or whoever it may be who's doing this, the empowered milk and cookie withholders.

And so I think we need some - this is where we really need, you know, real professional advice because at this point we're - we're starting to reinvent wheels here. Thanks.

Keith Drazek: Okay. Thanks, Greg. Alan, over to you for the last word on this and then we move on.

Alan Greenberg: Just a comment on Jordan's comment in the board one of the 16 is the CEO that we've decided we can't remove. Two things, first of all I don't think we need to agonize over the liaisons. The board has the right and therefore the - presumably the new caretaker board has the right to remove all liaisons unilaterally by their choice with the exception of the GAC liaison.

So we may have to live with the GAC liaison but the rest of them can be ditched at the whim of the board. So that I don't think is an issue and not one

we need to focus on. And I'm not sure we want to get into the political water of changing the rule about the board removing the GAC liaison.

The suggestion that was made in one of the items that maybe the chairs and vice - chairs, vice chairs or whatever of the ACs and SOs, could be - could be the interim board. That makes complete sense with the exception of the fact that those are the people who are going to be spearheading the removal of the previous board. And it could be presumed as being slightly self-serving.
Thank you.

Keith Drazek: Yeah, thanks, Alan. Fair points. And I think the comment earlier about the GAC chair becoming a voting board member is, you know, puts some caution around that suggestion anyway. So all right so perhaps a way forward - I note that Matthew has typed in the chat that perhaps we can ask for some advice by Paris and park this one. This may also be a candidate, you know, the discussion around the interim board for a possible Work Stream 2 issue.

You know, the definition of caretaker and all the moving parts and the details that we're trying to deal with here could be deferred to Work Stream 2 because the unlikely nature of, you know, this power ever being used. But that's just a thought.

So I've got Jonathan and then Alan and then let's move on.

Jonathan Zuck: Old hand, sorry.

Keith Drazek: Okay. Thanks, Jonathan. Alan, is that a new hand or an old hand?

Alan Greenberg: I didn't think I put my hand up but maybe I did. I was just actually just about to type in if we defer the caretaker board to Work Stream 2 we'd have to put -

it would also have to put on hold the ability to take action until Work Stream 2 delivers.

Keith Drazek: Okay. All right any other questions or comments on this before we move on? All right, seeing none, flipping the page and basically at this point I imported the language from the CWG transition proposal to make sure that we in this particular power, as we need to be in all the powers, but in this power that we're aware of any key dependencies.

So in this, this is exactly the language that was pulled from the CWG Stewardship proposal. And it talks about the dependencies. And if we go down to Number 2, the community empowerment mechanisms, and then specifically, A - so 2a and I'll read that whole little section.

It says, "The empowerment of the multistakeholder community to have the following rights with respect to the ICANN board, the exercise of which should be ensured by the related creation of a stakeholder community member group," and A is, "The ability to appoint and remove members of the ICANN board and to recall the entire ICANN board." So, you know, this is an important dependency that we have in the CCWG with the proposal - or from the proposal of the CWG. So I just wanted to make sure that that was clear to everybody as we continue these discussions.

And that's really all I have for discussion today. Obviously we need to do quite a bit more work on all of this and there will be, you know, probably some additional language that we will want to put out for the next round or certainly will be. But we've got some time to get that done. And I think this will be a topic of important discussion in Paris.

Steve, I see your hand.

Steve DelBianco: Thanks, Keith. And good work on this. The yellow text that you highlighted from CWG was written well before we got to Buenos Aires and went with an empowered SO AC model. So they were using the language with regard to our proposal about a reference model, which used the word “member.”

So is there a way we could short circuit all this and quickly ask the chairs of the CWG to verify that and to say that if we replace the board to say the exercise of - by the empowered SO and AC mechanism instead of having the words slash member group.

And if they agreed that that is an appropriate substitution then we would be able to leave this completely out of the discussion of enforceability and stay in our sandbox by describing community powers that are exercised by the empowered SOs and ACs. Thanks.

Keith Drazek: Okay thanks, Steve. I have a thought on that but let's move to the queue. Jordan and then Alan.

Jordan Carter: Thanks. I think that we do need to have a discussion with the CWG about enforceability generally. And I think - I think I've seen a note that says (unintelligible) from the CWG leadership will be in Paris so I think that that's a discussion that's likely to be scheduled there.

I don't - I think, Steve, you might be on the - slightly on the wrong track though, there. Whether it's membership or whatever I think the point is the requirement is for the ability to appoint or remove members of the board and to recall the entire ICANN board. So on that basis I don't think we can sub this out to Work Stream 2.

I think we could do a bare functional workable something that none of us really like but can live with approach to the caretaker issue that means this power is workable in Work Stream 1 and then we can schedule Work Stream 2 or I'm at danger of suggesting a Work Stream 1.5 but we can talk about that later, fleshing out an improvement of that model. Thanks.

Keith Drazek: Okay, thanks Jordan. Alan, over to you and then back to Steve.

Alan Greenberg: Thank you. I can easily live with what Jordan just said of an interim model we don't like but technically it's there should we need it in the period of time. I read the CWG comment as giving us a huge amount of flexibility. They're using a lower case, a stakeholder community or member group and they didn't capitalize member. I think we have ultimate flexibility there. I don't think we need to really - I mean, we can certainly check with them. But I just don't think there's a need to change those words. I think they've given us complete flexibility.

Keith Drazek: Okay. Thanks, Alan. And, Steve, back to you and then I will jump in and try to wrap up.

Steve DelBianco: Yeah, thanks. Steve. Jordan, I was never suggesting anything with respect to Work Stream 2. It was respect to the phrase "member" - "community member group." And it's a lower case M as Alan just pointed out. And the clarification we need from CWG is whether they would be happy with the words "empowered ACs and SO mechanism."

Because none of this anticipates whether you're a member or a designator and that's why the word member will feel misplaced here. And it got there because we had it in our May 3 draft as our reference model. And by cleaning that up very quickly we completely resolved this problem.

Keith Drazek: Okay. Thanks, Steve.

Jordan Carter: Can I just add one point, Keith? Sorry.

Keith Drazek: Sure, Jordan.

Jordan Carter: Look, I just want to be really clear that that's a copy and paste out of the CWG's proposal. There is almost no chance of reopening that text and re-seeking consensus on changes to it. It has no relevance to our work. We do not - we are not obliged by the way that's worded to come up with a legal membership model. And I think that that will be - I think that's already been made clear by the CWG co-chairs.

If there are going to be any changes to the CWG proposal it's going to be that the ICG kicks it back to the names community. So in the meantime let's not ask for any changes to that wording. Seriously.

Keith Drazek: Okay thanks, Jordan. And, yeah, so I mean, my view on this is that I read the language in the way that I think Jordan just described is that it is not presupposing or prejudging a membership model per se. It's basically saying that these powers need to exist, that the community needs to have the powers. It doesn't, I don't think, say that it must be done through a membership model.

So I think the key is that we as a, you know, a work party and in the CCWG just recognize that the powers are in fact required by the CWG proposal and that, you know, we need to keep that in mind as we have our discussions.

Okay Steve, is that an old hand or a new hand? Okay, old hand. All right very good. So with that I don't think I have anything else to add at this point, Jordan. So I think I've given as much of a summary as I can and obviously a lot more work to do on this. But I really appreciate everybody's feedback on the discussion document. So, Jordan, back to you.

Jordan Carter: Thank you very much, Keith. And your next task, should you choose to accept it or even in fact should you not choose to accept it, is to scrub the document up into the revised text for discussion at Paris. So I hope that you're up for that.

Keith Drazek: Yeah, happy to do it. Thanks.

Jordan Carter: Great. Thank you. Well thank you, everyone. That's two chunky pieces of work that we've had a good discussion about in the last 90 minutes. And I wanted to do two things. I wanted to give you informally and off recordly a kind of précis of the way the agenda is shaping up for Paris in respect to our stuff.

And that's - and I'm not going to go through the whole thing but there are sessions scheduled at the moment in the working draft about the AOC reviews incorporation to the bylaws. There's a half hour for that. And there's a good hour of discussion on CWG dependencies cross check. And there's an hour and a half for the community powers on the budget, strategic plan and on the bylaws stuff, the bylaws bits that we're going to be discussing on our call on Monday.

And there's a discussion of the - there's several discussions with the lawyers on the general model. There's a further discussion of board member recall

refinements. So there are a few hours of call time on our stuff. And there's another session as well on voting weights.

I anticipate that the draft agenda, if it hasn't already gone out to the list, if I remember, will be out soon. So this - the point of me raising this is just to show you that there is going to be time in the agenda to talk about these critical issues that we're raising.

The other thing I wanted to do just briefly now is to précis our next call, our last preparatory call on Monday. And we've got 90 minutes - a two-hour call forecast. And at the moment on the agenda for that we've got the bylaws community powers, so the ability to block standard bylaws which is in the drafting material for and we've got the approval of fundamental bylaw stuff which I'm going to do over the weekend.

My understanding is that Alan Greenberg will be doing a paper on the removal of individual ICANN directors. We've done the whole board one today. And I'm anticipating also from Alan and the others some draft text on the 8th of July discussion we had about the nature of the community mechanism and if it isn't draft text it might be an updated discussion document for talking about in Paris.

And finally I guess we will need to run through the next version of this paper that we've worked through today, the drafting that comes out of the paper today. So are there - does anyone else have any other things that they think we're going to need to tackle in that call on Monday? Because there'll be some new material and some review of stuff we've already seen. We're going to have to be very efficient so it'll be a little bit more of a fast paced discussion that we've had these past few days.

So if there are any hands up on that - on either of those two things I've just mentioned or indeed any other items that you'd like us to discuss today and we'll come back to what's in the chat, the question from Robin and from Gary shortly. Steve, please go ahead.

Steve DelBianco: Hey, Jordan. When we were together in Istanbul you put a good deal of time into a spreadsheet that showed how to get these super majority thresholds at different levels of participation. And I'm not saying it has to be a big discussion item on Monday but we ought to have that ready in case we have to update our document, our proposal to say that if only 20 of the 29 votes participate what would be super majority?

If, let's say, the GAC decided it couldn't vote on an item then we'd have only 15 of the 29 possible votes participating on a board - on a bylaws measure, for example. What would be super majority there? And if it's all just 75% and you do the math well that's easy. But I'm just asking you whether there are other particular threshold questions getting to super majority if on a given vote like blocking a bylaw only three AC SOs deem it worthy to contribute.

And if they only did so is it relay still 75%? Is it two of the three AC SOs participating? And no need to answer now but do you think that's a topic we have to be ready for in Paris?

Jordan Carter: I think it is a topic that we have to be ready for in Paris, Steve. And so thank you for raising it. I think that some of that discussion is part of the group that Alan has led on the voting and the community mechanism, Alan, Robin and Matthew if I recall.

I don't want to claim responsibility for the spreadsheet, that was a Thomas Rickert initiative. And I found it a little bit difficult to deal with because

(unintelligible) right into the discussion. I think that there is a bunch of (interesting) questions that I'm hoping the next version of Alan's paper does deal with because we will need to in the end resolve a proposal in Paris or very shortly thereafter. I don't have anything better to say than that but thank you for drawing attention to it. We could disinter the spreadsheet or something else.

In terms of - carry on, Alan. Alan, your hand is up.

Alan Greenberg: Yeah, I just wanted to add something to that. One of the items, you'll recall, on the paper on community mechanisms is the minimum critical mass which can take action. And that one we said we really can't do until we know the total number of votes involved in the process. So yes I will be addressing that in what I do. But it will be partially an open question at this point.

But I think the final picking of the numbers is a critical issue. And we're going to have to hopefully come to closure on the waiting scheme and then as a second pass what the critical - what the minimum critical masses are. So it's something we'll do...

Jordan Carter: Okay.

Alan Greenberg: ...the spreadsheets are not particularly onerous. We're looking at very small numbers. But it is something we're going to have to look at.

Jordan Carter: Thanks, Alan. And can I just check since you're talking, you okay to do the individual director recall as well recognizing that's even more work for you to do this weekend?

Alan Greenberg: I'm going to try - I've already told my family don't expect to see much of me this weekend. But I make no promises but I will be trying. I hope I will make - I'll get you something whether I get a draft document or something else we'll see.

Jordan Carter: Okay, all right. If I find myself with a spare hour today, which is our Saturday, I might chuck you something to look at if I get time to...

Alan Greenberg: Okay excellent.

Jordan Carter: ...give you a hand. Mark - Gary, beg your pardon. I'm just used to (unintelligible) Mark when I see you take up. My apologies. I think Steve's probably dealt with your questions about the GAC role in the community empowerment mechanism certainly from my point of view and what the CCWG has discussed so far. It's going to be at least importantly a matter for the GAC to help settle about its role; advisory versus participating in these mechanisms.

And Robin, to your question about the addressing of the other rights that membership has, for what it's worth I still think - my impression of where the CCWG is going is that it has had those memos but hasn't talked them out yet. I expect them to be discussed in Paris. It might be worth having a quick look at that summary. Sam Eisner (unintelligible) which is 99% sure in my mind is where the other statutory rights of membership are dealt with along with the (unintelligible) create.

Also I saw some points in the lawyer's presentation on Tuesday about various downsides of membership in terms of those statutory rights. And I know other members of the CCWG see what I see as downsides as upsides. So it is a discussion that is rolling.

Everyone, my last question is, are there any other items that need to be discussed now? And if the answer to that is “no” then we’ve got a pretty clear picture about our agenda for our call on Monday. And we’ve got a weekend to have working, by the looks of it.

Any other items? Last call here. They don’t have to be. Just giving you time for the (unintelligible). And we’ll call that a no. So thank you everyone for participating in this meeting. Good sense of good natured conversation. Let us hope that the whole CCWG adopts our wonderful approach at the meeting in Paris next week.

I hope you have a good weekend. And I would like to encourage you all to be cracking on that stuff for Monday. And we’ll talk soon. Thank you.

Keith Drazek: Thanks.

END