

ICANN

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

Mathieu Weill: Okay. I think we're going to start now. You may be experiencing some difficulties with Wi-Fi access but that's actually for the better because we can get more involved in the room. Is the mic - are the mics working? Yes? No one's listening but that's okay.

So we'll go to consensus call. Is the report approved? Yes, thank you. Just checking. So let's open the meeting now. Welcome to this face-to-face meeting in Paris of the Cross Community Working Group on Enhancing ICANN's Accountability.

I'm sure the room is going to fill up pretty quickly now because the announced crowd is quite impressive but I'm - I'd like to welcome all the members and participants of the Cross Community Working Group. Also a significant number of observers, GAC members, Board members.

We have - I see three advisors from our - the independent advisors for this cross community working group, and many familiar faces which I'm delighted to see in person instead of through our regular conference calls.

We'll have a busy, busy two days with important options to decide on, on the way to our second public comment. And it was striking to see that everyone was, whether yesterday during the cocktail or this morning, sort of always wishing us good luck. I don't know why. My first reaction is that it has nothing to do with luck. And then Thomas told me that it's not about luck, it's about how you behave in the room and try and find this agreement that enable the process to move forward.

So we have assembled a few slides to recap the context. So can we have the initial slides? I think they've been circulated yesterday. And I see Eberhard's hand is up for an initial comment. Eberhard.

Eberhard Lisse: I have some questions with regards with rule of order. I see there is a clock listed there. Can we please discuss the matter of how we are going to deliberate today because this is a decision that has not been taken by the whole group. And it may force people to say less than they want to say. And this is not a decision that I think the chairs can make on their own.

Mathieu Weill: Thank you, Eberhard. We will discuss it further in the presentation. So just to recap that - and I have everyone aware of our problem statement and what we're doing right here. We need to enhance ICANN's accountability to a level that in the absence of the contractual relationship with the US government everyone is confident enough that this transition can proceed.

This is not a predefined level. This is a matter of us feeling it's appropriate and it's about ICANN's accountability. And the Work Stream 1 and Work Stream 2 distinction is part of our charter and I'll get back to the definition of this - of the work streams.

Can we go to the next slide? Trying to go fast because we have a busy agenda. Submitting rules. Suggestions that have been already presented and discussed at our last CCWG plenary call. First rule is obviously openness, we need to listen from everyone. Members and participants and observers are welcome to contribute.

We know there are some in the room who are - have been with the group from the start, are very familiar with all the steps of our work and others who may be less familiar with the history of our work, that's okay as long as everyone obviously keeps contributing and be respectful of the diversity of views in the room.

We've had a huge amount of work done before this meeting in order to be able to base our work on written contributions. A significant amount of contributions were in the package of frozen documents that were circulated very early on Wednesday. And we need to focus our work on deciding on options, refining those papers.

We will be obviously reluctant to open new discussions on fundamentally new ideas at this point of our work because we have this timeline that we're expected to follow after the Buenos Aires meeting and that's part of the overall timeline transition.

So we encourage everyone to keep interventions concise and focused. That is a key - a necessity if we want to have everyone to be able to actually express themselves. A best practice is when you take the floor, it's about one topic, you have one message. That's always easier.

We would - we recommend that we have the option to use a two-minute timer when - if we find it necessary at some point. We hope we would not have to.

And obviously that would - that rule, if introduced, would also apply to co chairs and rapporteurs as well as members, participants and others.

And a final note that Day 1 and Day 2 will be considered different meetings and if there are substantial decisions made across those two days, I cannot rule that option out, that will enable the - us to follow the two reading rule that we've set up as part of our working methods.

So I think on those rules that's where, Eberhard, you can certainly comment.

Eberhard Lisse: I personally think decisions should not be made by the co chairs but it should be made by the group as a whole. And secondly, Day 1 and Day 2 are not different meetings - are not two different meetings so the two reading rules will not stand. This is sprung on us at the very last hour. This has not been deliberated on or decided by the group, this has been decided by whoever wants to decide it. It's not acceptable.

I have objected in - by email and I object to it again. You don't have full consensus for this. You can't do things like this. This is unaccountable and it's a shame for this working group that they're dealing with accountability that the co chairs resort to such measures.

Mathieu Weill: Thomas Rickert wants to answer.

Thomas Rickert: Just very briefly. We have discussed a few weeks back that we would work on the basis of a method of iterative consensus building which means that those parts that are uncontentious in our group can be part of a consensus call. And we do not want to lose this opportunity during this two day meeting. So if there are parts, and there are some I guess, of our package of

recommendations that everybody is happy with we didn't see a reason why we should hold back on documenting that consensus and keeping stock of that.

It is a decision that we're putting out here so we would encourage those that share concerns on this approach with us. Eberhard has gone on the record via email and just currently and we encourage those that are against operating that way to speak up. But, Eberhard, you want to add to that?

Eberhard Lisse: I just must break my own - one contribution per topic rule. This meeting was sprung on us on relatively short notice and a large number of people are not here because they are on long planned vacation. So even to say that things that are uncontroversial in this room today are - can go by two reading consensus it not acceptable. It does not allow a large number of participants who are not here to contribute if they were not satisfied with the consensus.

Mathieu Weill: Thank you, Eberhard. Definitely meeting rules (unintelligible) so - and I'm not going to spend half an hour on the meeting rules. So based on the proposal that's here I note Eberhard's objection. Are there are any other objections to the meeting rules as proposed? And I'm meaning objections. Malcolm, is that an objection or a comment?

Malcolm Hutty: It's a question.

Mathieu Weill: Go ahead.

Malcolm Hutty: According to the agenda - according to the agenda we don't proceed through all the items on one day and then all the items on the second day in turn. We have an agenda that's spread to the two days where some items are not reached until the second day. How would it be - would it be as far as speaking in order be concerned to raise something that doesn't reach the agenda for the

second day in order to raise it before a substantial decision is made on the first day, as you put it.

Mathieu Weill: So, yeah, thanks for giving me the opportunity to clarify this. What we're putting here is just a provision that would enable a decision if it's reached on the first day to be reconfirmed on Day 2. It does not mean we are going to make decisions on everything on the agenda. It's just an option. So if we have a topic we - following this iterative consensus building methods we've been discussing over and over again, where we find consensus on Day 1 we could confirm on Day 2, and it's just an option and something that's been discussed on Day 2 would have to be confirmed on a later meeting, then we have later meetings.

Malcolm Hutty: But yes, for clarification of the order of the meeting, if there is something is suggested as being decided on Day 1 and someone wishes to raise something relevant to that, which is noted as being left for discussion to Day 2, should they either, A, raise it on Day 1 anyway as a means of potentially trying to prevent that consensus on Day 1? Or should they simply note that it's tabled for Day 2 and therefore it would be inappropriate to...

((Crosstalk))

Mathieu Weill: Malcolm, let's see that when we get to the discussion please. The only rule here is Day 1, Day 2 different meetings because I...

((Crosstalk))

Malcolm Hutty: ...how to behave here.

Mathieu Weill: But it's not committing you to anything else than saying Day 1 and Day 2 are different meetings. I have Tijani and then Kavouss.

Tijani Ben Jemaa: Thank you, Tijani speaking. I have a concern about one intervention per topic. You may give an idea on a question about one topic and you have response or have other comments on it and you may have a follow up question, follow up comment. So one intervention per topic is not...

Mathieu Weill: So it's one topic per intervention, not one intervention per topic we're talking about, which means when you're taking the mic keep it to the - your core message instead of when speaking saying, "I have Item Number 1, 2, 3, 4, 5," which actually often might dilute your message. That's why I'm speaking about best practice here.

Kavouss and then Alan and let's close this. We need - we actually have substance to discuss.

Kavouss Arasteh: Good morning to everybody. Let's start our work, Mathieu...

Mathieu Weill: Thank you.

Kavouss Arasteh: ...and we are here and let's start the work.

Mathieu Weill: Here.

Kavouss Arasteh: Thank you.

Mathieu Weill: Alan. You really want to say anything?

Alan Greenberg: The one topic per intervention I find is unreasonable. Typically you're awaiting through 10 speakers before you get to speak or five speakers to not make any quick comments that can be made in one sentence I think is unreasonable. Making long interventions which involve long things, multiple long things, I agree should be avoided.

Mathieu Weill: You're free to speak, just speaking about best practice here. I won't get into a discussion about what's best practice about how to intervene into meetings. So any other objection brought on this? I'm seeing none in the room. So we proceed with this noting Eberhard's objection and go to the next slide.

Reminder of what is driving us here is a criteria that we will need to keep in mind. So we have the NTIA criteria which are obviously overarching the whole transition process, support the multi stakeholder model, maintain security and stability and resiliency, meet the needs of global customers of the IANA services, maintain openness of the Internet and a proposal cannot replace the NTIA with government-led or intergovernmental organization solution. We're all very much aware of that.

Another set of decision making items we're going to get back to in a minute, are the CWG Stewardship conditionality or requirements. And Lise, who is here and I'm really glad that we have Lise here today, is going to be introducing them in a moment.

We need to find consensus. Our decision making rules are clear, there's full consensus, rough consensus across members. But of course after that of course there's acceptability to the rest of the community. And we have the option of the two work streams. And I want to spend just a minute on the work stream definitions that we've been using for our work, and that's the next slide.

Our group has been discussing how we spread things between Work Stream 1 and Work Stream 2 from the start starting in December. And the definition that was in the initial report, this is a quote, and probably left in - the emphasis added is probably last in this slide but that's okay, I'll add it myself.

For the mechanisms we set in Work Stream 1 are those that when in place or committed to," and committed to might be important for us what kind of commitment are we talking about, would provide the community with confidence that any accountability mechanisms that would further enhance ICANN's accountability would be implemented if it had consensus support from the community even if it were to encounter management resistance or if it were felt by some to be against the interest of ICANN as a corporate entity.

That's the definition we're using. And I just want to stress this because this is - there are comments made around this that tend to think that Work Stream 1 is what is strictly related to IANA. That is not how our work was set up. That is not how we are considering - we've been approaching this work. And there's a reason for that.

It's because what's strictly related to the IANA function was part of the CWG Stewardship mandate. And we are addressing another set of issues, which is to enhance ICANN's overall accountability to a level where people are confident that even without the NTIA contracts ICANN is sustainably going to behave in an accountable manner. Right?

So that's, I think, very important at the outset of our meeting that we have this definition in front of us because I guess we might have to come back to this at some points when we confronted with discussion about are we in a position

where we can keep this in Work Stream 1? Do we have to put that into Work Stream 2? That's going to be the definition for us to use.

I think this next slide, which is actually related to the agenda so a quick item before I get to this slide. A new agenda was circulated yesterday. It was taking into account some of the comments we've received on the list that there was not sufficient time allocated to the IRP discussions, the appeals mechanisms. So we've actually added one - and we had another - we had three sessions on the government discussions so we rebalanced with two sessions on the government related issues and discussions and two sessions on the IRP. That's the only change in the latest version of the agenda.

And the IRP discussions start on Day 2 because Becky, who is here, and I'm - Becky and Steve just landed at 7:00 am this morning, and they are here and fresh and, yeah, like ever, but we didn't want to start the say with IRP discussion and Becky on stage, that was a bit too risky, that's why both IRP sections are on Day 2.

And we'll get into several - many of the topics that the working parties have been working on. And we have asked the rapporteurs to actually structure their introductions of the topics based on the documents that you have all read, I know. Seeing a lot of nodding in the room. Yeah, there's some nodding. And they're all going to be structured like this.

What were the concerns that we found during the public comments? How were they resolved by the working party? What are the open issues we have to provide direction on?

Because our last count at the end of these two days is be sufficiently clear so that we can draft Public Comment 2 report and we've made all these not

what's missing but general directions discussions and directions so that we can issue a public comment where the community can say it's clear, we understand where you're going, we're in agreement, we're not in agreement, we're suggesting this. That's really our challenge for these two days.

And I spoke too long already so with that I will turn to Leon for the next agenda item, the CWG dependencies. Leon.

Leon Sanchez: Thank you very much, Mathieu. This is Leon Sanchez. And...

Mathieu Weill: We have Sebastian...

((Crosstalk))

Leon Sanchez: Oh, Sebastian.

Mathieu Weill: The roving mic is coming.

Sebastian Bachollet: Thank you very much. It seems that there are - we're supposed to have a sitting order for the one who was able to talk and not the other ones because they have no mic at each table. And my point was to know can we know who are - from the member - who are present here physically and the one who online to see how many of the member if we have time to vote where they are and who they are please. Thank you.

Mathieu Weill: So I think we have 24 members including some who are represented by alternates. Maybe I can ask members to raise their hands. That's 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16. I have 23 in the room right now. That's (unintelligible). So that's - for July meeting I think it's outstanding. And we have also our ICG liaison, we have the Board liaison, we have the staff liaison

here and as we were saying earlier we have three of our advisors also present and we have the ATRT expert in the name of Avri.

Man: Mathieu, could you maybe ask the Board members in the room to put their hands up in case people don't know all of them as well.

Mathieu Weill: Sure. So Board members so Bruce is our liaison, (unintelligible).

((Crosstalk))

Mathieu Weill: Thank you. And welcome. Many of you have been involved for other meetings as well. Anything else? Move to the CWG?

Leon Sanchez: Okay so as you may be aware the CWG has some dependencies on the work we are performing. The CWG had its final proposal approved in Buenos Aires. And no pressure at all but I think that everyone is relying on the CCWG's work as to whether the transition will happen or not. So we have quite a complex task to perform during this meeting.

And we thought it would be useful to invite someone from the CWG to explain to us maybe how - what they expect from us with regards to this meeting, how our work might have already fulfilled the dependencies that they are willing or that they are expecting us to address with our proposal.

And in that sense we invited Lise Fuhr, which is one of the co chairs of the CWG, to come with us and be here so we can maybe ask some questions to her in case we need clarification on whether we are doing it the right way or whether we should be looking at some points that need to be fine tuned so we can properly address the CWG's dependencies on our work.

So just to be clear, Lise is here to help us carry out our work in the best way - meets and addresses the dependencies that the CWG has on our work. She is of course not here to back our work or sign off on anything. But I'd like to of course welcome Lise and open the floor for discussion on whether we are doing it well, what are your expectations and what should we be looking into by addressing the CWG's dependencies. Lise.

Lise Fuhr: Thank you, Leon. And I'm very glad to be here with so many dedicated people even in the holiday season. I'm very impressed by how many people you were able to gather here.

I know you guys have a couple of very busy and interesting days. I'll just do a quickly walk through of where we are in the process and I'll just do a quick review of the conditions or the requirements.

And I know we have a lot of people here who's also been participating in the CWG work. And I'm happy to have those guys helping me ensuring that the requirements are met because those are very important.

As you can see on the slide, it's a very complex process we're all a part of. We have two processes, one is the ICG that the IANA stewardship process where we, the CWG, has finalized our proposal and send it to the ICG. But that proposal has been made explicitly conditional on you guys are meeting some of the requirements that we have set in the proposal.

So that's why we have the second leg that the CCWG Accountability group and your proposal. And the timing here is utterly important. It's very important that you have met our requirements by the Dublin meeting. So without that our proposal will not stand.

My co chair, Jonathan Robinson, used to describe it as a three-leg chair where the conditionality and the requirements from your group is one of the legs of this chair. And without it, it cannot stand. So it's very important for us that your proposal is meeting the requirements of our proposal.

And this is of course a very unfortunate situation to be dependent on each other but we are very confident that you will meet those requirements because we are in a very close dialogue and we have meetings with your co chairs almost weekly, not during the summertime, but we are in a good dialogue.

So we think this will be met but it's also quite important that we continue this dialogue in order to find out how to meet those requirements in the best way. Next slide, please.

And when it comes to the requirements we have put them in six areas. One is the ICANN budget. And here it's very important that we have an ability to approve or veto the ICANN budget as the part of the IANA budget is very important to us.

So the budget part it's important that we have our specifics regarding the IANA budget and that is important because if we find that the purpose or mission or role set out in ICANN bylaws is not met or we find that the needs of ICANN's stakeholders or the financial stability or anything regarding IANA is not in line it's important that this can be sent back to the ICANN Board. So that is one of our issues.

Two others are that we - our model is proposing that we have an IANA functions review and a customer standing committee. And those are important to have incorporated in the bylaws. And regarding the IANA functions review, this is supposed to end in a report that's sent to the ICANN Board.

And that is why the ICANN Board is also an important part of our requirements because if the ICANN Board doesn't take into account what's stated in the report it's important that we have the ability to remove certain members or whatever you guys are proposing of spilling the Board. I know this is a big issue too but it's important for us in relation to specific the IANA functions review because those are going to be essential parts of ensuring the stability of the IANA function.

Furthermore, we have appeal mechanisms where it's important to ensure that the independent review panel is also a part of - and it's made applicable to the TLD managers. We've had this issue with the ccTLDs that are not interested in being included in this part at the moment. So this is taken out of our requirements and has to be dealt with by the ccTLD group, the ccNSO, on a later stage. But regarding the rest it's specifically needed that this is also a part of your proposal.

Finally, we recommend that all this is being a part of the fundamental bylaws. And this is quite important because as we discussed, the IANA functions review is going to be the heart of ensuring that IANA is performing together with the customer standing committee. But the customer standing committee is a more daily - more check on a daily basis where the IANA functions review is where we go into the details and analyze how is the IANA function working and is there anything that is needed to be changed? And if so there's going to be recommendations on this.

So these were the areas where we need your help. And the nature of us digging into accountability issues has made this complex and that's given us the - well we had to kind of not do it ourselves but instead rely on the accountability group would take this into their proposal. So instead of doing double work we found that it was better to pass the work to you and say put

this in your proposal and we will be dependent on that you meet our requirements. Thank you.

Leon Sanchez: Thank you very much, Lise. And we have definitely listened to you. We have definitely worked on trying to take care and address the dependencies that we have clearly stated. And well you are of course aware that we have been holding coordination calls with you and Jonathan and the ICG as well. So I think we're all on the same page.

And so far the different models that we have discussed may address the different dependencies in different levels. I hope and I'm positive that we will be able to reach a solution when we finalize this two-day meeting. We will be finding a way to choose the right model that will address those dependencies.

And as I said so far I believe all the models at a certain level address these dependencies. And now I'd like - we have some time for open discussion. I would like to call for questions or maybe clarifications that might be needed with regards to the expectations that the CWG has on our work and the dependencies that we must address at this point. So is - if someone wants to raise a voice now is the time.

And I see Kavouss has his hand up so, Kavouss, could you please?

Kavouss Arasteh: Yes. As the liaison of ICG together with Keith (unintelligible) we had our last meeting before going to public comment on 1 July, 40 days public comment period is last of 8 of September. In that last discussion I have declared that - I raised the question in CCWG as follows .

If all accountability measures well documented in the CWG proposal and submitted to ICG are properly addressed and duly responded by CCWG

(unintelligible) in the proposal for public comment that there would be no difficulty if all these conditions are met. So we would like to have some assurance by the end of this meeting that all the point raised and all conditions communicated to you and concerning the proposals are properly addressed and there are sufficient measures ways and means to duly respond to those. That is an important element for ICG in order to include as a source of a statement in the final document that should be submitted .

I promised to the ICG that I will come back to the chairs or co chairs and state what we received from you at this meeting. Keith Drazek, may complement what I said but that is something that we really need to have something from this meeting, that is important element. By the way, the combined proposal of the two communities are almost ready and it is a final stage of processing more public comment. Thank you.

Leon Sanchez: Thank you very much, Kavouss. And, yes, we will be doing a cross check tomorrow. We have an agenda item on cross checking what we will be doing on this. And well of course addressing the needs and the dependencies relies on all of us here we need the support from everyone and each of us to achieve that.

And I believe that in the co chairs statement we will be addressing your concern and of course including some kind of wording that you will be able to take back to the ICG. Thank you.

So next in the queue I have Jordan - Jordan Carter.

Jordan Carter: Thanks, Leon. Thanks, Lise, for that talk. Jordan Carter here from (unintelligible). On Box 4, the customer standing committee, is one of your requirements. And these are all to be fundamental bylaws And I notice that

there's nothing there about the post transition IANA structure which presumably it was going to be - also need to be in the ICANN bylaws. That was something that didn't need to be fundamental in the CWG (unintelligible).

Lise Fuhr: Sorry, could you just repeat it?

Jordan Carter: So I'm looking at Box 4, the CSC being a fundamental thing that we need to tie down. I was just asking about the status of the PTI, the Post Transition IANA entity, does that need to be - it would be in the bylaws if it gets implemented. Are you waiting to see how the ICG goes on reconciling that?

Lise Fuhr: Actually we discussed it so the PTI was going to be in the bylaws. And we haven't concluded on this specific part yet. We have asked - or we are getting a quote from Sidley on a matrix on the specific bylaws examples. And we will work together with you as a group on these bylaws because we want to try and categorize the bylaws into which bylaws should we be responsible for, which ones should you be responsible for and which bylaws do we - don't have any interest in as a CWG group other than as a community as a whole.

But so that's going to be made and that's going to make it clear for us the specifics on those bylaws. And regarding the PTI we will have to get back to you on if that's going to be within a bylaw or not because it's more legal issue than a issue of the model. Thank you.

Leon Sanchez: Thank you very much, Lise. Next in the queue I have Athina Fragkouli.

Athina Fragkouli: Yes, hello. Thank you very much. Thank you very much for your presentation. As Leon said...

Leon Sanchez: Athina, I think that some attendees have problems listening. Could you please speak up a little bit?

Athina Fragkouli: Can you hear me now? Yeah, thank you very much for this presentation. As Leon just said, these dependencies are addressed in all the models we proposed already in different levels. And I want to stress the different levels. And there is a difference in the level of enforceability in particular throughout this proposed mechanism.

And I would like to ask whether there is a preference or a requirement in the level of enforceability for some (unintelligible). And if there is it would be good to know as early as possible in this process (unintelligible). Thank you.

Leon Sanchez: You want to answer that?

Lise Fuhr: Yeah, yeah, thank you, that's a very good question. It's difficult to actually answer right here because most of it is in the details in the proposal where we would have some that are, as you say, more directly enforceable and other needs to go to the Board and other places. But we have certain processes of how to do, not complaints but the process of how to raise an issue. And some is building into the customer standing committee and another one is building to the IANA functions review and others are simply technical issues.

And this is where we might have a distinction because some of these issues will be regarding technical issues and others will be regarding how complaints are dealt with more management issues. So - and I guess where the functions review goes more into these things, the customer standing committee are more about day to day technical. And the level of enforceability, well, it's a good issue. I'll bring it back to the group and we'll be aware of how to address that in this group. Thank you.

Leon Sanchez: Thank you very much, Lise. I'm closing with the queue with Alan Greenberg so we can move forward to our next agenda item. So next in the queue I have Greg Shatan and then Alan. So, Greg.

Greg Shatan: Thank you. It's Greg Shatan for the record (unintelligible) remotely. When we get to discussing the ICANN budget review I think we need to be careful to determine whether we met the linkage requirements with...

Leon Sanchez: Greg, I'm sorry to interrupt you. Your voice is breaking and it's real low. Could you please speak up so...

Greg Shatan: Sure, I'll try - I'll start again. Is this better?

Leon Sanchez: Not working.

Greg Shatan: Is this better? Okay...

Leon Sanchez: Yes, I think so, yes.

Greg Shatan: Okay. I'm saying that when we discuss the budget review we need to assure that we are meeting the linkage requirements. Specifically I think that our budget - the CCWG budget review is not a line item budget review. It's basically a up or down rejection most likely. I know that there's some discussion on whether it's a rejection or a positive approval but it's on the budget as a whole whereas I think the CWG may want or expect the ability to review and approve the IANA function budget specifically.

So I'm not sure whether these two fit together as they need to or whether the IANA function budget review would be dealt with separately from the overall

budget review. But I raise that as a point to be looked at, at the appropriate time. Thank you.

Leon Sanchez: Thank you very much, Greg. I think that we'll have a thorough discussion on this actually in our next agenda item with the lawyers. They will provide creative solutions to address this. And well I don't know if you want to add something to this, Lise, or should we just go...

((Crosstalk))

Leon Sanchez: Okay. So yes, thanks for raising this, Greg. And we will definitely keep in mind your comment as to how we can address either as a separate things or all together. And next in the queue I have Alan Greenberg. Alan, could you please take the floor?

Alan Greenberg: Thank you very much. My question was actually on the same subject but I'll phrase it somewhat simpler. I presume the CWG interest is worried about the IANA budget, not necessarily ICANN's overall budget.

Lise Fuhr: Yeah.

Leon Sanchez: Okay so just for those that are not attending this room, Lise is nodding. Lise is nodding and actually saying yes to what Alan just said. The CWG main concern is about the IANA budget, not the ICANN budget as a whole. So...

Lise Fuhr: And I'd like to add just one quick note to that because in our proposal we actually address that it would be helpful if the IANA budget was made faster than the ICANN budget as such so it wasn't an included part of the ICANN budget. So it is important that it's IANA budget as separate and that's our main issue. Thank you.

Leon Sanchez: Okay so I think that kind of also answers Greg's question. So with this I would turn now to Thomas for our next agenda item. And thank you, of course, Lise, for your attendance and for your guidance. We will remain with an eye on you for more guidance during our meeting so thank you very much for being here.

Lise Fuhr: Thank you.

Thomas Rickert: Thanks, Leon. And while I invite Holly and Rosemary to the podium, I'd like to briefly introduce how we're going to go about with this discussion. As you will remember the group had lengthy deliberations about what legal vehicle for community empowerment could be used.

And Rosemary and Holly made a presentation that was deemed very helpful by many of us during our Call Number 39. They have been asked subsequently to look into some of the details that were not fully discussed during that very call and that was in particular the single membership model.

Which is why we are now going to hear a presentation that's based on the slide deck which you've heard during Call Number 39. But they will not speak to the parts that they already spoke to during that call. So we do want to avoid duplication. So we've asked them to show us briefly through the presentation but focus on the changes since - on what you've heard before.

So the presentation which we have asked them to limit to 15 minutes, will primarily focus on the single membership model. And after we heard that discussion we will then start a discussion on how our group is going to deal with this. So we have an hour for this but certainly the discussions by this group are not limited to an hour. We have more time slots to come for this

discussion. But now without any further ado I'd like to hand it over to - not sure who's going to start this - Holly? Holly, please.

Holly Gregory: Well good morning, everyone. It's nice to be with you again. I'm just going to jump in. On July 7 we presented to you a presentation that discussed in greater detail two models that have been explored for the first time in Buenos Aires. And in that discussion we were also asked to explore further a variation which is a sole member model, the community mechanism as a sole member model.

That revised presentation was provided in the materials that were frozen. And I'm not going to go through it in great detail. We're going to highlight what we've added with this idea about a new model. I do want to emphasize some things at the outset though.

It's very clear each of these models has advantages, each of these models has some disadvantages. And as you know, we're your independent counsel, we're here to be a resource to you, help you understand the legal issues that arise with each of the models.

We're not here to opine on what is best. We don't have a view on what is best. The real goal here is for us to help you think about it, what is best for you is going to depend on what your goals are, what your priorities are and how you view the risks and advantages of each of the models.

So we're here to help you think through those issues. But, again, you know, as we say in the States, we don't have a dog in this hunt but we do want to do anything we can do to help you better understand how each of these models might work.

So if you look at the slide on common goals, Slide 5, I don't know if we have the presentation? We don't have the - well on Slide 5 we talked about what was common in each of these models. I want to emphasize, each of these models has common elements. All models will enhance accountability.

All models provide for the rights - the powers that you indicated in the initial proposal were important. All models are backed by enforcement of some type. And maybe where the models really differ is how enforcement works and how much enforcement. You know, at the absolute end I provided a continuum on the trust and enforcement at one end there are some ability to go to court.

We understand that going to court is not something that this community is really, you know, necessarily interested in. And we greatly appreciate that community works on trust and so we've given you options that are within that sort of continuum.

I want to emphasize that when we talk about rights and we talk about enforcement they really are two very distinct issues. So when we talk about rights it's what powers do you have. Of course rights need to be enforceable to really - to have the assurance that they will come to fruition. But how they're enforced, the level of enforceability is a whole distinct issue.

I think that the difference of rights and enforcement is apparent on Slide 6 in the deck, this slide highlights that all the models provide for the community powers that you seek or rights, and all models provide for enforcement. But again how direct that enforcement differs to a bit.

So let's skip over to the new model on - I think it first appears on Slide 11. We called this model the community mechanism as a sole model. As you'll recall, we have the empowered SO AC membership model contemplates that

those SOs and ACs that at some point want to become members with full direct enforcement rights, could do so. They can opt in and out - opt out by becoming legal persons and then deciding to become members and they would then have all of those enforcement rights.

The empowered SO AC designator model looks at the SOs and ACs and gives them designator rights, rights to designate directors, remove directors and through some contractual and springing resignation letters to recall the entire Board. And it also gives additional decision rights to effect all of the powers. Some of those decision rights however would have their enforcement mechanism be a little bit indirect by relying on that coercive power of being able to recall the Board.

The third model says well maybe we should take that concept of legal personhood and membership and kind of move it to the community as a whole. And so what it strives to do is to say okay you're going to have this community mechanism under any of these models in which a lot of - in which sort of the vote occurs and the will of the community comes forward.

What if we were to take that group, that community mechanism, and call it the sole member and make it the legal person? And so it provides all of the rights and all of the powers and the enforceability that you seek and takes away some of that concern about do SOs, ACs need to be legal persons? And with that as a broad introduction I'm going to turn it over to Rosemary and she's going to help drill down on how these things differ.

If I look a little uncomfortable, I'm sorry, if I look a little uncomfortable here today it's not because I'm with you, I'm having a back spasm so I'm just trying to talk through it. So in any event, I'm going to hand it over to Rosemary.

Rosemary Fei: Thank you, Holly. So - this is loud enough. Is that loud enough? We are now turning to my section of the deck starts on Slide 16 and that slide is unchanged so I'm not going to spend any time. It just describes your current structure.

Slide 17 you've also seen before, it's the one that describes an initial phase. And I want to explain a little bit more than maybe we have to date. The reason there is an initial phase is that we - as we've tried to push the membership model as far as possible where we wanted you to be able - you requested that membership be able to be something that you could decide on later rather than having at the Day 1, we realized that during the phase before you actually had any members that membership model really looks very much just like the designator model.

So you have an initial phase where the designator model and a membership model are virtually identical. And the only difference between them is at the very bottom of that slide with respect to what gets triggered or what can happen in the future. And the big difference is that in the membership model you can trigger a full membership structure if enough people are willing - enough groups are willing to become legal persons and members. So I just wanted to make that a little clearer because I think it may have not been clear before.

So the designator model you go into this structure and essentially you just keep the structure. The membership model you start with this structure and you can flip into membership. Now when we look at the next slide how would we implement a community mechanism as sole member model? There's a slightly different set of bylaws enhancements, you can see it's a shorter list. I don't want to spend the time to go through it in detail. But it's a relatively

simpler transition because you don't have two phases, you just start with the single member. So - and we put that in place from Day 1.

This next slide - what number are we up to? Slide 19, shows all three models in their end stage. Now both the first model, the empowered SO AC designator model and the last one, the new one, the sole member model, there's essentially no big change.

In the designator model what happens is someone decides that they need enforcement, they become a legal person so that they can enforce if they're not already a legal person. That's all that happens in that model. There's no big switch.

In the middle model the membership model, there is a big change. There is some sort of a vote that enough people, some threshold has been reached, and all of the group decides you now want to be a membership corporation, with all of these SO AC members. And it's a bigger change at that point. The third model there is, again, not really any change. It's just - it continues to operate the way it was described in the prior slide.

Now we added a new chart to the deck starting - it's a three page chart. It starts on Slide 20. This was in response to your request for a strength and weaknesses analysis. And the reason it doesn't use the word "strengths" or the word "weakness" is that we realized as we started to put it together that what was a strength from one perspective was a weakness from another perspective and so those terms were just too loaded.

So instead we went to a key characteristics approach. And so whether you think a given position is the better position that's really up to you to decide. I don't think it's up to us as counsel, as Holly already said, to make those

decisions for you. We are trying to present you with options and be clear about what option - what each option brings in a good way and a bad way but what's good and bad you have to make up your own minds.

So the first thing I would point out on Slide 20 is that note that all three of the models have all of the powers. It's not that you don't get certain powers in certain models, it's that the mechanisms for enforcing and maybe the level of ultimate enforceability may differ. And you'll notice that when we look at the designator model there are indirect powers and coordinated powers.

By indirect powers we mean powers that you can't just do yourself, you have to back it up with Board recall. And by coordinated powers we mean powers that require coordination among multiple parties. Notice that there's only one direct power in that column and that is the power to remove individual directors.

When we move to the second column, which is the membership model, notice that, again, we no longer have any indirect powers, they've all become direct. Nothing is indirect. And I'm doing this because I think these are the issues that you all were concerned about, what's the difference in how these are enforced and all of that.

So now what we have is a lot of coordinated powers. And that's because the members would as each member class with each set of rights would have to be agreeing either to constrain their rights or to enforce their rights jointly so that you don't have one member deciding on its own that it wants to veto bylaws, for example.

So that's what you notice about the change from the first column to the second column. When you go to the third column it looks quite different because now

all the powers are direct. There's no coordination because there is only one member. And there's no indirectness because the member has all of the powers.

Holly Gregory: But if I may just interject. And really in reality in terms of how it actually functions, so that's the legal answer - in the actual functioning everything that we say is direct under the full member required the same coordination that it required in the membership model.

Rosemary Fei: Inside the sole member...

((Crosstalk))

Rosemary Fei: It's now occurring inside the sole member rather than giving various bodies...

Holly Gregory: So functionally - functionally it's the same.

Rosemary Fei: Thank you. So moving on to the next page of the key characteristics chart, again we tried to pick out things that we've heard in the ongoing chat were concerns. And unintended powers clearly rose up as a concern. And you'll see that the - you don't have any, in the designator model, whereas you do in the two membership models because members have statutory rights.

There are differences in legal personhood but I'd like to turn next to the enforceability. In all of the models the IRP is the main way of resolving problems. The - you can read for yourself what it says, I don't think I want to go over it in detail.

Enforcement uncertainties are quite different between the models. There are essentially minor uncertainties relating to the designator and sole member

model and larger uncertainties and sort of legal issues that arise with the coordination of all of the members and the ability to do that tightly.

Going on to the next page of the chart, the last page of the chart, capture by single stakeholder group, note that what we did here is we split this into the likelihood of capture and the consequences of capture. And what's interesting is that both the likelihood of capture and the consequence of capture in the designator model is extremely low because the designators only have the powers they're given, there are no statutory powers.

In the full membership model the likelihood of capture depends on having an active set of members to counterbalance each other. And the consequences of capture are the most severe because members have statutory rights like the right to dissolve.

On the other hand, when you move to the community mechanism as sole member model we think the likelihood of capture is roughly the same which is relatively low as the designator model however should there be some way to capture the single member then that single member collectively has the powers that membership brings.

Lastly, some concern has been voiced about the complexity and how much change to the governing documents. It's very clear that the designator model requires the least change. The empowered SO AC membership model requires the most. And the changes for the community mechanism are somewhat less, they're in between the other two.

So that's the summary. And I'm sorry if I've run over.

Thomas Rickert: No, I think that was very helpful. Thank you so much. For our discussion I think it's important for us to bear in mind that there are two components to our deliberations. One of which are the community powers and the legal vehicles that Rosemary and Holly spoke to talk to the question of how these powers can be made enforceable.

And I'm afraid that we sometimes seem to be mixing up the two. And therefore before we start talking about the legal mechanism that we might employ - might deploy, let's briefly see whether there are questions with respect to the powers themselves. Right? So is there any discussion required by this group on the powers that we have established, the powers on budget, strategic plan, operating plan, fundamental bylaws, normal bylaws, revocation and removal of individual or all Board members.

Holly Gregory: Could I ask that we put Slide 26 up as our visual for this?

Thomas Rickert: Because there was the notion of revisiting the community powers and potentially putting some of those to Work Stream Number 2. And I think if there was the proposal to do something along these lines we would need to know now. We had a question from Sabine which I would - yeah, let's go to Sabine first, she mentioned a question in the chat that I'd like to convey to the lawyers. Quick question on Slide 19, "What are the legal personhood requirements in the CMSM? Will that sole member have legal personhood?"

Holly Gregory: Yes, the sole member would have to have some sort of legal personhood. I don't think it's been determined what exactly that would be. It's a decision that we would need to make.

Thomas Rickert: Thank you. Then we have a question from Pedro which I - yeah, please do (unintelligible). Pedro, maybe you can speak up?

Pedro Ivo Ferraz da Silva: Yes, it's actually not a - well it is a question but it's - Rosemary just mentioned that it's not yet decided what kind of legal personhood that would be but what are the options? I immediately thought about unincorporated association but exactly what...

((Crosstalk))

Holly Gregory: Yeah, unincorporated association is the one that we sort of have been assuming in the back of our mind that we could explore. I mean, but that - it's probably the - definitely the simplest most straightforward.

Thomas Rickert: Okay thank you. Now we have a queue forming. And Alan is first.

Alan Greenberg: Thank you. Alan Greenberg. Just a quick comment that when we talk about capture I think we need to remember there are effectively two kinds of capture. One is where one group or a small number of groups somehow get power over the other ones. The other is capture by many of them opting out. So they've simply decided not to participate leaving whoever is there to - that has perhaps by no implicit action of their own, has captured the organization.

And when we talk about capture, we really need to look at both because we are in a situation where it would appear that a fair number of the ACs and SOs may choose to opt out.

Thomas Rickert: Thanks. Just before we forget about it, the question that I asked - because there's a massive queue forming. Can those please speak up that want to talk to the question of community powers? Because I think we need to try to take stock of the question of the community powers and then discuss the community empowerment model that we would like to attach to it.

Next is Chris, please.

Chris Disspain: Thank you so much. Yeah, I assume you asked your question because there might be - if we're going to be discussing some of these powers or reconsidering some of them the result of that might have an effect on which model we end up choosing. I'm not sure that what I'm about to say does make a difference but you asked the question so specifically from my point of view I have - I think more discussion needs to be had on the budget strategy community power. I'm not against it per se but I don't think we have anything like enough detail about what we mean.

You've heard in the discussion this morning some people saying it's veto, some people saying it's approval. And until we're clear I don't feel personally comfortable saying I'm okay with that power.

Thomas Rickert: It's veto. It's veto. It's veto. It always has been veto. It's veto.

Chris Disspain: Well, is it veto of the - is it a block on the full budget? There's discussion to be had on what we mean.

Thomas Rickert: It's a veto on the decision taken by the Board.

((Crosstalk))

Chris Disspain: ...reconsideration? Is it asking us to - the Board to reconsider? Is it a blanket veto?

Mathieu Weill: So, Chris, we have an agenda item on...

Chris Disspain: I know.

Mathieu Weill: ...later on today.

((Crosstalk))

Mathieu Weill: And I would really recommend that we read the documents that have been worked on, on this.

((Crosstalk))

Mathieu Weill: And it's very accurate. All the answers are here.

Chris Disspain: I would like to be able to answer Thomas's question if that's okay with you, Mathieu? I have actually read the documents. And I'm still not clear. And it's also clear to me that other people in this room are not clear no matter how clear you think the documents are.

So my answer to your question, Thomas, is, that one I would - I think needs more discussion on. I don't think that affects - would affect my choice of model for myself personally because I think that's the one that is the least affected by all of them. In respect to all of the others I'm fine with them. So I don't have an issue.

Thomas Rickert: Let me just try to offer a little bit of rationale for my question. We can have all the community powers, regardless of what model we attach to it even if we leave everything as is, even if we keep everything merely trust-based, right, so I just want to make sure that we can take stock of that and put that in front of the bracket. What are the powers that we want to empower the community with? Let's try to lock that down.

And then talk about what level enforceability we need and that is the discussion that we're going to have with the lawyers. But, Chris, that's been very helpful that we obviously need to dwell on that a little bit more. And let's go to Paul then. And can I please ask you to lower your hands when you've spoken?

Paul Rosenzweig: Good morning. Paul Rosenzweig. I just wanted to respond briefly to Alan's suggestion that one aspect of capture would be the refusal of community members to participate in a community solution. I don't think that that's a reasonable basis for rejecting whatever model we might choose.

If the community going forward chooses a particular model and one aspect of the community chooses to continue to resist that and takes its ball, in effect, and go home, that's the decision that the part of the community is free to make. But it can't be part of our decision making that nobody will - that that particular group won't participate. It should be part of our decision making that they object but having settled on a methodology in the end the burden on the - is on the community member to decide whether or not it wants to accept the consequences of taking its ball and going home. Game goes on.

Thomas Rickert: Thanks, Paul. Bruce.

Bruce Tonkin: Thank you, Thomas. Just wanted to indicate something with respect to that third model around the sole member that there is one other possibility you could think about there and it's something that we used in the new gTLD process is the notion of an independent member or independent objector.

And in the new gTLD program we had a mechanism where there was concern that different people didn't have the ability to formally raise a complaint with

respect to a couple of areas around public interest and gTLD program. And we created the concept of an independent objector.

And the independent objector purely must make a decision on whether having - looking at all the complaints that are going on in the community whether it is in the public interest to, you know, raise a formal dispute. If you had an independent objector then they're not really subject to capture from any particular organization because at the moment you're creating a sole member and you're saying that sole member is directed by one or more of the SOs or ACs.

But you could literally just have a member that's truly an independent person and that person can - has the sole function to operate in the public interest. And if they saw that ICANN was going outside its bylaws or not listening to the decisions of the IRP then that independent person could actually then take ICANN to court in that mechanism.

So it's just a variation to think about which I think it's perhaps less capable of capture much like the IRP. You're saying I've got a panel of three people, let's say, and you're choosing those independent members of the panel that are not subject to capture and then they're able to make a decision to bind ICANN. You could have something similar in that single member model as well. Just a variation to consider.

Thomas Rickert: Before we go to Holly to respond to that, I think that's a new concept that's certainly worthwhile considering. But it doesn't empower the community. So everything that we've been discussing from Day 1 basically that we want to empower the community now puts the power of objecting into somebody else's hand who might be out of the community.

So we go to Holy briefly but since this is an entirely new concept I would like to encourage you, Bruce, to maybe put something in writing to that and let's see whether it gets traction in the group for us to further look into. I think that it is a clear deviation from what we've been doing over the last couple of months.

Holly Gregory: So I wasn't going to - it's an interesting idea. I wasn't going to respond to it so much as to respond to what might be a misconception. You mentioned that one or more members would direct the community mechanism as sole member to act. The community mechanism as a sole member is only directed as the entire group of community members decide to have it act so no one AC or SO could ever tell it how to act.

Thomas Rickert: Thanks, Holly. Let's move to Jordan.

Jordan Carter: Breaking the rule about two points in one remark, I think we should pursue all of those community powers; I don't think any should be taken off. And I think between now and the time we finalize our report comes out and we have to iron out any remaining confusions or lack of detail like the one that Chris raised about the budget power. And I'll actually just save it to one so I'll leave it at that.

Thomas Rickert: Thanks, Jordan. Sebastian.

Sebastian Bachollet: Yeah, I would like to be sure that you ask the right question, Thomas. Because we get through a public comment period and maybe it's not too much what we think here only but what came out from the public comment on the issue was important to put on the table. What was the answer to the people who raised the issue on one or the power? And how we deal with that because I can repeat my point of view but you already know it because I wrote it. Then

I - if you - if I want to be sure that it's on the table, yes, I want to repeat them, it's on my report and I will not say it again.

But I guess what it's important it's what we have in the comment period back to us and see what we do with that or what was done in the different working party or where it was treated, I think it's more important. Thank you.

Thomas Rickert: Yes, Sebastian, just to respond very briefly, we took good note of what has been said during the public comment period. As you know the groups have been working very hard between the end of the public comment period and today. And what we saw is overwhelming support for the community powers. It was only until recently that we found out that there seemed to be some in this group that wish to put some of the community powers until a later stage. I remind you of the intervention made by Thomas during the last call.

And I just want to make sure that we keep what has - what might be proposed by those that want to put community powers to Work Stream Number 2, what exactly that should be. Apart from that, I think community support for the community powers as such has been overwhelming. There have been questions about details that need to be ironed out. And we'll have a separate session on that.

But I think we can't afford to have happen at this stage of our work is that we agree on a model and then re-enter into a discussion on where we don't want Board spill, right? So I think we can't afford to go back to Square 1. We need to smooth out some of the wrinkles. But we need to make sure that we keep stock of where we are in our deliberations.

Let's now move to Izumi, please.

Izumi Okutani: Thank you. So my question is not necessarily direct to the lawyers but I find it would be useful to know if there's a particular model that the CWG thinks would be insufficient in meeting their requirements. So there are three models that is put on the table. And if all the options work for the CWG, I think we can consider them flatly. But if there is a particular model that CWG thinks that this is insufficient, I don't think it's realistic for us to consider this option.

So I don't necessarily expect an answer immediately because I suspect maybe the CWG needs to discuss it but it's something that it would be useful for us to know in our consideration.

Thomas Rickert: Thanks, Izumi. And I'd like not to put Lise on the spot now. Maybe we wait until later stage but she takes note of the question. She's nodding for those who are on the audio bridge only so she's acknowledged that receipt of that question.

I would like to close the queue after Malcolm. And, Holly, you did want to respond?

Holly Gregory: Well, all of the models will address the dependencies from our legal perspective certainly. And we sat through and advised the CWG. I do have concerns about sending it back to CWG to decide a model at this point.

Thomas Rickert: Okay. Let's then move to Becky.

Becky Burr: Becky Burr for the record. Excuse me. I also support the powers that we've decided and discussed and debated quite a bit and there seems to be consensus over it. I just want to make one point. I am increasingly uncomfortable with the usability of the recall the whole Board power. And so to me the other

direct powers are very important because I think that, you know, when something is as potentially disruptive as that is it becomes a less usable tool.

Thomas Rickert: Thanks, Becky. We take note of that. Let's now move to Alan.

Alan Greenberg: Thank you. With regard to Becky's last comment, that's something I've said for a number of times that I really think that power is so dangerous because of the unexpected effects of whatever the new interim Board does that I'm not sure I even want to see it on the books. That may not be a common feeling.

I asked for the microphone to disagree with what Paul said in respect to my first comment. First of all, Paul, in the chat called it an objection. I was not raising an objection. I was simply raising something that we need to keep - be aware of.

And, yes, most of the ACs and SOs opt out it is not the ones who are left how are to blame. They didn't maliciously capture. But the optics of the end result and to what extent we can now claim ICANN is controlled by the overall community is in severe danger and therefore I think consideration of who is likely to opt out and not in the various models does influence our choice because the optics of this and how much we can sell that this is really a community controlled organization is exceedingly important.

Thomas Rickert: So let's take note of your clarification that your point was not an objection. I think it's our job to make participation in the community model sufficiently interesting for people not to lose interest and certainly joining this club comes with a responsibility to make it work so I think we have to show that I can be sufficiently operationalized. Kavouss.

Kavouss Arasteh: It is very difficult.

Thomas Rickert: I confirm.

Kavouss Arasteh: Yeah. Difficult plan we have. Difficult things we have before us becomes more and more complex comparative one and the other. My question to you co chairs and to us is at the end of these two days are we going to put one single reference model for the public comments? Or we are going to propose three options? The latter case would result in chaotic situations.

Not all of the people here fully understands. I am among those that do not understand many questions on this. There are intelligent people here. Very good. But not everybody intelligent as they are. Very, very difficult. Please reply me at the end of the two days we put one single model. If that is the case at some time let's concentrate on that and reply to all of the concerns and questions about that. One.

If there is no candidate whatsoever to be part of that single member what will happen? If there is a difficulty of the personhood what will happen? So we have to answer all of these questions. I'm very sorry, everything in the combined proposal of ICG relies on the models. And we clearly mentioned that. If the model is not clear there would be no transition possibility at all because everything is there.

CWG as one of the elements said that they want to have budgets, veto on the budget. If the model does not reply to that properly that situation will fold and that will not be implemented. So I'm sorry, every day we receive new things and every day we have this sort of the process explanation there is no interactive, there is no sufficient explanation and that is that.

I raise the same question, somebody says, no, let us listen to them. We listen to them, still they come up with a new proposal. This is more or less a new proposal.

Thomas Rickert: Kavouss, I guess we are very cognizant of the predicament that we're in. We need to have consensus forming by the end of tomorrow. As you know we follow the two readings culture so (unintelligible) be able to make a definitive statement on that. But we need to have consensus sufficiently forming by the end of tomorrow. Otherwise the timeline and the transition will be endangered.

And I can reveal a secret with you; if there is no consensus by 1600 UTC we will have the doors locked and bolted, air conditioning turned off, drinks removed and salted snacks being brought in. So - but...

((Crosstalk))

Man: ...and you'll find out what happened to the chair when he tried to do that.

Thomas Rickert: But joking aside, I think your point is a very good one. We are here to - and we've reminded the group multiple times not to reinvent but to refine what's already there. We've got great guidance from the community coming out of the first public comment period. And whether we're going to have a full fledged model by the end of tomorrow I do not know. But we should have sufficient knowledge of the direction that we're taking when we leave Paris. So that needs to be inside and otherwise I think we're going to be in difficulty.

After Kavouss I think it was you next in the queue please...

((Crosstalk))

Thomas de Haan: Yes, thank you. For the record, Thomas de Haan from the Dutch government, GAC member.

((Crosstalk))

Thomas de Haan: ...part of the group but still have some consideration to give you to as a group. It comes with the remark of I think Alan about capture. And I think it was reacted also by Paul saying that if a group rejects or refuses to be part of it then it implies a kind of giving up your responsibility.

I think I would bring in the fact that, for example, the GAC is probably, well at least probably very high that they cannot be part of a member meaning that you have to also consider this, so there should be whatever a respecting of the mechanism we are designing you should be able to bring in the views of those ACs or other groups who cannot be part. Thank you.

Thomas Rickert: Thank you. Next is Malcolm.

Malcolm Hutty: Thank you, chair. I've said it before but clearly I need to say it again, these models must not only deliver Section 5 of the report, the community powers, but the whole of the report. This focus entirely on the community powers, when considering which model to choose, is very unhelpful. It must deliver everything that we propose.

Now I'm very uncomfortable, Thomas, I'm afraid with the way that you've handled Bruce's intervention. Bruce's idea was a variation on the single model for an independent objector I can see personally there's immediately some concerns that I would have with that. But it's a legitimate suggestion. But it's the suggestion that was raised for how this model might be varied so

as to ensure the appropriate enforceability of the IRP which is not the enforceability IRP was not listed as one of the community powers because it's not in Section 5 of our report, it's in Section 4 of our report.

That's an entirely legitimate input to the membership model or to the choice of model that we use. And to dismiss it, and I'm afraid it came across very much, maybe you didn't intend it this way, but it certainly came across as dismissing Bruce's intervention on the grounds that it wasn't directed to the applicability of this model to implementing these powers. And I find that completely inappropriate.

Now as I say, you may not have intended it that way. And it may just have come across differently. But the way that we are focusing this - the way we are framing this discussion on analyzing these models only in terms of the community powers is leading us into that position and it is very unhelpful.

Thomas Rickert: Malcolm, a quick response to your point. First of all, I've encouraged Bruce to send something in writing to the list to see whether this proposal gets traction. Since this was a new idea I thought and I still do think that it's not the right place for us to open up a discussion on this new item in the plenary before knowing that it does get traction within the group. So the idea has not been dismissed. I just offered another approach to introducing that to the discussion.

With respect to the community powers if you look at the agenda the points that are relevant to you to perceive all this as a holistic package are being dealt with during the two day session. What we're focusing on now are the powers that are closely interrelated with the legal vehicle to be used for operationalizing them. And therefore we want to slice the discussion so that we can take stock of portions of the discussion.

Certainly the IRP is an integral part of the whole package and I think that's what you're alluding to because that's closely linked to the bylaw section on core values mission and, you know, the compact, if you wish. So that's going to be dealt with.

But in this extremely complex discussion we need to make sure that we keep portions digestible for the whole group. So your point is not - is well received. We need to take a look at the accountability architecture as such. But for this very discussion on the legal vehicle I think we need to focus on the powers directly associated with it.

We had more interventions in the chat one of which was by difference. Maybe I can ask the individual behind difference to disclose his or her identity?

Seth Johnson: Seth Johnson.

((Crosstalk))

Thomas Rickert: Okay so then I missed that in the chat. There was the question about pointing or disclosing the statutes that you're referring to for the statutory rights. Maybe you can send a note to the list referring to the legal name where that can be found. So that information is already out there, we just need to point you to the right direction.

Rinalia asked a question in the chat on whether the legal mechanisms would allow for openness so that new structures can be added or accommodated as we move on.

Holly Gregory: I think under all of these there's the ability for future change. Future change is really, you know, critical because we can't anticipate right now everything that will happen in the future. I think under all of these models there are mechanisms for the governance structure to continually evolve. So none of this gets locked in stone forever.

Rosemary Fei: I would just to that briefly, the mechanism for change would be different in the different models, member vote, multiple member vote, designator approval after Board proposal but all of them allow future change.

Thomas Rickert: Rinalia has a follow up question. Please.

Rinalia Abdul Rahim: Thank you. It pertains to what Rosemary just said, who is the decision maker in terms of allowing for new structures to participate? And I think it would be worthwhile to know that in the different models.

Holly Gregory: Do you want to take - okay so in the empowered SO AC membership model and in the community mechanism as sole member model membership bodies have the ability to change bylaws and so they would have a lot of power. In the empowered SO AC designator model you would need more activity by the Board of directors.

Thomas Rickert: Thanks. And I'm really going to close the queue after that. Lyman. I hope I pronounced the name correctly. Lyman.

Lyman Chapin: Close enough. Lyman Chapin. Thank you. Here from SSAC. And I'd like to make a comment with the understanding that being new to this process it may be a point that has already been recognized and debated within the group. But that in itself is relevant to the fact that SSAC is somewhat of latecomer to this process as a whole.

The point I want to make is that ultimately the success of any model that we come up with will depend on the willingness and ability of actual real people to participate. And I want to focus on participation because there's some of us who are willing to fly all over the world and have these kinds of meetings almost indefinitely because that's more or less written into our job titles.

When we talk about the community we're talking about people who for the most part are not interested in those kinds of processes at all. And if we want a structure that's going to represent their interests we should be very careful to ensure that it encourages participation by the sorts of people who will sustain the structure going forward.

Any structure you put in place can be a fine and wonderful thing but it will not sustain itself without the active engagement and involvement of people who care about its success.

And so I very strongly encourage you, and I'm making this particular point because this had a lot to do with the fact that it took SSAC a long time to decide that it would join this group as a chartering organization that we don't imagine that we can put in place a structure that satisfied all of our, let's say, abstract criteria about what the community powers should be and how they should be exercised and so forth which is then opaque or uninteresting to some set of people whose active willingness to engage will be necessary to carry this forward through all the different changes and uncertainties that it will undoubtedly face in the future.

I will leave it at that. I very much appreciate the opportunity to participate in this group with you and hope that I'll have an opportunity as well to be educated on some of the points that perhaps are still unclear to me but that you have already had a chance to discuss. Thanks.

Thomas Rickert: Thank you very much. Now do we have - we had a question about statutory rights. We had questions earlier about derivative suits. They've been addressed in the presentation. It was my understanding that those who were concerned about a membership model were particularly concerned because of the risk of derivative lawsuits and statutory rights.

The lawyers have spoken to these issues. We just to briefly refresh your memory for the designator model we do not have that risk because the designators wouldn't have those rights. For the membership model we could try to truncate those rights in the bylaws but there is no 100% certainty that this will hold water in courts so they can try but there's no guarantee.

For the single membership model we would have the risk de factor lowered because there needs to be a collaborative approach by the groups in the single membership associated with voting thresholds for those powers to be exercised. So de facto these risks are lowered. And maybe if we combine that with truncating those rights in the bylaws then we still have an additional safety net to lower that risk.

My question to you is whether for those who were concerned about this, and you will remember we asked the lawyers specifically to look into that, have those questions been answered sufficiently in the memos that you received and in the presentation. You know, we will continue this discussion but let's just briefly see how much need there is for further deliberation.

Chris, you were getting...

Chris Disspain: Only to say I don't know, I mean, I'm waiting for us to have a full discussion where we can ask questions and get answers. I can't possibly make a comment

about what I think about it now. I'm happy to have that discussion now but I thought you wanted to have that later today.

Thomas Rickert: Yes, but if you could give us an indication of what is open if you could put that in a nutshell that could possibly put us in a position to prepare for that during the lunch break.

Chris Disspain: But you're asking me to have the discussion that you want to have later. I mean, my points would be including things like how do you deal with the - how do you deal with a single member having a series of groups of entities making - belonging to it. How do you deal with voting.

How do you deal with the SO and ACs still not wanting to belong to an unincorporated association, that's their relationship with the member. How do you deal with - yes you may be right about the statutory rights but they still exist as statutory rights, they're still there. Holly has said it's likely you can't reduce them by very much in the bylaws.

Are you simply shifting the trust burden down a level? I assume the unincorporated association that is the sole member would need to have some sort of a Board.

Holly Gregory: Ho.

Chris Disspain: Well it would need to have some sort of representatives presumably. So see what I mean. So I'm not suggesting I'm right, Holly, I'm saying there's a whole heap of things to be discussed and I can't comment on what I think until I've had that discussion.

Thomas Rickert: Yeah, but that's good. You know, it could have been that everybody would jump up now and say well my questions have been answered because I read the memo, I heard the presentation so that's a done deal. I think we know what the area of concern is so that we can prep a little bit for that and have that discussion.

Before we break for coffee just as a reminder, we are going to continue this conversation. We're going to also have conversations on other parts of the proposal as you know. But let's just be clear we need to end up with one solution, right? So asking questions it's all good but I think we shouldn't open up too many additional points or try to get too much additional detail that could derail us from our aim to find the consensus position today.

So let's try to focus on the main points, the main concerns, finding consensus is a painful process so let's all be ready to make some sacrifices and then - in the hours to come. And with that I think we should break for coffee for...

Mathieu Weill: I think it's a false promise. Coffee is only a new - another agenda item where I think, or am I mistaken?

Thomas Rickert: I thought we were to break for..

Mathieu Weill: No, no not yet. Not yet. Work Party 3 is standing between you and coffee.

Thomas Rickert: Okay, I read break in three minutes or wait longer. Okay then we move to...

Mathieu Weill: I'm going to chair this one now.

Thomas Rickert: You and...

Mathieu Weill: Yeah.

Thomas Rickert: So back to you. And thank you to Rosemary and Holly.

Mathieu Weill: Thanks both of you. So we'll get back to this discussion obviously and I think it's important to keep that in mind that we want to do now is update on the new emerging issues we had identified based on the public comments. And we just a reminder that we created Work Party 3 in Buenos Aires in order to work and frame some of the proposals that could be made around these emerging issues of SO AC accountability diversity and I'm missing the...

((Crosstalk))

Mathieu Weill: ...and the staff accountability. There was a bit about the Board's role as well but I think it hasn't been worked on too much at this point.

And so Leon has been rapporteur for this - leading this group which was formed very quickly and I want to thank all volunteers for that. There was a lot of work done in very short time. And, Leon, you're going to introduce the discussion following the framework we've discussed earlier and then we'll have an initial discussion now to fully understand the proposals and we'll get back to that later in the day for a discussion that will aim at clarifying where we want to head on these emerging issues especially as far as what should be Work Stream 1 versus Work Stream 2.

And, Leon, with that turn to you.

Leon Sanchez: Thank you very much, Mathieu. So this is going to be of course very brief as it only intends to present the preliminary results that we have achieved in Working Party 3, as Mathieu said, we have a lot of work to do in very little

time. And we basically divided - can we go to the next slide please? We basically divided the working party into three subgroups. One dealing with SO and AC accountability. The second one dealing with ICANN staff accountability. And the third one dealing with diversity.

These all were issues that arose from our first public comment period, for example, with the SO and AC accountability the main concern was the old issue on who is going to watch the watchers. So as we empower the community with new powers there is the concern of - that we should be enhancing also the SO and AC accountability.

We also received some comments with regards to ICANN staff accountability in the sense that our proposal was largely centered in (unintelligible) accountability whereas we should also be looking into ICANN staff accountability. And lastly diversity was also an issue that was raised or that was highlighted in our first public comment period. And we were asked to look into it with more detail as part of our work.

So if we could go to the next slide please? So the work that we developed is reflected on three papers, three short papers. And what I'm presenting to you here is our only recommendations that each of the sub groups came up to after the work we performed through five or six calls if I can recall correctly.

So the first recommendation with regards to SO and AC accountability would be to assess whether the IRP should also apply to SOs and ACs activities. And I'm pointing this as a Work Stream 1 issue with a question mark because we would of course need to agree on this. And it would be something that we would require your feedback.

The second recommendation would be to perform a complete review on accountability by each SO and AC as part of Work Stream 2. There is also the concern that we should be looking at having maybe an independent review of the SO and AC accountability because there is the concern that if we leave this in the hands of each SO and AC they might come back and say okay, well we did our review and the good news is that we are already accountable. So we need to have that double checked or cross checked with someone else that's not directly the SO and AC that is incumbent.

So the third recommendation would be including SO and AC accountability as part of the ATRT process. And this would also be part of our Work Stream 2 plan.

Then perform a structural review so each SO and AC in relation, as the case may be because we are aware that not all SOs and AC are created equal. And to their respective constituencies and stakeholders this would also be proposed to be part of our Work Stream 2 plans.

And then we also recommend that we evaluate the mutual accountability roundtable as part of Work Stream 2. This is a mechanism that was proposed in Buenos Aires by one of our advisors. And there has also been some discussion not precisely around this mutual accountability roundtable on the list but sort of a mechanism that would enable some kind of public hearings with regards not only to ICANN staff but also maybe extendable to SO and AC accountability. So this should definitely be something that would be looking at or analyzing in detail as part of Work Stream 2 plan.

And lastly with regard to SO and AC accountability to establish a commitment to carry a detailed working plan on enhancing SO and AC accountability as part of Work Stream 2. So we can establish and we can

agree to have this commitment as part of our Work Stream 1 work then we could then carry this into the detail as part of Work Stream 2.

Next slide please. With regards to ICANN staff accountability, the recommendations that we came up to are to establish a clear definition in - about ICANN staff role including a description of best of powers in ICANN staff by ICANN Board that need approval at those - and those that don't. This would be part of our Work Stream 1 work. And we have discussed that the appropriate document for this to be included would be the problem definition and scoping document.

Then we have to make certain mechanisms that are already in the proposal applicable to ICANN staff as well. And I'm signaling this as a Work Stream 1 issue with a question mark. We need to agree on this of course. And our third recommendation would be to commit to have as part of Work Stream 2 a plan to build documents that foster a culture of accountability. There have been some suggestions like a code of conduct, training programs, etcetera.

So we would be including all of these mechanisms as part of a Work Stream 2 plan. And finally to commit to carry a detailed working plan to enhance staff accountability that includes realistic and meaningful access to redress by aggrieved parties as a consequence of ICANN staff's action or inaction. This would be of course carried out as part of Work Stream 2 as well.

And one thing that I would like to stress is that we're not looking into micromanaging staff. And we wouldn't be so far looking into having staff accountable directly to the community so that the staff then suddenly has 2000 bosses which to respond but rather to have them be accountable to the CEO as they are now or as they should be now.

And only if they are not being held accountable to the CEO then the community would of course have or have some means or mechanisms to hold accountable - to hold staff accountable.

So if we could go to the next slide please? On the diversity issue we have seven recommendations. And these are to include diversity as an important element for the creation of any new structures, this of course would be a review on the Work Stream 1 proposal. So we should include this as part of, for example, if we're looking into the IRP we should be - we should make sure that a diversity factor is included as part of creating the IRP panel.

Then to evaluate the evolution of the ATRT into ATDRT which D stands for diversity of course. And that of structural reviews into structural accountability, transparency and diversity reviews of SO and ACs as part of Work Stream 2. Then establish full inventory of existing diversity related mechanisms for every ICANN group as part of Work Stream 2 as well.

Identify the possible structures that could follow, promote and support the strengthening of diversity within ICANN, also as part of Work Stream 2. And commit to carry out a detailed working plan to enhance diversity in ICANN also as part of Work Stream 2. And devise a formula to ensure as a first step at least regional diversity in each new created structure. This would be, of course, maybe signaled as a Work Stream 1 issue.

And finally to commit to strengthen outreach in order to expand the existing pool of ICANN participants so that diversity is better addressed as a consequence. This would be part of our Work Stream 2 plan so far.

So I think the next steps would be of course part of later agenda item. We would be going into detail as part of our afternoon sessions I believe. And with this I would like to turn back to Mathieu.

Mathieu Weill: Thank you very much, Leon. As you said, the point of this agenda item is to ask questions to the Work Party 3 group so that we can clarify anything that's unclear in here and so that at a later point in the day we can get into what exactly the group is comfortable with putting into Work Stream 1 or Work Stream 2 or actually adding things, obviously it's open for discussion. But rather what we would like here is clarifying questions. I've noted some questions regarding to the applicability of the IRP in some of these cases to staff decisions and can I turn to Becky for a quick response?

Do you think that there are questions in some of the slides about whether the IRP would apply to a staff decision? And that if we can clear that up do you think?

Becky Burr: So just as now, it applies to a decision by ICANN includes the Board, it includes the staff that is in violation of the bylaws. So I don't think that, you know, ultimately, you know, the Board is accountable for the staff at some level. And I think most of the - well there haven't been very many - many of them have - most of them have been directed towards particular Board actions. But that's not the standard.

Mathieu Weill: Okay. And there was another question mark about whether IRP could apply to SO AC decisions if I'm not mistaken in your document. Do you think, Becky, I don't know, so for instance, a supporting organization that would refuse a proposal by the Board to restructure, could that be going to an IRP?

I'm speaking of it because we're discussing about mutual accountability and how SO and ACs need to be held accountable somehow about still representing the broader views of their groups and so on.

Becky Burr: Well the standard would be if - is the action of the SO or AC a violation of the bylaws. I mean, I think you'd have to deliberately set it up that way and I think that there are some worries about setting it up that way. But I don't think that were precluded from doing that.

Mathieu Weill: Thanks. So a queue has been forming so I'm turning to Rinalia.

Rinalia Abdul Rahim: Thank you, Mathieu. I've raised the issue of SO AC accountability early on since the Singapore meeting and I'm delighted to see this item. In my capacity as the chair of the Board committee structural improvements there is a set of organizational reviews that are scheduled in ICANN's world. Basically you know this. So I'm curious about Item 4 on that slide which talks about structural review. And I would like to know whether that is one and the same, whether you intend for it be incorporated in the existing organizational/structural review or something apart from that?

Leon Sanchez: Mainly the same thing.

Mathieu Weill: I think the idea behind it was that expand a little bit the scope or (unintelligible). And I will close the queue very soon because we don't have that much time and I know we all want coffee but there's still opportunities for clarifying questions. Malcolm, you're not in the room, right? Okay.

So Malcolm, you're next.

Malcolm Hutto: Thank you. On that last point very briefly I think it's clear that the IRP exist to review the compatibility of the actions of the organization, the corporation against the bylaws, not the Board specifically or the staff.

And the SOs and ACs being creatures of the bylaws as well if they were to act in a way that was fundamentally incompatible with it, it would be open to review. I expect there'd be a high threshold to actually succeed in such a review. But if they were to act grossly in disregard of the core values of openness and transparency and so forth they'd be susceptible to that review as well.

My intervention, however, was on - I wanted to make a separate point because we haven't had the opportunity to do so in the WP meetings. This is - WP3 is supposed to be the emerging issues group. And I would like to suggest three other topics of emerging issues that have arisen that I'd like to suggest should be tabled for the work of this group.

The first is Larry Strickling's suggestion that we should consider making it - writing into the bylaws that the standard for Board action should be to certify that a consensus has been reached in the community.

The second thing I'd like to table is Kiran's suggestion that there should be some form of...

((Crosstalk))

Malcolm Hutto: Kiran, yes, some sort of select committee/congressional inquiry/power for the community. I will try harder. The second thing that I would like to suggest that this group consider developing is the proposal from Kiran that there

should be a community power to hold hearings modeled on a sort of congressional inquiry style.

I'm not saying that I endorse that as a proposal but I think it's an important suggestion that we should consider.

Mathieu Weill: And Number 3?

Malcolm Hutty: And the third one is a writing up of Bruce's recent suggestion, the idea that there should be some sort of independent objector that would themselves have the power on behalf of the community as a whole to initiate an IRP on the basis that the Board - that the corporation was acting inconsistently with the bylaws in some way. I think these are...

Mathieu Weill: Thank you.

Malcolm Hutty: ...three significant.

((Crosstalk))

Mathieu Weill: Excellent. Thank you very much. That's very useful. Leon, can you tell us whether - on the Board's role whether there's been discussion in Work Party 3 hearings and inquiries that somehow covered by the mutual accountability roundtable things that we've been discussing or...

((Crosstalk))

Leon Sanchez: Yes, Mathieu. Actually I thought I had referred to that when I was presenting the slides. But I think I wasn't clear enough. And, yes, the mutual accountability roundtable would be in line with Kiran's suggestion I think. It's

something that needs to be discussed into more detail of course. But this is what we have in mind so far. I mean, as I said, we have very little time to come up with a document to present to you.

And of course we are lacking the details in many but to my mind Kiran's proposal would be most likely in line with what we've discussed on the mutual accountability roundtable.

Mathieu Weill: And on the Board's role I remember that we had discussion there was one of the feedback that we get from the public comment and Larry Strickling. Was there any discussion in the Work Party 3 on this topic?

Leon Sanchez: We discussed very little issues...

((Crosstalk))

Mathieu Weill: Okay. So maybe something we need to keep in mind as well.

Leon Sanchez: Yes.

Mathieu Weill: And of course the independent objector, yes, fits very well in this. Yes. And the proposal has been made by Bruce on the mailing list for those of you who have access to your emails. Next in the queue is Steve.

Steve DelBianco: ...light is flashing green. Now it's working. Steve DelBianco. In the stress test discussions we realized we don't have anything there for Work Stream 2. But one of the key stress tests for Work Stream 2 has to do with the definition of the powers that need to be in Work Stream 1.

If you recall, you had it up on the fifth slide that you used to intro today that it would guarantee the community's ability if it had consensus that could implement a Work Stream 2 measure in the face of resistance from ICANN management or Board. And when I look at the last two slides on Work Party 3 many of these measures would require in Work Stream 2 a bylaws change.

But I don't know of a mechanism by which the community by consensus could force a bylaws change in front of the Board so the Board could vote on it so the community could then challenge the decision if the Board decided not to accept it. I don't know that we have a mechanism that the community generates bylaws changes.

I've seen it done in an ATRT and potentially in other review teams but we have - we should probably try to understand whether we need to design something new so thank you.

Mathieu Weill: So we have something in the transitional bylaw article that we're contemplating for Work Stream 2 which would basically say that the Board will have to - will commit to consider the proposals out of CCWG Work Stream 2 to implement them. But that would be the mechanism we'd have.

Not being a lawyer, not sure about how strong it is or whatever but that was what we suggested. And we had quite good feedback from this on the public comment Number 1.

Next in line is Fiona.

Fiona Asonga: Thank you very much. I just want to us to look - to go back I think through slides. There is the proposal by this work party to have the ATRT also look into the AC and SO's review. And if we go back to what Rinalia just said

about the current - the ongoing organizational reviews within ICANN I think it becomes very difficult for an ATRT to do the ATRT reviews that look into the Whois, the security and stability, the consumer reviews, and then again go into the AC and SO's reviews. It's not practical.

So we probably need to find a way of getting the AC SO reviews addressed in a more practical manner. Maybe having another review separately from the ATRT that looks into the AC SO's reviews when they are being done as part of the organizational reviews within ICANN because there are some ACs and SOs that have already been reviewed in the past couple of years within the ICANN organizational reviews.

So we need to be building those review processes to look into accountability of those ACs and SOs as of course to try to push all of it into ATRT. The scope becomes too broad and the time from within which the review process supposed to begin and complete is not going to be manageable or practical within the set up that would want a review team to complete its work and for implementation to be done.

And bearing in mind there's a lot of back and forth consultation between the review team, the staff and the community we can't have an ATRT adding to what it already has, the ACs and SOs. Thank you.

Mathieu Weill: Thank you, Fiona. Thank you, that's very good comment.

Leon Sanchez: Yes, I'd just like to stress that this - to what we have here is a work in progress. This is not conclusions at all. That would be of course our next steps to get into consensus and conclusions. And we also need to be careful not to mix subjects. The ATRT expansion would, as we came up with the suggestions or the recommendations, would refer to diversity, not to SO and

AC reviews. As Rinalia pointed out we already have something in place for that so this is just work in progress. And we need to further flesh out this into details.

Mathieu Weill: Thanks. I will move to Wolfgang now and go back to the online queue after that and trying to mix both.

Wolfgang Kleinwachter: You know, my question was related to the idea of the roundtable and the hearing. And it was covered more or less by Leon's response to Malcolm. I think this idea has a lot of potential to enhance mutual trust and I would be ready to contribute to make this more specific in detail because this is - would be an enrichment of ICANN meetings if we have public hearing within the ICANN meetings.

Mathieu Weill: Thanks, Wolfgang. Very excellent to hear that. And I sense quite a lot of traction for this idea of roundtables and hearings for - it's been the case for the last couple of face to face meeting so definitely something we need to move forward.

So the queue is closed but we still have Jan, Kavouss, Alan and Chris. Jan.

Jan Aart Scholte: Thanks, Mathieu. Jan Scholte. Just on the SO AC accountability, two things, one was that we talked about the SO AC accountability to the direct participants in the ICANN process on the one hand. But also the accountability of the SO AC to the wider world outside the ICANN process whose interests and activities they aim to bring to ICANN. So there were two dimensions to it. And we want both of those to be looked at under each of the headings.

The second thing was that I think maybe on the second point on the SO AC accountability as it was articulated on the slide, might not have been clear to those people who were not involved in the group. But what we were talking about there was that there would be a review of the - each SO and AC would review their rules and procedures, their operating procedures to see how well those were incorporating and sensitized to accountability issues.

We went through the existing SO and AC rules and procedures and found very, very little reference, explicit reference to transparency, consultation, evaluation, redress and so on. So it's to sensitize those documents in that. And in many cases make them reflect the practices. Very often the SOs and ACs have very good accountability practices but they're not actually reflected in their formal definition of their rules and procedures. Thanks.

Mathieu Weill: Thank you very much, Jan. Kavouss.

Kavouss Arasteh: Some of these ideas are very good wishful thinking, difficult to implement. Watching the watchers, mutual accountability, it is difficult to implement that and if you want to implement that it's very costly. Application of IRP to staff has some legal complexity and difficulty. We should not follow that path. Thank you.

Mathieu Weill: Thank you, Kavouss. Alan.

Alan Greenberg: Thank you. If we can go to the slide on diversity.

Mathieu Weill: Slide on diversity, please?

Alan Greenberg: I think it's the next one.

Mathieu Weill: Yeah, probably next one.

Alan Greenberg: Yeah, thank you. I have a great feel of uncomfot with statements like the second to last one. Devise a formula to ensure - ensure is a rather strong word - as a first step at least regional diversity in every new - in every new created structure. The community council, if we have one itself, is going to be a new structure that will not be diverse. Parts of it will be but overall it will not be. So I feel very uncomfotable with diverse which is a great aspirational things but we have to be practical. We don't want to set up bylaw rules...

Mathieu Weill: So can we...

((Crosstalk))

Mathieu Weill: ...can you expand a little bit about what's meant through this sentence? And that might be some formulation issue.

Leon Sanchez: Yes of course. Maybe it was a bad choice of words to put ensure into the slide. It was literally a transcript of what we had in our document. And what we mean by this is that when creating new structures there should be at least some criteria that we have set up in our document which is not an exhaustive list of criteria but rather a guidance that those who would be appointing members or people to seats in whatever structure we create should take into account in order to try to address diversity. As you say, it's more aspiration then...

((Crosstalk))

Mathieu Weill: There's a gradation anyway, it can be just a goal, it can be a goal with some guidelines, it can be introducing a minimal level or getting to very strict

quarters and everything. And I think there's a gradation that we need to discuss on this.

Leon Sanchez: Exactly.

Mathieu Weill: Follow up by Alan.

Alan Greenberg: I understand completely what it should be. I was just cautioning that words like that can cause problems...

((Crosstalk))

Mathieu Weill: Sure and the point is well made. Chris.

Chris Disspain: Thank you.

Mathieu Weill: You're last and...

Chris Disspain: ...Mathieu...

Mathieu Weill: ...actually Becky wanted to respond to a previous comment but please.

Chris Disspain: Two points I wanted to make, one specific, one general. In respect to staff accountability we're talking about making the staff accountable to the community. I've asked this question dozens of times in various different contexts, who is the community?

Currently the IRP reconsideration requests are available to whether a claim is that staff have acted outside of policy. The ombudsman is available for what I call sort of HR type issues. If staff members are rude to somebody in a

corridor or vice versa. So what are we actually talking about when we talk about making staff accountability to the community? And who is the community?

And then on a general comment if I may, I'm actually becoming very concerned about the ever-increasing number of issues that we're dealing with here. We're here to deal with the IANA transition and accountability and enhancing our accountability in respect to that a great degree.

ICANN 2.0, which I was intimately involved with, took about two years. It was a much smaller ICANN then and a much less complicated ICANN. It still took us two years to put all of that together. A lot of the things we are currently talking about in this Working Party 3, and some of this is - is classic for the ATRT. The last ATRT took nine months.

It had three ICANN meetings. It had at least two public consultations. There were new ideas on this list that we're talking about shifting to Work Stream 1 that will become - will have one report, one public comment and end up - could end up being in a document in Dublin. And I'm very concerned that we've got new ideas floating around that are being brought up right now and that suddenly are going to be put into a document and we're going to expect to have consensus around without the norms that this community uses to deal with those sorts of things. Thank you.

Mathieu Weill: Thanks, Chris. I think your - I'll let Leon answer to the first point but on to the second one that's very true. But we've also received significant number of comments that said these emerging issues must be addressed for the proposal to be acceptable. And so we are - we are - we need to decide what has to be - because the description you're making about the process and the one public

comment only is actually only for the Work Stream 1 items. The Work Stream 2 items will probably go on for an extra year.

Chris Disspain: No, Mathieu, I was talking about items being shifted into Work Stream 1. There were some items on the...

Mathieu Weill: Sure. Sure.

Chris Disspain: ...Work Stream 3 list that a question mark should it go into Work Stream 1?

Mathieu Weill: Yeah, but I note that this actually a huge majority of items in the proposal that are Work Stream 2 and I think the group has been very reasonable about this. And that's certainly what we'll need to discuss this afternoon about what kind of issues are necessary to enhance ICANN's accountability before the transition happens and that's our definition for Work Stream 1.

And what are the items that are either Work Stream 2 or would be handed over to the next ATRT or anything, obviously. That perfectly fair question for us to ask how we manage our work load and how the community - whether there are unintended consequences, and there will be anyway.

So did you want to respond to the staff accountability precision?

Leon Sanchez: I think Becky wants to add something on that.

Becky Burr: Yeah. I want to be really clear, we're getting very wrapped around a tree on this staff accountability issue. The standard for the IRP is did ICANN violate the bylaws. That's the standard. It's not about being accountable to some, you know, some general theory of accountability to the community. It's did ICANN violate the bylaws by some action or inaction.

But when you file an IRP you file an IRP against ICANN. Ultimately the Board is responsible for ICANN and so the Board usually gets involved and makes - and votes on the declarations and that kind of thing. But we are not talking about hauling up individual members of ICANN staff before the IRP. We are not talking about giving staff the right to bring an IRP for HR violations, we're talking about a very narrow constitutional court function. And the distinction between ICANN and ICANN staff and ICANN Board is totally irrelevant right now in the IRP.

Mathieu Weill: Thank you. I have - the queue was closed but Eberhard, if you want to make a last comment and then I wrap up and then we'll go for coffee this time.
Eberhard.

Eberhard Lisse: Just a short thing, you can even start the clock, it won't be a problem. I slightly disagree with Becky whether it violates the bylaws or not, staff behavior as displayed in the recent IRP is just not tolerable and we must find a way of addressing this.

Mathieu Weill: Thank you. So to wrap up I would do is that, Number 1, the work party has been doing a tremendous job in gathering all of this in such short timeframe and I think this very sensible proposal is on the table right now. The key we will - the key discussion we will have this afternoon about all of this is whether - basically two questions.

Are there any of this topic that we think are outside the scope of the CCWG as a whole and that we should hand over to manage our workload? And assuming that we keep some of this within our framework and given the public comments we've had I think we will certainly have to do something,

are there any items that we need to address in Work Stream 1 and we need to find these ones.

But it's sort of a - the - it's management by exceptions and so the standard would be that these items would mostly go to Work Stream 2 and there might be exceptions that we need to put into Work Stream 1. And that's what we need to find out later today. But first let's get some coffee; it's high time, I guess. And we'll reconvene in 15 minutes so at 10 past.

END