

ICANN

**Moderator: Brenda Brewer
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6:00 am CT**

Mathieu Weill: Hello everyone. We are going to reconvene and would suggest that we start right away. I think that will help the rest of the room to understand that they will certainly join us especially considering the items we have now in front of us.

And we will start with a agenda item related to the AOC so the affirmation of commitment reviews such as the ATRT and their incorporations into the bylaws.

So the topic was already discussed quite a bit and we'll get Jordan as repertoire of work party one to introduce the status of work and we actually have a couple of decision points at the end about whether we - about making sure we have clarity about how it's heading and whether we can actually start drafting bylaws.

So Jordan are you feeling ready?

Jordan Carter: I'm feeling ready (Adam) are you feeling readyish? Good afternoon everyone. My name is Jordan Carter dot (unintelligible) one of the ccTLD members of the CCWG.

This I hope will be pretty simple but I'll just keep blathering to you until we have the slide up here which is uploading. For the incorporation of the AOC reviews into the ICANN bylaws I think as a top level summary there are about 30 comments, 31 comments that mentioned the topic.

And there aren't any fundamental changes to the first draft proposal to look at and so that's helpful. We'll not try to ask you to get your head around the massive shift here.

I can keep talking all week and just wait. The three sort of key issues, three or four key issues - so the point about why we are bringing these in just as a reminder is because the AOC is a bilateral agreement between the United States and ICANN that can be aggregated at the will of either party.

And these reviews are seen as an important part of ICANN's commitment to accountability and transparency. So incorporating them in the bylaws makes sense. There was positive support for that from pretty much all of the commenters.

And so that's what we're talking about here. So from our original proposal though are four issues I want to draw your attention to about concerns that came up in the public comment period.

One was in terms of how members of review teams are selected or how the teams are composed including diversity issues. One was to ensure that the scope of ATRT reviews is somewhat artificially limited.

Some people thought that the list of suggestions was worded in a way that made it look like a constraining list and that other items couldn't be discussed. And there was a mention about OECD guidelines in respect to the Whois directory services review being legal guidance which was not correct and there is the issue of review team access to sensitive information.

So in terms of resolving all those work party one created two options in terms of review team composition. It proposed clarified language for ATRT reviews and their scope.

It provided updated language around the OECD review item describing it correctly. And there's some proposed language there regarding access to sensitive information by review teams.

And if you can go to the next slide (Adam) the open issue I think here is a decision regarding which model for review team appointment process because the ideal is that we can resolve that here today as a model to go forward with and then we can hopefully agree by the end of this agenda item to allow bylaws drafting on this to start to use it as a test case of that process.

Now I'd just like to hand it over to Steve before we start the speaking list to see if there's anything else to add. He led the team that did most of the work on this.

Steve DelBianco: Thank you Jordan and (Adam) if you could load the red line on bringing AOC reviews into the bylaws and then we can get right into the specific part on page 3 or the decision we were needing to make. Are you able to do that?

Okay, so while he's doing that this decision on how do the review team members get appointed. We had only a few public comments with respect to

that and in our May 3 proposal we simply said that all reviews would be conducted by a volunteer community review team comprised of representatives of the relevant advisory committees, supporting organizations, stakeholder groups and the chair of the ICANN board.

So that includes everyone and the group must be as diverse as possible. And that was in itself a difference from the affirmation of commitments because the affirmation of commitments simply let the board and the GAC chairs designate review team members and it had no diversity requirement at all.

It had no requirement for specific number of members from each AC and SO and that has tended to evolve over time as the board works with the community to figure out how to properly compose, to properly staff these review teams and in each of the reviews it was a slightly different experience.

So one of the comments that we attempted to do was to say should there be, should it be left unsaid how many are on and how they're picked or we have two other options and those are option one and two on page 3 in the document in front of you.

So if you're each able to go to page 3 we ought to be able to get this done relatively quickly. So option one was kind of a wide open model where there could be multiple volunteers from every AC and SO.

So in particular those of us in the GNSO and the stakeholder group that I represent the commercial stakeholders group has three constituencies within it.

So you can bet that the business constituency, the intellectual property constituency and the ISP's are all very keen to have an ability to participate in

these teams and not have to sort of take their turn once every three to five years to get a seat there.

So there was a keen element of interest from the commercial side of the GNSO and I would say that is probably unique to the commercial side of the GNSO. So obviously option one becomes something that is more favorable there.

Option two is again wide open in terms of the number that could participate but each AC and SO would pick up to seven members designated for the review team and that's quite helpful to the GNSO seven would accommodate it.

But then the group of the chairs of the participating AC and SO's would be responsible for selecting a subset and in this case the proposal is 21 members that they would try to balance for diversity in skills and there would be a minimum or an actual 3 from each participating AC and SO.

So that would put a hard limit of 21 but it's possible that it might not get there. Both of these proposals option one and two try to rely upon consensus for the creation of the affirmation of the review team recommendations and findings.

And yet there's an acknowledgement that if and when a vote had to be taken to determine whether they had consensus that in both of the models that has equalized among the AC's and SO's right.

One is equalized, option one and option two is equalized by virtue of the fact that you pick only three from each. So Jordan we could entertain a little more discussion about this.

Was it your intention to try and get closure on option one versus two today.

Jordan Carter: Yes that is my intention so we should discuss that as a point of discussion or resolution later today. I've talked a few people over lunch who don't have particularly strong feelings either way.

So if you do have strong feelings please start getting in the queue and be ready to express them politely and happily and nicely and so on. There's just one other thing I wanted to mention before we sort of do start that speaking list which is you recall from (Lisa Fara's) discussion this morning that the incorporation of the IANA functions review is a dependency of the CWG proposal (unintelligible).

And towards the end of this document the IANA functions review is indeed incorporated as a review in this part of the proposal. And that is an integral part of work stream one. So I just wanted to draw your attention to that as well.

I don't think we need to look at the textual changes that relate to the other issues that we raised because they are very brief and minor. So you've got the red line.

I know that you've all started all these documents intently as you are winging or training your way here. So I think Mathieu we might get you to run the queue and have the discussion.

Mathieu Weill: Thank you Jordan, very good framing of the discussion. Rinalia Abdul Rahim: raised her hand first, go ahead.

Rinalia Abdul Rahim: Thank you Mathieu. Jordan I didn't see in the document timing. I see a cycle of the intention 5 years. And if possibly there is a requirement that the timing of each review is staggered that may be good to help the community manage workload.

You might be in a situation where in one particular year you have one review starting and the previous year's review overlapping continuing for the second year and possibly the special review triggered.

And you have in the composition of membership the board chair who is required to be in every single one of the reviews. And it's possible that the workload becomes too much that the board chair is not able to lead the board or manage the board.

So I would ask you to consider whether or not it would be possible to have the requirement of a board chair and/or someone that he or she designates.

Jordan Carter: Thanks Rinalia. On both points in terms of the scheduling we have limited the term of these reviews generally but they would completely within one calendar of their start so that will help.

The intention is not to run all four or five at once. The nominee point if a useful suggestion that we'll take back to working party one as we finalize the proposal thanks.

Mathieu Weill: Thanks, next is Chris.

Chris Disspain: Thanks, a couple of questions. First of all did we consider leaving the way that the review teams were put together as it's currently set in the ISC? Did we talk about that and did we get feedback that that wasn't acceptable?

Are we changing that, are we changing the way we're doing it because we believe the community wants us to change it?

Secondly can I just point out that in respect to option one I would suggest there will be a challenge of logistics, costs and also, you know, workability if you're going to just have an unlimited number of people it's going to make it extremely hard for this to be an effective review mechanism.

And in respect to option two I just want to make sure I understand it correctly because if those are my choices it's that one to which I would lean. The chairs of each SO and AC so not bits of each SO and AC but the chairs of each SO and AC would be the ones who would make the decision is that right? Okay.

Jordan Carter: Correct.

Mathieu Weill: And thanks for expressing a preference which is very useful. Bruce you're next.

Chris Disspain: Yes it is Mathieu but it would be great if I could get my question answered about how we dealt with the fact that the current IOC proposals, thanks.

Steve DelBianco: Thank you Chris, Steve DelBianco. The current affirmation of commitments lists the various AC's and SO's just saying representatives of and there is no diversity requirement and no limit on the numbers and it leaves it to the chair of the GAC and the chair of the board to a point.

And when work party one met early on this was one of the first things we changed was to have that be something that the community determines in the same way that we do with cross community working groups that we the community designates the people that we want on there and don't want to

have to run a gauntlet so to speak and making sure that the chair of the board approves a person or persons that might well have a hostile attitude towards company's activity or anything like that.

So we didn't want to have them be in the position of judgment to pick and choose. So that was made early on and that's the black text at the very top of the screen that we published for public comment on May 3.

So it's really three options that are on the table. Option one and two and then what we published on May 3. Thank you.

Mathieu Weill: Thank you Steve. Next is Bruce.

Bruce Tonkin: Thank you Mathieu. I like the idea at the beginning of option two the concept that you've got a fixed number of members and an open number of participants.

Then you talk about the challenge here with consensus and you talk about, you know, a mandated method of determining their consensus. I think your bigger problem with these review teams is they are really requirements gathering sessions.

And so if we as a group decided we're all using or a lot of us are using this Adobe Connect. So we could have a group of us basically come down and say what improvements would we like to make to Adobe Connect?

If someone wants (unintelligible) to be able to talk in Arabic and automatically have the answer come out in English or I might say I'm about to resize this chat panel to be the main screen.

So it will all come up with our requirements and normally in a software development exercise you go okay we're going to do another release of this Adobe software in six months' time.

You guys have come up with a list of requirements. What I really need you to do is prioritize those and tell me what the top five are and then I'm going to introduce those in the next release cycle.

And the IOC reviews basically they're cycles they're basically a three-year release cycle and really we should be defining what needs to be done in the next year and a half within that 3 year period.

And then in the second year and a half I would assess, you know, how that went and then you come up to the next review in the third year and then you review all your requirements to get a prioritization.

So I'd really love the community to start thinking about prioritization because you make the group broader. What you end up is more and more requirements and we're already struggling to implement them all.

And then we're spending more and more money which is public money, you know, I think that the organization has to get better prioritization in thinking about what can be achieved within a short period of time.

And the challenge of that review team is actually to prioritize not to just come up with a list of requirements.

Mathieu Weill: Thanks. Jordan or Steve do you want to respond?

Steve DelBianco: Thank you Bruce. So I recorded that you show a preference for option two that you're asking about what happens between the reviews. All of these recommendations are for no less frequently than 5 years not 3 anymore and it was a mixed bag before.

There are no less than five. There is a (unintelligible) on page 2 which applies to all four reviews and it requires and this was published on May 3 and didn't receive any significant comments, that ICANN has to create, the staff, an annual report, the details, the status of implementation on the prior reviews that are defined in this section.

The annual review implementation report would be open for public review and comment period and serve as an input to the continuing process of implementing the recommendations from the review teams that were defined.

So that strikes me is exactly what you said is what we have on page 2.

Bruce Tonkin: There's no prioritization in that. What you're talking about is saying is I've got a list of requirements and I have to report against whether I've implemented those requirements.

Jordan Carter: Bruce the point is made and it needs to be worked out at work party one and I think it's a very good point and we need to also discuss whether that's a work stream one point or a work stream two point because that's obviously the continuous improvement of the review system as well.

And I think our focus right now is very much on what do we need to put into address the CWG requirements from the IOC reviews into the bylaws and that's why I think there might be a need for further discussion on this later or WP1 can take that on.

Bruce Tonkin: It's a release - I cannot see a downside to asking reviews to prioritize their recommendation and I think that's what you're talking about and I think adding a line like that would be perfectly reasonable.

But other people in the audience are shaking their heads absolutely so it's a point for debate, thanks.

Mathieu Weill: So it's we'll take (unintelligible) right on work party one. Kavouss you're next and I'm closing the line because we want to keep this item some time to wrap up this item at the end so Kavouss please.

Kavouss Arasteh: Thank you very much. I think we should to the extent possible avoid to inject new ideas because we have discussed it sufficiently, one. Two, when I compared the two options option two is more democratic, transparent, inclusive.

And I have seen that in many other areas outside the ICANN in similar situations we use the same approach. As far as the consensus (unintelligible) matters in (unintelligible) discussed for two months and the same way we have come up with that.

We tried to have unanimous agreement if not consensus. If not we tried to see who is the minority, try to convince them (unintelligible) join the majority. If not the minority deal with the experts.

I suggest that the consensus on option two if there is any adjustment quickly will be done, we would do it otherwise if you do not adjust nothing is perfect, thank you.

Mathieu Weill: Thank you Kavouss. Sam, Samantha where are you sitting? You're here, please.

Sam Eisner: Thank you, this is Sam Eisner for the record. Following on from some of the things that Bruce and Chris said from a staff perspective, also from talking to staff who actually works on the reviews and manages the reviews from the staff side.

I think that consideration should be made that the smaller the review team the more effective the group tends to be. And so I think that size is an important and limitations and predictability on size also for things like budget of the review team are very important because as we've seen from different reviews there tends to be needs for a face-to-face meeting and that includes travel.

And so having limited sizes of review teams not only helps with the effectiveness of the group but also helps with predicting the budgets that go along with that.

And also I just wanted to confirm, my understanding is that the AOC reviews when they're incorporated into the bylaws will not be part of the fundamental bylaws, that's not the consideration right now?

Bruce Tonkin: Just (unintelligible) yet not except for the IFR one that's listed at the end of the...

Sam Eisner: Right okay because as I was listening to conversations about future changes that might be needed in work stream two I just wanted to make sure we weren't building ourselves a trap on it, thanks.

Mathieu Weill: Thank you. Next is Alan.

Alan Greenberg: Thank you, a couple, a few quick comments. Number one, when we keep on talking about the community we use the term in multiple different ways. In this case the community includes the board and I don't think it should be restricted to just the AC's and SO's.

There typically is a board member on it and the board should also participate in the selection. I think that may add a level of balance that the AC SO chairs competing with each other don't have.

I also think that the group that we're talking at is too large. There has only been one review that had as many as four from one AC or SO on it. Most of them it's much less and I don't think the reviews have been hurt by that.

So I think we need to tone down the numbers. The ALAC for instance did not participate in some of the reviews and that was quite kind. We didn't really have a lot to add and there was no point.

In other cases we've had one and another case three would have been the right answer depending on what the subject is. So, you know, targeting 21 is a maximum could be fine, targeting 25, 21 as the norm I think is just an apparition.

And lastly on priority I have talked to it again. I won't raise the issues here again. It's not as much of a no brainer as people say. Having sat on an ATRT and trying to prioritize we just didn't have the information we needed to do it properly.

So it's not quite as much of a no brainer, please don't put it in the bylaws.

Mathieu Weill: Thank you Alan. Avri.

Avri Doria: Thank you, breaking the rule about more than one point. First of all I wanted to take - I'm sorry, you know, but rules are indeed made to be broken. There's been an issue here about no ideas and that being problematical.

I just wanted to bring up the notion that a new idea is often necessary to find the balance between two existing ideas that aren't quite finding consensus. So sometimes a new idea is indeed needed.

I think it is important in this one that it is up to 21. It is including up to 3, you know, or the 10. So I think if we want to make that language stronger perhaps we should I very much agree.

On the prioritization I think that (Allen's) comment was a little too mild. We spend a lot of time in ATRT too trying to prioritize because we did have some members who felt that prioritization was indeed critical.

And we tried and we tried and we tried and we didn't succeed. One of the components of prioritization is understanding also what it takes to implement something and that the implementation realities can very much change the prioritization.

So I endorse that please don't try to put in prioritization and I support option two.

Mathieu Weill: Thank you Avri. Any response? No okay. So turning to Sebastien for the last word on this one before we wrap up. Someone is trying to shut Sebastien off, terrible.

Sebastien Bachollet: No, no, not at all. Yes I know thank you for the possibility to give new ideas. I would like to say that chair of the board and the chair of the GAC

didn't do so bad job then maybe we don't need to have the old chairs coming together to decide for one specific cure and maybe we can pick up two of the chairs during this final selection.

Whereas they will get a name from each SO and AC and they will pick up to find a best balance and the best diversity possibility. We can trust some of us and not to do everything all together always. Thank you.

Mathieu Weill: Thank you Sebastien. What's your response to this Jordan?

Jordan Carter: I just wanted to point out that while we have spent most of the discussion on this there were some other points in the changes and stuff. So just to offer an opportunity if anyone had any points they wanted to raise about that.

We think that they're uncontroversial changes so it's okay if no one does want to say anything on it.

Mathieu Weill: Seeing no one - Alan.

Alan Greenberg: I was just going to point out that Steve Crocker had made a number of comments on the list recently about specifically the Whois and I believe the consumer ones and I think both of his comments had some merit.

Mathieu Weill: Yes if they have merits maybe we should have discussed but the way I remember those comments were about are we bringing all the reviews into the bylaws and I think that was discussed extensively in Istanbul and Frankfurt, not in Frankfurt but more in Istanbul.

That at least at the moment because we are opening the option of sunseting or sunrising new reviews that was probably the most appropriate for everyone to agree on because it was closer to the existing situation right.

And I don't know if there was another point you were referring to in terms of merits because I mean I don't have this in front of me right now.

Alan Greenberg: It's very quick, he wasn't saying don't do a Whois type review he said the words are wrong. We knew they were wrong when the AOC came out, let's get them right now.

I don't think it's a controversial issue and I think it's quite appropriate and the consumer one he pointed out that we may not have rounds we shouldn't have discussions talking about rounds we should make it more generic.

Mathieu Weill: Steve I think...

((Crosstalk))

Steve DelBianco: Steve DelBianco and it's actually a matter and I responded to Steve Crocker about it, he didn't read the full new gTLD review. It says, no less frequently than every 5 years.

But if we did a batched round like we did in 2012 there would be one the year after. So we clearly anticipated that and covered it. With respect to changing the commitment it would be the only one where we changed the commitment.

On the other four we brought the commitments over because the beginning of each and every review from the AOC starts off with a sentence or two of

commitments, ICANN commits to and because of that we simply brought all that in.

Now the ATRT the very first ATRT that's convened under this new bylaws would have the opportunity of terminating, modifying or adding a new review and it could make that change.

But right now Alan each of the four brought over the commitments. Some of the commitments went into the core values in work party two and the rest of the commitments showed up verbatim here in the affirmation.

Mathieu Weill: Thank you Steve. Sebastien is that a new hand?

Sebastien Bachollet: Yes I know maybe we don't run as fast as everybody but I really think that input from Steve what was to be considered. And one of my thinking after reading his inputs was we have two review concerns are all ICANN and we have two review concerns of just one part of ICANN.

And even if it's important I think the work done on Whois but also on the new directory services and that's something new going on. Why to put something on the bylaw of one subject who may be change and (unintelligible) very heavily in the very near future?

It's why I think maybe we need to do slightly differently because I really think that if we have to review something one day I hope that it will be against the new directory services. Thank you.

Mathieu Weill: Thank you. Kavouss you want to say a word and I really want to wrap this up.

Kavouss Arasteh: (Unintelligible) time is elapsed.

Mathieu Weill: Sorry.

Kavouss Arasteh: Half an hour is finished.

Mathieu Weill: Yes that's why I want to wrap up.

Kavouss Arasteh: So we have to respect that. Thank you.

Mathieu Weill: Avri.

Avri Doria: Yes thank you and apologies for speaking again. I think that I very much agree with the people that want to change or take out the Whois. I think this is the wrong time to do it.

Mathieu Weill: That would be actually one of the (unintelligible) aspects or do you want to comment Jordan?

Jordan Carter: Well I just - there might be a really easy elegant way to fix this and I apologize because this is a new idea but it's a really small one. In the bottom of page 4 in the ATRT review and there is an ATRT review scheduled next year.

There is a paragraph that says the review team may recommend termination of other periodic reviews required by the section and may recommend additional periodic reviews.

Could we add termination or amendment of other periodic reviews and then that would give us a big of an instruction to the ATRT to take a - considers community driven look at the questions that Steve has raised but avoids us having as of yet another work stream one task.

Mathieu Weill: Thank you Jordan and I think that actually enables us to also address the prioritization aspect and what we're doing here is we're incorporating a continuous improvement system on the reviews themselves which is good it's within our scope.

And but I was indeed quite reluctant that we go too deep into the details of how this review system works because I think we're getting a little bit off track compared to our initial mandate at the CCWG and especially considering the timeframe we were operating against.

So just trying to wrap up. I did not hear any objection. I did feel some traction for option two and did not hear any objection nor any objection compared to the other changes that were proposed.

Can I suggest we use the AC room to track support or objections against this proposal considering the input we're received and with option two. Eberhard, yes.

Eberhard Lisse: I object.

Mathieu Weill: Okay thank you. Any others?

Jordan Carter: To clarify what we're seeking is just a tick or cross about whether you (unintelligible) that option two being the preferred option here to go ahead to the next phase.

We don't want to put two options up in the public comment reports in other words. So the tick would be you're happy with option two and the changes the cross would be you don't want option two presumably you mean you want option one.

Mathieu Weill: Excellent so we're going for option two taking into account the objection that was raised by Eberhard and the next question is obviously the action item is going to be for work party one, two, refine the document for incorporation into public comment number two.

But the next question is can we launch the process to test, the test case process of bylaw drafting based on this specification of what needs to be incorporated so that we can actually take an early start at drafting the bylaws and testing how we can organize the interactions between our groups, their lawyers and get this ready in advance.

That's the second question and do we - does anyone in the group feel uncomfortable launching this process of bylaw drafting on this block?
Eberhard that's consistent.

Eberhard Lisse: I feel uncomfortable and I object.

Mathieu Weill: Perfectly consistent.

Eberhard Lisse: We can ease up the process of objections by taking them on record now for the rest of the day.

Mathieu Weill: That's on record and I'm comfortable with that. So that's good so we're moving forward with this. I thank you for the constructive (unintelligible) we received and I would like to hear Steve.

Steve DelBianco: Just one final point. We need help from - thank you very much for settling on option two and we'll move ahead with that but on the same on page 3 the board of directors of ICANN and their public comment understood that we

said that the review team members would have access to all of ICANN's internal documents. That was added on May 3.

The board said what about sensitive and confidential information. Do we need a non-disclosure for that? So what I wrote in here in red was review team members shall agree not to disclose sensitive or confidential information obtained from ICANN.

But who determines what's sensitive or confidential? I had added the designation of sensitive and confidential it should not be at ICANN's sole discretion otherwise we get a redaction such as we saw with dot Africa.

So we need help from those in the audience who are familiar with non-disclosure provisions and how one determines disclosure when you have two parties that might have a different view on what can be disclosed.

And the disclosure might be that it's going to show up in the recommendations of the review team report. Disclosure might also be leaking it to the media or something and I realize we don't have the details in here to get that done.

And Steve Crocker wrote that he felt that we're on the right track here but we need to go further than this before we hand it to the lawyers to draft the bylaws.

So I just ask for help from those who have familiarity and knowledge about non-disclosure provisions. Thank you.

Mathieu Weill: Thank you and I would like to avoid getting into another debate on this right now but Eberhard's hand was raised first.

Eberhard Lisse: It has come to my attention that for example on the ccNSO and I don't want to make this now as an example really the noncom members don't have access to all mailing lists.

And that's something that I would like to avoid helping elsewhere. This is being dealt with in the ccNSO and so it doesn't - I don't want to raise this as a particular item but we must make sure that all members of the board are treated the same way which I hope it is done but I just want to raise this point.

Mathieu Weill: Can I suggest maybe raise it on the mailing list so that people from the various parts of the community can enlighten us whether that's the case or not or that's something that happens because I think that would be easier to deal it like this.

Sam and Chris wanted to react to Steve. Very, very concisely because we need to move forward to the next item. I don't know Sam was first.

Sam Eisner: Thanks this is Sam Eisner. Part of the concern that was raised was broader than just having a non-disclosure in place. But if you take for example the consumer trust and competition review you could see there that there may be actually competitive issues at play in there.

That those who are participating in the review itself could have access to competitively sensitive document. There needs to be some consideration of that.

We can't have a review process set up that allows access to documents that actually could open up liability on many different parts not just to ICANN but it could expose people to competitively sensitive information.

And so I think that also needs to be considered as this provision goes forward.

Mathieu Weill: I understood Steve's call for help actually to deal with ensuring we have everything covered on that side.

Steve DelBianco: Yes and in the consumer trust competition and choice review the teams, the two teams that worked for a years to specify the metrics had suggested that pricing data, wholesale pricing data would be protected by a third-party and rolled in only in an anonymous aggregate fashion.

Mathieu Weill: Chris was your intervention covered?

Chris Disspain: No.

Mathieu Weill: Okay.

Chris Disspain: Just a couple of things. First of all I just want to make sure. I thought that we were looking at when we were talking about option one, option two that that was the sort of only substantive point that you were seeking our input on and that we said we favor option two and you will proceed on that basis.

I actually think this is a fairly substantive point too that we need - I think we should take it as red that there is consensus to amend what is the current IOC or to add to that to say that confidential information should be disclosed.

I think we need to examine that in a bit more detail. Let me give you an example. There is a confidentiality agreement signed by all of the parties. What are the sanctions that would exist in the event of a breach of that agreement?

How would you deal with the fact that the agreement could be breached by leaks? Let me make it very clear I am massively in favor of transparency I've got no issue with it at all but I can see for example that there would be issues for communications between registries and ICANN of commercially sensitive information that they would have real, real difficulties having exposed even subject to confidentiality agreements.

Even subject to non-disclosure agreements they would have problems with having that disclosed. So I think we need to think this through very, very carefully before we make a blanket statement that says all information will be made available to the panelists to the review team but don't worry there will be no disclosure agreements. I think we need to be extremely careful, thank you.

Mathieu Weill: So that's exactly what I think was, Steve was pointing at is that we still need to refine this part. So the approval to go into the bylaw drafting is with reservation about this confidentiality writing where the requirements, the specific details of the requirements still need to be worked out.

And Steve is calling for help so I am expecting that ICANN legal is going to happen. I'm expecting that officers will step forward to provide us with concrete suggestions on that and based on their experience.

And with that I think we've made significant steps forward on this. It's a very good sign for the rest of the afternoon. We set the standard, we have discussed an item, approved, found common ground approved.

Now let's move to the next item and do the same. It's the community model.

Thomas Rickert: Which is I guess the (unintelligible) question before us. Second phase of our community model discussion and well we thank Steve and Jordan for being with us during this session.

I'd like to invite Rosemary and Holly to the podium. The way we would like to go about with the second slide on the community empowerment model is that we took note of some of the questions that Chris gave us a flavor of and we know that there were some more questions out there on the models on the table that have been analyzed and presented by Holly and Rosemary.

So before we open up the queue for you to ask more questions we would like to give them the opportunity to take a few minutes to give some of the answers to questions that you haven't yet asked right.

So hopefully some of the concerns that you have will be removed by then. After that we're going to open it up for clarifying questions from your side so that the models are well understood.

That should hopefully not take longer than half an hour and after that we're going to enter into a discussion to hopefully be able to prefer one of the models as our new reference model.

And without any further ado I'd like to hand it over to you.

Holly Gregory: Am I on okay. Hi all, could we put slide 11 up just as backdrop for this discussion? So the initial proposal that went out in May contemplated participation of the SO's and AC's in a community mechanism for the exercise of the powers that you all have decided that are important.

And in response we heard some concerns about the structure. Not so much about the powers but about how to structure this. And the community mechanism's sole model was sort of our thinking on how you could address those concerns.

The concerns were about the SO's and AC's becoming legal persons, there were concerns about the ability of members to exercise statutory powers of disillusion of ICANN and to bring derivative actions sort of on their own outside of an IRP process.

So back up for a moment. We know that member rights are the most enforceable rights and require legal personhood, but if SOs and ACs can be members, and only a few decide to do so, there's a risk of capture.

So the sole member model is really designed to address these concerns and lower the risk of capture in relationship to statutory rights and other powers. That's what it does. It's also relatively simple and provides direct enforceability by the community mechanism of all of the powers. Rosemary's going to drill down on the detail.

Rosemary Fei: Thanks, Holly. So under the community mechanism as a sole member -- I think it's Slide 17 -- the community mechanism itself becomes the sole member. So remember that in all three models we do not have currently a community mechanism in the bylaws. That's going to have to be put in. It's going to involve whatever allocated votes that I think are being discussed later this afternoon. And it's going to look largely the same. That mechanism is going to look largely the same no matter which model we're talking about. It's a whole new thing and we need it in all of the models.

In the community mechanism as sole member model -- actually it's the next slide please; I guess it's 18 -- the community mechanism itself would become the sole member of ICANN. We would have a provision in the bylaws once we define the community mechanism just as we would in all of the other models. But in this model we would go a little further and say this community mechanism, this group of participants who are acting together to exercise certain rights in ICANN as sole member, would be a legal person that would be the sole member of ICANN.

This would be done strictly through the bylaws. It would not require any registration with any outside body. And there is no separate board. There is no - there don't have to be officers. It is literally the community mechanism itself that becomes the member. And the members' decisions are the decisions made by the community mechanism, so that voting process that we're describing.

Now again in all the models, we're going to need some mechanism that we - I don't think we've talked about much yet and we don't think it's a big deal, which is why there hasn't been focus on it yet, to communicate the community mechanism decision to the people that will actually implement it, whether it's the board or the staff or somebody else. We haven't worked out those details.

In the community mechanism as sole member, we could have the people -- because at some point it's going to have to be warm bodies, natural persons, who are going to have to actually communicate the community mechanism decision to somebody else. Those people would be participants along with the SOs and ACs.

Not every participant in the community mechanism has to be given a vote. So you can have some participants that are just there to listen, some participants who are there to advise, some participants who are there to exercise the full

voting rights that the community mechanism contemplates, and we could have some people who are just there to report out the results ministerially of the community mechanism voting.

So the ACs and the SOs would act within their internal mechanism. That's what it is. That's not changing. They are inserting their votes into a community mechanism when is needed, and that's the sole member, and then that action becomes the member's action.

There - I think the - two important concepts are that the participants of the sole member, this legal person sole member, all these different participants, some of which are natural persons and some of which are SOs and ACs, and some of which may be people we haven't even talked about yet, I don't know, the legal entity shields them from liability for the actions of the legal entity.

So when they come together and they vote and they make a decision, it's the legal entity, the sole member, that's responsible, not each individual component part. And the sole member is a member of ICANN and members do not have fiduciary duties and generally are kind of like shareholders in a corporation, somewhat similar to that, shielded from liability for the actions of the corporation.

So the member will make a decision, the decision would be communicated to whoever's going to execute the decision, that is ICANN, the execution occurs through ICANN, and should there be liability arising from it, it would be ICANN's liability.

Is there anything I missed?

Holly Gregory That's it. So we're open for questions. And I hope that added some clarity.

Thomas Rickert: Can you please switch off the microphone because I've been advised that if we have more than two microphones up here, we're going to have feedback. But we want feedback from you, not from the amplification system.

There's a queue forming, but before we go to the people in the room we have a question from a remote participant that I hope you will forgive me for taking first, and that is from (Seva). "If the community becomes a sole member, how does the community attain a singular voice in a manner legally incontrovertible?"

Holly Gregory So the sole member votes its interests as it's directed by the ACs and SOs that have voting rights in the sole member, and that's how it acts. As Rosemary said, there would be persons who are participants as well, who would be the people who communicate to the board. Now those communications of course are totally subject to the approval of the SOs and ACs who voted, for accuracy.

And we heard a very good discussion by Steve about the rogue voting concern, and I think all that stress test absolutely applies to this mechanism very directly. And I thought that discussion was a very reassuring discussion.

Thomas Rickert: Thanks very much. Now we can move to the queue. And I would like to ask all of you one favor. If you ask your question and if you already have a preference for one of the models, please do indicate so. I guess that will help us understand better what the temperature in the room is. Chris?

Chris Disspain: So I'll declare up front at this stage I don't have a preference for a particular model. I think there are two models on the table that might well be workable. I've just got a couple of questions for clarity and so on.

I just want to be clear, you both just made the point about there would be other participants apart from the SOs and ACs, just so that we're clear -- and you may have said but I missed it -- you actually have to have, do you not, two legal persons in order for the member itself to be considered to be a legal body. So you will need at least two people to be there. They don't have to vote, they don't have to do anything.

So the SOs are not -- just as an example -- the SOs and the ACs could be the participants that vote and the chair of each of the SOs and ACs could be designated as the legal participant for the purposes of creating the body. Is that right?

Holly Gregory Right. The SOs and ACs would also be participants for the purpose of creating the body, but in terms of the two legal persons, that would be satisfied by having two human beings who are there to communicate the results of the vote to ICANN.

Chris Disspain: So all we have to do is to make sure that our chairs our human beings, then?

Now - so that's fine. So just one question and then a suggestion. Again I may have misunderstood, but I think from reading your memo, you say that the enforceability rights that participants, i.e. the SOs and the ACs, in a sole member body is unclear, especially where the participants are not legal persons. So I may - I think that's what is says, so we're going to need to address that if we go down this member road.

Holly Gregory So the thought is that the bylaws will provide for all the voting rights and the mechanisms by which they vote , and then the - they would vote in the community. Now the question is if for some reason the community

mechanism ignored the voting thresholds and voting rights, who could challenge it?

And as with every other issue, you get back to this issue. I think you'd have the IRP, you'd the ability of legal persons to challenge, but you do have that same issue. You know, it just keeps driving down. So the participants are the SOs and the ACs. Their rights are dependent on to a level on trust, to the bylaws, to the IRP (unintelligible).

Chris Disspain: But the legal persons would have those rights though, wouldn't they?

Holly Gregory Absolutely.

Chris Disspain: Right. So in fact, those rights would be vested automatically in those, let's say, it's the four chairs of the - okay.

Holly Gregory Absolutely.

Chris Disspain: And one more thing, which is just a suggestion. If we decide to the membership model or maybe actually to help us make our decision to do this sole member model, there are a number of logistical requirements that exist in an organization when you have a member or members. So for example, there will be requirements for there to be a formal AGM, at which the members vote on various things, presumably things like accepting the accounts and few other things.

I think it would be very important for us to be clear what those logistical requirements are because they are outside of what we are used to and we need to be comfortable that we are okay with whatever they are, if we're going to go down that road.

So for example I imagine that there would -- I don't know for sure but certainly in Australia and English law -- there is a requirement that not that a bylaw change is blocked - can be blocked, but actually there's a requirement that a bylaw change is positively affirmed, in some cases with a 50% majority and in some cases with a 75% majority.

Now if we're going to move to some sort of membership-based model, we need to understand that. And that begs the question whether we actually need a veto of the bylaw process, because in fact the bylaws can only be changed with the consent of the members.

Rosemary Fei: Excellent point. We prepared a chart listing in preparation for the empowered SO/AC membership model, but since it's just based on what the statute says, while maybe some of the examples given in it won't apply in the sole member model, that chart, which I believe there was a link to in the chat earlier today, put in by my law partner (Stephanie Pettit), that chart lists all of the requirements that we'll have to address in membership bylaws.

Chris Disspain: So, Rosemary, thank you and I appreciate it. If I could suggest -- and I speak as a lawyer -- a lot of people in this room, a lot of people in this community, are not lawyers and just referring them to a chart that lists a whole heap of powers is not going to cut it. We're going to need to go through...

Rosemary Fei: I did not mean...

Chris Disspain: No, no. We're going to need to go through it, it's going to need to be explained to us, and everyone's going to need to understand what it actually means if we decide to go down that road.

Holly Gregory But if I may, the formalities around what a membership must do, the membership body must do, are relatively light. And so a meeting? Yes. Can they have the rights to amend bylaws? Yes. But the board can also have the right to amend bylaws.

Rosemary Fei: Yes. Under California law, specifically going to your question of the members' rights with respect to amendment, the board and the members both have the power independently to amend the bylaws. Of course ultimately the members' right to amend the bylaws is backed up by if the board keeps amending them back after the members say they want this and then the board says, "No it's going to be that," that could happen but then the member could remove the directors. That's the ultimate sanction in normal corporate membership law.

But it is also possible to - the board cannot - there is one type of bylaw amendment that the board cannot do under corporate law, which is a bylaw amendment that materially and adversely affects the right of members to vote.

Thomas Rickert: Okay, I think we need to - we're getting to a level of detail, we're losing everyone. I think we need to answer much more general questions. Associations and corporations have been formed ten thousands of times, and I think we will be able to cope with some of the administrative burdens of an association as well, if we take that route.

So let's maybe move further down in the queue. Before we do so, Chris, you said that you can - you think two of the options are workable. Which one would you rule out?

Chris Disspain: The empowered membership model. So the designator model and the sole member model I believe are the ones that we should be working on. I don't think the other one will fly.

Thomas Rickert: Okay. That's excellent. (Horar)?

(Horar Hans): Thank you. Just a - (Horar Hans) here, GAC representative of Switzerland for the record. Thank you (unintelligible). (Horar Hans) here, GAC representative of Switzerland for the record. I just wanted to ask some questions to get more clarity on how this, in the case of the sole membership model, how the person, the legal personhood, of this sole member is established.

So I've heard that it's established directly by the bylaws, so there is no need for a declaration of intent or anything similar from the SOs and ACs to participate, to be part of that legal person. And if no declaration of intent is needed, how do the SOs and ACs decide whether they want to part of this legal person, and if so, with what status, whether advisory or voting. Would that then be - have to be decided before through the bylaws? So it would be, to a certain extent, beyond the decision power of each SO or AC, how their participation is finally established? Thank you.

Holly Gregory: So I think what we would do is we could draft bylaws that identify who is entitled to have votes and to participate, and it will be up to each SO and AC to decide whether they want to participate or not, in whatever means that they want to participate.

So participation will be open to the defined set of SOs and ACs. We'll have to think about how the voting power changes depending on who does or does not want to participate. But I think it's up to each SO and AC. The bylaws won't mandate that someone wants to participate if they don't want to participate.

Rosemary Fei: I'd just like to point out that currently all of the existing SOs and ACs are participating in ICANN. That's the way it works now. And what we're saying is that we're going to add in addition to ICANN another -- ICANN is a legal person -- we're going to add another legal person, and it's going to be the single member. And the way you participate in that single member is going to be defined in this community mechanism in the bylaws, which you are in the process of specifying, thinking about weighting votes and all of that.

So the participation in the sole member is equivalent in the nature of the relationship to participation in ICANN. It's not - you're not doing something more than what you're already doing in ICANN. If you're an SO participating in ICANN, you're now just also participating in another legal entity.

Thomas Rickert: Thanks, (Horar). Can you give us a flavor of where you're leaning or what you don't like?

(Horar Hans): Well actually it's difficult to take positions about a model which is like ten days old, but...

Thomas Rickert: Well we have another 40 hours or so.

(Horar Hans): I think just personally, I think it's an interesting aspect to this model that there's no need for a legal person or a declaration of intent by the AC or SO itself. But that we draw an analogy to the present participation in the current framework, I think that could be - could have some possibilities in it. Thank you.

Thomas Rickert: Thanks, (Horar). Alan?

Alan Greenberg: Thank you very much. A couple of questions and then one other thing. In terms of what we were just talking about, that sounded like to me it would be cast in the bylaws whether the ALAC was choosing to be a voting participant or not. Because the question was asked, you know, at what point does someone decide to do one or the other, and I thought I heard it was part of the mechanism, the definition of the mechanism.

Holly Gregory The right to participate would be reflected in the bylaws, but I think whether or not the ALAC wanted to participate would be fully up to them.

Alan Greenberg: We're talking about a sole member here. Was there also consideration to a sole designator? Just curious.

Holly Gregory I'm not sure what that would entail as sole designator. Then again, you'd have to come up with that legal personhood, and then you'd have fewer rights. So I guess we didn't think about it. I certainly could construct such a thing but I don't see what the advantage over either of the other models on the table would be.

Thomas Rickert: Let me just add, the invention of the sole model came because some aspect of the risk of derivative lawsuits and statutory rights to be exercised by a single community member. And so I think, I don't see a need for thinking of a single designator model.

Alan Greenberg: The potential benefit would be, again, if only a very small number of the groups within ICANN choose to take the voting participation, then the member has a lot of powers, you know, the statutory powers associated with the member, which could be exercised by conceivably one or two groups. So it has the same danger as only a few members.

Okay, the question is: in this model how are board members selected and removed? Because we were - we've said that only the member can remove. So that sounds like all of the ACs, SOs, NomCom, would have to funnel their request to appoint someone through the member. The member would have to ratify and presumably could not say no -- I'm not quite sure how you structure that -- and the same for removal.

I think it's a major issue that - no, no, it's a major issue conceptually, it may be easy to implement, that we haven't talked about at all and I'd like to hear more about it.

Rosemary Fei: Sure. It's a very good point, and we did think about it. As you'll see in this third bullet on the slide, we acknowledge that instead of each SO and AC directly being able to appoint directors, as under the current bylaws, instead the - each SO and AC would essentially deliver its names to the sole member. And the sole member would be obligated -- it would not be a matter of them putting it through a community mechanism -- the sole member would vote, elect, whatever language you want to use, to put those directors in.

And similarly, assuming that you want to retain the ability of each SO and AC to remove unilaterally its own directors -- I realize there's some controversy about that -- but if you wanted to retain that, you would retain that by simply saying when an SO or an AC decides it wants to remove one of its directors, it just tells the single member and the single member automatically does it.

Alan Greenberg: Thank you. That's what I was presuming, but a discussion that was held earlier this week implied not everyone was presuming that, so.

Thomas Rickert: Okay thanks, Alan. Next in line is Kavouss. And we will close the queue after (Sam).

Kavouss Arasteh: Thank you, Thomas. I request you kindly to allow me to express my views clearly. We have two...

Thomas Rickert: You're more than welcome to do that.

Kavouss Arasteh: Don't interrupt me, because you did it two times and Leon one time, and Mathieu one time. And Jordan one time as well.

Please allow me to explain the situation. First, we have to have two steps as step one, what mechanism works, and step two, what are the shortcomings of that mechanism that works. From 4th of April to 23rd of April, legal advisors provided five legal assessments with full detailed analysis of designator model and membership model, pros and cons. Membership model, full power to do everything. Designator model, power to do some things but not all. And then they created this unincorporated association, so on and so forth.

Argentine, there were some rejections of the people that they don't want or they cannot be a member if they could not exercise some of those powers, but just (unintelligible) plan and anything relating to fiduciary and anything relating to the view of the IANA functions, they could not do that. So we're blocked. What we can do, we'll find another way.

What is another way? Something that does not require member, one; something that does not require personhood, two; something that enables us to enforce the decisions. Now taking into account whatever we have today, today we have AC and SO, all of them they participate and they are participants. So they retain the right of participation as of today. No change.

Now voting. The right of voting of all AC and SO will be included in the bylaw whether or not they exercise that. That is another issue. (Unintelligible) That exercises our point. One, for this subject, they don't exercise it and, point two, another subject. But their right is already there. So we don't have membership, we don't have personhood, so these two problems are removed.

We have participation. They participate. However, in order that the result of their voting of participation be put in place, they need a vehicle, and that vehicle is community mechanism. Through that vehicle, which is some sort of personhood, some sort of personhood, they exercise and put in place the result of the voting on a particular situations.

Then they have IRP. If there is anything to go through that, then they need to have some other mechanism like a council and so on and so forth to represent them in one way or another in order to take the case into the courts. Did they understand the case correctly or not? If that is the case, in my personal view, this new arrangement works.

Now we have to see whether there are some unclear point or something to be clarified or adjusted. If that is the case, distinguished co-chair, please kindly ask whether they could concentrate on this community mechanism and to see whether there is any shortcoming, any insufficiency, any difficulty, and resolve that. But we cannot go by these things.

By this, we resolve the issue of membership, we resolve the issue of the personhood, and we retain the right of participation as today, we retain the right of voting forever in the bylaws. Whether they exercise in one point or another point, that is another issue. And we create something which is community mechanism, which is some sort of vehicle to put in place the result of those voting.

Did I understand the issue correctly or not? Thank you.

Holly Gregory: That was a good summary.

Thomas Rickert: Thank you. Next in line is (Erica).

Erika Mann: Thank you so much. I'd like to ask something. In general, I prefer this model described here, the sole member model, but I have two questions. So number one, you said that the legal entity will shield, in legal terms, the natural person. I would love you to explain this a little bit more, because for a German mind that's a bit strange.

The second, what the implications actually for the - for ICANN as an organization for the board? Because the whole exercise is to give more power to the community, to shift it, but with this model, legal entity shields, natural persons, which means shields liability risk as well, so the liability risk solemnly lie on ICANN and I would assume to the board. So what kind of power shift is this model or if you take the designator model with regard to the risk factor for the organization?

Rosemary Fei: As to the liability shield, we, for purposes of going through this exercise, we have used what we think would be the easiest, immediate to hand model, which would be to have the sole member be an unincorporated association.

In California where it would be formed, assuming we did this, and we don't have to do it there, but assuming we did, there is a quite good statutory provision that says that the participants, the members, the people who make up an unincorporated association are shielded from liability for the association's activities and debts.

So I know that in other jurisdictions it doesn't work that way, but in California it does. It's recognized as a legal person and it has its debts and its own liability, and that doesn't pass through to the people behind it.

Holly Gregory So in addition to that, there's the concept that members are able -- so now we're talking about the sole member -- a member in a membership organization, members are able to act in their own interests. And so the sole member isn't liable for the actions it takes when it's voting on the decisions before it and its rights and powers. So that's the other shield to memberships.

In contrast, the board of directors continues to be the fiduciary for the organization. And remember, I - the reason this still makes sense is that it's the board who is directing and monitoring the affairs of the corporation on a legal basis. Members are voting around very specific membership rights that for the most part don't read on fiduciary duties.

And if you'll recall our discussion around the ability of members to weigh in on budgets and strategy, we're very careful to limit it so that the members are not taking on fiduciary obligations, because we don't want them to be liable for those decisions. So that's why we speak of veto powers and not positive powers.

Thomas Rickert: Thank you. (Erica), a quick follow up?

Erika Mann: Yes. It's a good answer. Can I - would you be so kind to send me the California law and could I have a follow up? I'm happy to do this by e-mail if I have follow-up questions? Thank you.

Thomas Rickert: Let's try to address the German minds concerns. (Erica)? I didn't have those concerns though. Maybe I'm not German enough. Next is Tijani, please.

Tijani Ben Jemaa: Thank you, Thomas. Tijani speaking. First of all, answering the question of Thomas, my preference goes to the sole member model. My second preference would be the designator model.

Now I have ten questions about those two models. I sent them to Leon and Mathieu. I will not ask them all because it would be too long. I will ask only the first one, which is the composition of the, let's say, community council. I called it here the CMSM, which is wrong I know, but the community council, which will be the member of the ICANN. The composition of this council will be from the AC and SOs and ACs. But do you think that it will be receptive to them? If it is not, who can be member of this council?

And after that, suppose one day after this council was constituted someone comes from any country and say I am an organization of end users of Internet so I am the Internet - one of the Internet community component, and they want to be part of this council, is it possible?

Holly Gregory So we haven't been calling it a council, we've been calling it the community mechanism. And the idea was that the participants, not members, it has participants would be the SOs and ACs and a couple of human beings who have to be there to communicate, and those human beings would not have votes. So the SOs and ACs would be the voting participants.

I think if additional people or entities come forward that want to participate, it's up to the community in the first instance to determine whether there's an SO or AC that's the right vehicle. I think that the way that this would be drafted is it would be flexible enough for there to be bylaw amendments to allow for future expansion of participation if that makes sense. I know that in

some ways that's an indefinite answer, but I hear your concerns in the question. Thank you.

Tijani Ben Jemaa: My other questions in the hand of Mathieu and Thomas and Leon, so I can send them to you, but otherwise they have them.

Thomas Rickert: The questions have already been passed on, so you can expect answers I guess at very short notice. But I guess there are a lot - certainly there are a lot of questions on details, right, so we can't answer all of them today. But I think we need to answer the most important questions that you need to get answers to in order to specify your preference. And, Tijani, I very much appreciate you being brave enough to specify a preference even in the absence to all the questions that you have.

And with that, I'd like to move to Olga.

Olga Cavalli: Thank you, chair. This is Olga Cavalli from the government of Argentina. I have three questions, which for us are very important. And thank you very much for your comments and the coffee. They were very helpful for us.

First question: in the sole membership model you mentioned when you did your presentation that the legal entity shields participants from liability. Is this for all the participants in the structure, whether they are voting or they have an advisory role? If you could give us some details about that.

The second question is the people that communicate the outcomes of the structure have the special status in the structure? And the third one is the concerns that you included in Slide 19 when it says SOs and ACs that have personhood may enforce rights given to them by bylaws and their bylaws as

contract theory, if you could give us some details or clarification about that concern that is yours and maybe ours. Thank you very much.

Rosemary Fei: First of all, unlimited liability. The limitation on liability for participating in the sole member would extend to anyone whether natural person or legal entity or some amorphous thing that's neither, and whether they voted or not. So the shield on liability basically says what goes on inside does cause liability for people or things inside, only the sole member itself has personhood and therefore assumes responsibility for its actions.

But there is also the second level of shield from liability in that the sole member is a member which has no fiduciary duties and therefore no one can sue it for breaching fiduciary duties because it doesn't have any. Under California law, members generally escape that sort of liability.

You asked about the status of the communicators. They would be participants in the sole member. They would be subject to the same two levels of liability shield. And I think I forgot your third question, I'm sorry.

Olga Cavalli: The concerns in your Slide number 19 that you on the right side of the screen, if you could clarify that concept. You want me to read it again?

Rosemary Fei: I've got it. Thank you. So some of the participants in the sole member will have personhood and others will not. And - may have personhood and others we know will not, at least for the foreseeable future. And we aren't - we can't imagine every scenario but we are concerned that there might be some scenario where having personhood would give the ones that have it an advantage over those that do not.

It shouldn't; it wouldn't be designed that way. But for example, the ones who do not have personhood, if they decided that the sole member wasn't operating the way it was supposed to, they don't have recourse outside of ICANN. I suppose the ones that have personhood would be bound to go through the IRP but they also would at least have more chance of being able to bring a claim in court. I don't know what that claim would be, because all of their rights would be described in the community mechanism. And as long as the community mechanism was being followed, it's hard to see what those would be.

Thomas Rickert: Let me just check whether we have somebody in the room who has their crystal ball with them so that we can maybe imagine some of the scenarios there might be. I think we should take this question offline in order to allow for more questions to be answered, but let me say this: if this unlikely scenario happens, the remedy for the other groups would be to just put on record their intent to join, they exercise certain powers, and then they could be on equal footing with the others. So I think...

Rosemary Fei: Yes. We think that the concern is a very, very remote concern. It's a very remote concern. And it exists frankly in all of the models.

Thomas Rickert: Thanks. And next one in line is (Jan), please.

Jan Aart Scholte: Thanks, Thomas. Jan Aart Scholte here. This morning we heard that the multi-stakeholder model could potentially be compromised if too many SOs and ACs did not participate in it. Do you see anything in the structural, political logic of these three options that would be more inclined to attract narrower or wider participation?

Holly Gregory: That's really not a legal question that you're asking. It's more of a political and cultural question within ICANN. So I think that you're better able to opine on

that than I am. I think, you know, will people participate in any of these models, I don't think there's anything inherent in any of the models that should truly discourage broad participation. But again, I don't think that that's a legal question.

Jan Aart Scholte: They're politically neutral?

Rosemary Fei: I would just add that we understood that one barrier to participation was needing legal personhood to become a member, for example, or to become a designator that could enforce the designator's powers. And so one of the things that the sole member model does is while we still need a legal person to be a member, we don't need any particular SO or AC to become a member in order to participate. So I would say we have removed one barrier to participation.

Thomas Rickert: Thanks, (Jan). Can you share your preference with us, if you have any?

Jan Aart Scholte: I think that my preference would be that construction which attracts maximum participation. So if the models are neutral on that point then it comes down to political judgment of the various SOs and ACs.

Thomas Rickert: Okay but that at least would rule out one of the options, so that's helpful innuendo. Thank you.

Avri's next.

Avri Doria: Thank you. I'm getting myself confused I think in levels of abstraction here, and so my question may not make any sense at all. When looking at this and talking about for example California requirements for members, there's only a

single member. So - and that speaks nothing to what happens at the participant level when that - so for an annual meeting of one member is quite interesting.

It's not making requirements for participants in that member to do something, it's just saying that member. So I keep getting myself confused in that and I just wanted to check because I get easily confused. So, there would be very few of these. Now, one of the questions I had is, is it reasonable and possible for the participant part of this member, I'm sorry, to work on consensus as opposed to having complicated voting mechanisms?

Because it really is only supposed to be a catch, I mean a way to sort of trap any real big problems and not supposed to be a functional entity. So, it's kind of like only if there is something that's big enough for there to be consensus does the member actually have to ask.

Jan Aart Scholte: How you design the voting thresholds within the member for member action are really up to the group here to figure out. I do think that, you know, on some matters you're going to want to know that you can take action. And so, in order to take action at times it's helpful to have a vote threshold. But I do appreciate the consensus point, and I think how you define how that acts. I think the important thing is that you want it be able to act.

So, for example, on a bylaw amendment I think that you could have a process by which you work hard as you do now to reach consensus. But, once the participants in this community come to a consensus, then that's how this entity will vote. The entity itself as a sole member has to vote, but I appreciate the point about being driven by consensus.

Thomas Rickert: I guess it's a good point Avri that allows us to remind everyone that this is about exercising the community powers. And all of these community powers

need a petition, and there are voting thresholds attached to it, right? So, if everything works smoothly, we won't even notice that this is there. Right? It's only in the second census that things go sour that we will find out.

If somebody feels the need to petition, then the processes are being started.
Avri? Any preference?

Avri Doria: I find this CMSM quite appealing.

Thomas Rickert: Okay. So, we should have t-shirts printed, right?

((Crosstalk))

Thomas Rickert: We need a nicer name?

((Crosstalk))

Thomas Rickert: Jordan is next, please Jordan.

Jordan Carter: I'm glad I haven't had any wine yet. Thanks Thomas. I just (unintelligible) on two things; first, on Avri's point about making the member act by consensus. Even if you use the community council that would be the group of people that would be the member in that extreme situation, which was about enforcing the rights. And you could have the roles set out for that member in a way that did require consensus.

But I pointed out that you'd want to define that carefully, because what you wouldn't want to do if you got to the ultimate point of extreme conflict, which this is, you wouldn't want to set such a high definition of consensus that of clever manipulation or blackmail or pressure could defeat the use of that

power. So, I think it's about the day-to-day approach could well be a consensus one.

In terms of just expressing my preference towards these, the one that I regard as unacceptable is the designated model because it doesn't actually reallocate authority into the community, which I think is part of building a real accountability framework so that you interested in the SOAC model and the sole member model, from what I've heard today and seen, and thinking since I've heard this introduced, it's the sole member model that might be the winner, because it's got the powers that we need.

But, as far as I can see it mitigates all of the significant and reasonable concerns that there are with the SOAC membership model. So, I think that's my preference. And I'm really sorry but I don't have a question for you.

Thomas Rickert: Jordan, Jordan, Jordan, okay. Next is Ed. Ed please.

Ed Morris: Thanks Thomas. Thanks for the hard work (unintelligible) you've done creating the model. Two questions, one is there any difference in anti-trust exposure between the three models under consideration? And two, under the sole membership model can the community mechanism set up different voting thresholds in different means of access for the statutory rights. And I'm thinking here the inspection rights, which may be a little bit more popular than many people think, particularly for those involved in IRP actions?

Holly Gregory: So, I was an anti-trust lawyer before I became a corporate governance lawyer, but it was a long time ago. But, I am familiar with concepts of anti-trust law, I have had fun in my early career litigating some cases around anti-trust. I don't see a distinction on anti-trust issues between the three models.

And I'm given great comfort because of the kinds of decision rights and powers that we're talking about are not rights that would inherently concern the kinds of issues that anti-trust is designed to protect. So, I'm very comfortable from an anti-trust perspective that we're not raising issues here, and that there are no specific concerns in any model. The second part of your question I've now forgotten.

Avri Doria: It was whether you could have different voting thresholds; I think different requirements for how hard it would be to make certain decisions, different decisions. And the answer is that we can draft what the community tells us or what CCWG tells us to draft.

Ed Morris: Thank you.

Holly Gregory: That's an important point. I just want to emphasize it. So, you can draft within the sole member and how it will act. You can have your super thresholds, for example fundamental bylaw changes just like you could when we were talking about ACOSs becoming members.

Thomas Rickert: Thanks very much. Next in line is Izumi.

Izumi Okutani: So, thanks for raising this very interesting sole member model. And I have a question on something that designate model is able to do and wondering if that same can be applied to the sole member model? So, I think in removing individual aboard I think under the designated model it needs approval of the group that has designated the board to remove a particular board.

For example, in the case of, I don't know, (Unintelligible), if all the other groups say let's remove this board member, if GNSO doesn't give approval

this board member cannot be removed. Can the same mechanism be applied to a sole member model?

Holly Gregory: Yes. We could build that in if that's the will of the group, we could certainly build in that the sole member will only vote to remove a member if the entity, the director, if the entity that had selected that director wanted that removal.

Izumi Okutani: Thank you, and then I think the designator's model and the sole membership model would be the options that I would be willing to explore. Thanks.

Thomas Rickert: (Unintelligible)? Did you specify a preference?

Chris Disspain: She just did.

Thomas Rickert: Okay. I was looking at who was next in the line, so I was distracted for a moment. I apologize. I am mayor. I can't multitask, a German mayor that can't multitask. I mean...

Chris Disspain: You're German?

Thomas Rickert: ...it can't get much worse. Right? So, next in line is Becky.

Becky Burr: Thank you. I think that the single member model, sole member model is quite elegant and it does focus on community decisions, and it does seem to address the drawbacks that we were concerned about with respect to the empowered membership model. I just want to state again my, the one model that I have grave concerns about is the designator model.

I am not opposed to having the authority to spill the board, but I am extremely reluctant to rely on that authority as the main enforcement authority because I

believe it's one, too disruptive, and two, so disruptive that it is unusable. And I apologize for having no question neither.

Thomas Rickert: Becky? We need to talk afterwards. I have closed the queue (unintelligible). I will let the queue go on until (unintelligible), but after that we really need to take stock and move on. Next in line is Sam please.

Samantha Eisner: Thank you. This is Sam Eisner. First, at the outset my preference is the designator model among the options that are on the table here, particularly because it represents in some ways the least amount of change to the structure of the organization. And this is of course recognizing all of the community powers that would come in with it.

We've heard multiple times about considerations of not introducing too much change at the time of transition, making sure that the organization that's responsible for performing the IANA functions remains as stable as possible, and so in my view that's one of the overriding reasons that I prefer the designator model.

I also have that preference based on the discussion today because to me there are so many unanswered questions about the sole member model. I really dislike the full-membership model, so I won't discuss that. But I do have some questions of the sole member model. So, I have a few questions that go to that. I also wanted to respond to the anti-trust question inquiry because I also have anti-trust background.

I was management litigator before I came to ICANN, and I see a lot of anti-trust risk in coordinated actions that could be used in ways that could impair ICANN's ability to enter into contracts or impair its relationship with other

contracted parties. I think that there is a strong possibility that those types of coordinated actions could be used as the basis for anti-trust suits.

And I think that we probably need to look into that further. I think particularly when a group could come together and form a derivative action that could try to challenge under ICANNs bylaws, ICANNs decision to move forward with a particular contact saying that it goes against its core values or omission or something that's where we find a lot of risk, so I just want to put my disagreement with that on the record.

So, I've heard a couple of different things today. There was a discussion on the chat, not from Holly or Rosemary, but earlier there was a discussion on the chat that the sole member might have a need to have its own bylaws and articles of incorporation, and that's not what I'm hearing now in this discussion. It could just be the expression of intent.

Is there anything that would stop the member from becoming more of a formal legal entity member so that it's then actually an outside of ICANN entity?

Holly Gregory: So, a couple of things, on the anti-trust issue, specifically around the ability of the sole member to bring a derivative suit, you know, a member has a right to bring a derivative suit. And the sole member would probably have that right. We could try to constrain it as we've said in bylaws but we're uncertain in law how far you can constrain that.

But, in terms of the concern about an anti-trust issue, in order for the sole member to bring a derivative suit you would need the community participants who have voting rights and that sole member to all agree, so it wouldn't be any one group of people. And I think that that takes away a huge amount of

any anti-trust risk, because when you look at who the participants are in that, they have a number of diverse interests.

And so, it's not simply a group of competitors making a decision and that alone neutralizes for me considerably any concerns about collusion of the sort that could give rise to an anti-trust action. You know, I think that the other, you know, issues that you raise are interesting ones. But, I defer to Rosemary if you want to address any of them.

Rosemary Fei: You asked if there would be anything that would I think prevent the sole member from deciding that it didn't want to just be an unincorporated association organized under the bylaws of ICANN but really maybe wanted to go out and incorporate or something like that? Was that the question?

Samantha Eisner: Yes. And I do have a couple of other questions as well, but yeah that was the question on this issue.

Rosemary Fei: Okay. So, I think that it would be restricted by what's in the bylaws, but if it is in fact a legal person, which it needs to be to be the sole member, then it has some decision-making authority, and...

Holly Gregory: The other thing is we could put part of in the articles of the corporation that the member shall be an unincorporated association, and then you'd have to get to change the articles, you need the agreement of the board of directors. So, therefore the sole member would not be able to take that kind of legal action to change its own person-hood if you will without approval as well by the board.

Samantha Eisner: Thanks. I do have a couple of other questions from the conversation. I just didn't get them all out before I threw that over. In considering the voting

rights within the sole member how can we assure that that sole member allows new participants? Let's say if there is a new SOAC, do we have ways within the bylaws now that would construct, or through which we would identify the member that it would have to take into consideration new persons?

Because one of the things I also heard you say was that the board itself couldn't impair the members voting rights without the members consent and agreement to that. And so, if there's any resistance to new participants or defining how the new participants would get into the system, how could we make sure that that didn't happen?

And then I had one more question that I wanted to put on the table. I heard a response earlier that a single member could be taken to the IRP if it didn't follow the wishes of certain participants. I might have heard that wrong, but I think that was in regard to the question of whether they would follow directions in the voting of a board member. And so is that what we understand to be the case?

And I also heard some suggestion that person-hood was necessary for the IRP, and I wanted to make sure that I understood that link. Because I wasn't quite sure what person-hood has to do with IRP?

Rosemary Fei: Person-hood is not required for IRP. Person-hood would be required if the IRP is binding arbitration needed to be enforced in court. I'm trying to go back through the list of questions. New participants, I think new participants is an important flexibility that we need to find a way to build into the bylaws. As you know we haven't solved for every eventuality yet.

But I'm sure that there is a way to provide some kind of mechanism that would require an ability for new participation to be anticipated. And it's

common in membership organizations for there to be provisions that speak to the process for considering new members.

Samantha Eisner: The default, if there are no provisions in the community mechanisms part of the ICANN bylaws for how new participants are admitted, then it defaults to being a bylaws amendment. So, when the time comes maybe you want to describe a fifth group or a tenth group or whatever it might be, you would amend the bylaws. The alternative as Holly said is to actually anticipate and set forth a process whereby and set forth standards for who can be added or subtracted for that matter.

Thomas Rickert: Thanks. Sam? Before we move further down in the queue, I actually have two questions for you, because you've been the first one to really challenge the model that seems to be getting a lot of traction with other people in the room, that is number one, you mentioned that your strong preference is the designator model?

Is that a remark you are making on person capacity or is that an ICANN staff position? The second question is, if you prefer the designator model, does ICANN not have any concerns with the designator model, or is it just fewer concerns than with the other model? So is it perfectly clear, year that the designator model has no issues? Or are we just making a choice between pestilence and cholera?

Samantha Eisner: So, I have had some conversations internally about the models, but the preference for the designators models, at this point, is a personal preference. It's not an ICANN position. I don't think that the designator model is perfect, but I think it is what, among what we have presented, it presents the least amount of challenges.

I think that we still need to go through making sure that it meets the criteria that was set up by the NCIA and the questions that we've had presented. But I think it has a clearer path of providing very clear and simple answers to those criteria among the models that have been presented.

Thomas Rickert: Thanks very much Sam. Next in line is Chris.

Chris Disspain: Thank you Thomas. This is a really important and valuable discussion. I suspect a couple of things I'm about to say maybe a little too detailed, but I think it's really important that if we see roadblocks or hurdles that at least we flag them. I'm not necessarily only to find answers to them. Today, I want to get back to the question about new members because I think it's important to flag the following.

My guess is it would have to be a bylaw requirement change because you're not just going to be adding a new member. You're going to be changing the voting structure. Unless you have a deal that the only way you vote is that a super majority of each SOAC group has to agree something. The moment you change that and you say if one SO doesn't agree that's okay, then every time you add a new member you're going to have to change the way that that structure works. Which leads me to ask the question whether we should actually for simplicity sake be looking at, I know Jordan made the point about the hurdle shouldn't be too high, but they shouldn't be too low either.

Whether we shouldn't be looking at whether simplicity in the voting is not best, which brings me to a point that Ed Morris raised, which what I heard him say was, could we have lower or different voting rights for the access to the statutory rights? And I would strongly push back against a situation where you start saying this particular right because one small group of us thinks this

is a really important right, we're going to lower the threshold so that we can obtain that. I don't think that's necessarily workable.

And I have a question for you. You've talked about quite rightly that the member has no fiduciary responsibility. But, the member has the right to veto the board doing stuff, and in some circumstances make the board to stuff pretty much. What happens if the member exercises their rights and the board is advised that following that member's instructions is a breach of its fiduciary duty? What happens because it's not impossible that that could occur?

So, I know I'm not suggesting that this is unique to now. This is a real-world problem, perhaps a first-world problem, but it's a real-world problem, so I don't know what the answer is but there must be one, and it's something that we need to know I think.

Thomas Rickert: Before we go to Holly and Rosemary for a response, let's just be clear. From what I understood as we can't make the board do something. We can ask them to redo things that they've previously...

Chris Disspain: Yes, but if you block something and say don't do that, and this just may be my misunderstanding. If the answer to the question is if you veto the budget the board comes back and says well we're told that it would be a breach of our fiduciary duty to, you've given a specificity to the reason you want to block the budget, the board's being told that it's a breach of its fiduciary duty not to do that thing in the budget, if you are answer is and therefore, the board can carry on and do that, then that's fine. But, I'm not sure that that's actually what we think we're saying.

Holly Gregory: Well at one level this is really about engagement. And if the community were to block a budget because of a specific line item or issue, and the board came

back and said wow you've put us between a rock and a hard place because we understand that it is our fiduciary obligation to make this particular decision, and have this particular budget line, which I think is a fairly extreme example but we'll accept it.

What I think the board really needs to do a good job with the community of explaining the fiduciary perspective. Fiduciary perspectives are not black and white, but to the extent that you're in an extreme example where it is a black and white situation, I would assume that the community is reasonable and would buy the explanation.

If they did not, and the board stuck by its guns the community would be able to implement an IRP provision and escalate it and have some kind of entity way in the IRP process to weigh in on that.

Rosemary Fei: I'd just like to add that the way that California's statute is drafted, that ICANN is governed by, the obligation of directors to manage the affairs of the corporation is subject only to reserve powers of members. So, I think that while the directors can and certainly should raise concerns that they have as fiduciaries over the corporation, and do just as Holly said try and convince them.

Should it end up that the members say no on this one point, this particular budget issue or this particular strategic plan issue, we want it done this way, I think the directors would not be exposed to a fiduciary duty breach. Because they would be able to say look in the code it says that our ability to man our power to manage this corporation is subject to these reserve powers of members.

Holly Gregory: Rosemary just gave a much better explanation than did I.

Thomas Rickert: For those who are not in the room let me just explain to you that Chris was not only raising one thumb, but he was raising two thumbs on that response. So, let's move to the last three interventions. Kavouss was first.

Kavouss Arasteh: Yes. I think now we are more clearer on the situation. We have a better idea. Excuse me? Yeah. I think we are now in a better situation to understand where we are. There are two things that people still need perhaps to be more clear. What is community mechanism as a sole member? My understanding is that in order to legalize and implement the decision taken by participations of AC and SO.

There is a need to establish or create a mechanism, and we call them community mechanisms, as a sole member of ICANN, this entity is an integration of all ACs and SOs. Second, the reference was made to council, it is not a council-ee it is an entity if we need to take a case to the court, if we need to have someone. And that someone perhaps would be a legal firm or somebody that the community selects or elects, and authorize or delegate, take this case on our behalf to the court and come back to us.

That is something that we need. The legal council needs to work on this and provide some clarification, explanation if that what are these, because people they think that perhaps there's another council of another voting and so it is not that. That is quite different, so perhaps this needs some more clarification? Is it possible that clarification is provided?

Holly Gregory: Well, I think you are referring to a conversation that you and I had. In the break you asked me if the community mechanism wanted to bring to go to court, how would it do so? And I explained that the community mechanism,

the SOs and ACs, if they wanted to go to court they'd have a vote. I think this would be very unusual and hopefully never used.

And then they would need to decide who they would have legally represent them. And much like the CCWG had to select council, they would come together in some mechanism to select council to be the legal representative in a court consideration. I don't think we need to put details on it. I hope it's an eventuality that never happens.

But, it would be made in the same way that any of the groups that ICANN has come to those kinds of decisions. I don't think that you need--I'm not suggesting in any way that you need standing legal counsel for this sole member. You don't.

Thomas Rickert: Thanks. Lyman?

Lyman Chapin: Thank you. The question that I have, and it's really just one of to help me clarify my thinking. I'm very much a supporter of the sole member model. But about almost an hour ago now, Rosemary said, and I think I'm quoting directly, because it was something that I tried to write down verbatim, "participation in the sole member is equivalent to participation in ICANN." And that was in the context of describing what might or might not change for the SOs and the ACs.

I can understand many of the reasons for interposing a sole member between the SOs and the ACs, which we already have and ICANN, which we already have. But, it would be very helpful, and I'd hate to put either of you on the spot by asking this kind of question, can you very succinctly describe why the sole member is an important element of the legal framework that we're looking at? Thanks.

Rosemary Fei: Having a separate entity that we can make the sole member of ICANN is one of the classic, robust ways to--let me back up. The typical California non-profit corporation or any non-profit corporation, most of them don't have members, and in those cases they are controlled by the board of directors. And the board is usually self-perpetuating; here we have something that's not quite self-perpetuating.

The counter balance to a really board-driven, board-run, board-controlled entity, membership is the mutual corporate method for a governance structure that has some indirect role. They don't run the organization. They don't have fiduciary duties. They're not the board. But, they elect the board. They can remove the board. They can have these reserved powers.

So, the reason for uniting what are already a united set of people or things doing stuff in ICANN, the reason for creating that community mechanism, which is uniting the same people, in the same organization, is because we can make it the member, and give it the authority of a member under corporate law.

Lyman Chapin: Thank you. That's very helpful.

Thomas Rickert: Alan?

Alan Greenberg: Thank you very much, Alan Greenberg. I put myself back in the queue because Thomas forgot to ask me what my preferences are, so I'll give my preferences and take a moment to explain why because I may be in a minority now. My preference is still the empowered designator. I have some still significant concerns about the small number of ACs and/or SOs that participate, and the kinds of thresholds we're talking about.

And, you know, again if we're talking about rogue directors, we're allowed to talk about rogue members, rogue participants. If the CCNSO and the GNSO wants to hold ICANN hostage, because they have two-thirds of the votes, and chooses to do something to threaten to dissolve the corporation if the, you know, if ICANN does not give in something or other, I think that's potentially a dangerous situation.

And until we have confirmation that we have a much more significant group than just two or three ACs and SOs who will exercise their votes, I have some real problems with this model. There were also a number of comments made in DA by several board members, not all, about the potential danger of a budget veto. And since this one includes that I guess I'd like to hear why that's no longer a concern or why we believe there isn't.

So, I think there's still some vulnerabilities in this that come along with the member model that I haven't heard a counter to. And with regard to (Lyman's) comment that he likes this concept of, you know, the member is essentially the composite group of those who participate in ICANN. I think if we had a designator model for instance, then this community council we're talking about is identical.

It would include all of the various bodies, some of them would vote, some would not vote. It would have the same sort of touch and feel as what we're talking about as the member here, so I don't think it's unique to this one.
Thank you.

Thomas Rickert: Thanks Alan. I have closed the queue two times now. Tijani and Chris, are these responses to what Alan said? Yes? Okay to Tijani.

Tijani Ben Jemaa: Thank you Thomas. I have a question to Alan. What is the difference for you between this sole member model and the designator model regarding the control of the organization by CCNSO and GNSO? If they have the same weight of voting here and there, so how it can be different? Why do you have this concern?

Alan Greenberg: Easy. The statutory rights, rights to dissolve the corporation, lawsuits, things like that.

Thomas Rickert: Chris?

Chris Disspain: I just wanted to ask Alan whether, so I have some sympathy with your view Alan. I'm just wondering whether your concerns about the smaller number of SOs and ACs participating, Alan, might be dealt with by the voting thresholds required. So, if you said there were only three, just say there were only three to participate towards the single member, I guess we're going to have to get used to a whole set of acronyms if we do this, aren't we?

There's a reason not to do it, acronym exhaustion! I wonder whether you couldn't handle your issue with the voting thresholds that you'd require rather than saying it's not worth it? I'm just asking if you thought that's through?

Alan Greenberg: Yes. I have. It's Alan speaking. Once we know the number, the minimum number of votes or members that we're talking about, adjusting the thresholds could alleviate those concerns, yes.

Thomas Rickert: That's good news Alan.

Holly Gregory: And if I may, one of the advantages to the sole member model over the other member model that was proposed is that members have a right to dissolve the

corporation on a simple majority vote. But, here this sole member is going to be directed how to vote by the community. And you could go as far as making that vote to direct the member how to vote unanimous on something like this solution, essentially taking it out of play.

You could also say that it would have to be unanimous plus on the advice of the board. I mean so you could to a lot of kind of--get a little bit of flexibility to call for something like that. You could similarly put in super majority kinds of thresholds for the sole member to ever bring a derivative action if that was the judgment. So, I think we can control for a lot of that at the threshold level, the vote threshold.

Thomas Rickert: For those in the back of the room and in the adobe, I can say that Alan was looking quite relieved to hear the answers from Holly, so let me try to take stock of what we've discussed. And I really have to applaud the room for having a very, very good discussion. And I think that our lawyers have done a sterling job, so let's give them a round of applause.

So, where we are now; we have the wildcard objection from (Eber-hard), for (unintelligible) we have grave concerns from Sam, she was against the sole membership model, and we've hopefully removed the concerns mentioned by Alan. But, we need to bear in the back of our minds that we need to make sure that thresholds are sufficient in order to eliminate that risk. But, I think that was the intention anyway.

So, personal takeaway, and I hope you will join me in saying that is that there is a lot of traction for the sole membership model. If you have grave concerns, if you have objections to moving forward on the basis of using that model to further investigate, please make yourself heard now. Otherwise, we would try to drill down into more details on that model.

I know that some of you have more questions. You're certainly free to ask all of the questions on the mailing list. And I'm certainly not willing to prevent you from doing that. However, we would like to volunteer co-chairs that you send us your questions, we channel them to the lawyers, and we make sure the lawyers give answers to the group tomorrow, if they can resource wise, right?

Holly Gregory: This is instead of dinner right?

Thomas Rickert: Let me tell you why I'm suggesting this, if you put your questions to the list, and the whole group chimes in with their ideas of what an answer might be, we might cause confusion, right? And I think the least we can afford now is confusion, because I think that what has been opaque a few hours ago seems to be more transparent now, and I thank Kavouss for making that observation.

So, let's work on the basis of this sole membership model could potentially be our reference model at the end of tomorrow. There is further work on that, and since you've all done such a great job, we're breaking early for coffee, so coffee is ready now. And then we will start with a new topic after the coffee break. Thanks. Oh! Kavouss? You wanted to...

Kavouss Arasteh: In order to avoid that (unintelligible) one participant at 6:00 in the morning, in order to not have that problem for the legal counsel, we should have a deadline for that, 6:00 this afternoon? What time is there time for questions? There should not open up until midnight. It will be difficult. Thank you.

Thomas Rickert: Send them as soon as you can if you have them, but by close of business today we should have the questions I guess.

Holly Gregory: (John): And the good news is we're still on U.S. time, so we can go pretty
late tonight in thinking about these issues.

END