ICANN

Moderator: Brenda Brewer
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3:30 am CT

Leon Sanchez: Thank you very much. So our next agenda is discussion on IRP. And we still have two very important topics before lunch and we are running a little bit late on schedule so let's try to give this as concise and constructive as possible.

And since we're - since we will be reviewing the IRP at this stage we have invited Becky as our rapporteur for this. And things that we should be looking at on this session have to do with the selection process, how to deal with the independence of the IRP, how to do with regards to maybe international arbitration; are we going to go with that? Are we going to choose some other path to follow?

We need to maybe speak about the (unintelligible) proposal and experimental phase, maybe escalating IRP through different paths. So with that I will turn to Becky so she can lead us through the discussion in this item. Becky.

Becky Burr: Thank you very much. Could we bring up the independent review document? So first of all just to summarize the comments on the IRP, there was generally very strong support for an enhanced IRP. And I think that there was a lot of

support for many of the issues. I don't know if anybody - hopefully everybody can read that on their screen.

I've highlighted some of the issues where we heard more comments rather than another so rather than spending a lot of time on the details what I want to do is focus on a couple of things.

So first of all we heard from many people, and I think in quite a compelling way, that the international arbitration model was not - was not a very good or close model for ICANN. And that we really wanted something that was more focused on a more closely analogous to a constitutional court that was focused on determining whether or not ICANN had acted or failed to act in a manner that was consistent with the bylaws provisions as a - and that that should be - that kind of inquiry should be conducted by a specialized constitutional court as opposed to a kind of commercially oriented court.

So the notion here would be to more clearly focus the purpose of the IRP to deal with determining whether ICANN has acted or failed to act in violation of its bylaws and then hearing claims involving statutory rights of the sole member.

So while the initial proposal said that those claims would be excluded from that to the extent that we want to focus those claims, the statutory claims, and that we are able - permitted by law to do so, to funnel those through the IRP that is the process that would be available and in place.

The question of standing was - is not - people did not really dispute the findings on that. It would be available to a person or entity materially harmed by action or inaction of bylaws, the community acting through the sole member with respect to those - to both bylaws violations and statutory rights.

And the process will provide relief for - in the - for the demonstrated likelihood of harms so in other words the harm will not have to be in the past, it could be harm that was subject to an interlocutory decision.

Another thing that we heard a lot about was the selection process. Many people were concerned that, one, we - that it was inappropriate to look to arbitral bodies to provide candidates given the sort of mismatch between the arbitral model and what we were looking for. And there was also concern about the level of board involvement.

So what we've proposed is to have a - to tender a process for an organization that would provide administrative courts, certainly administrative support for helping us set up the court and depending on the preferences, the administrative support for operating the IRP.

So calling for expressions of interest, soliciting applications from well qualified candidates. And I want to stress that in furtherance of the diversity requirement what we would be talking about is affirmatively reaching out to well qualified candidates and soliciting their application.

The community would select a proposed panel through a process designated - I have here through the CCWG, but, I mean, through the community forum mechanism. One of the questions that the ICANN board itself had was how are you going to make sure seven members are not overloaded? How are you going to make sure that have enough members of the standing panel to address the issues as they arise?

And so the proposal here is to have a pre-vetted pool of additional or alternative panelists. In each case the notion would be that we would have at least one member of the standing panel on all but to the extent the work load

got too large for a seven-member panel we would have the ability to reach out to additional panelists who are familiar to us who had gone through training on ICANN and the DNS and the like. And then the board would confirm or reject the candidates.

Expertise, again, is, you know, it is pretty much as it is although a number of people pointed out that the expertise that was available need not - needed to be broader than just technical expertise, that there might be issues where diplomatic or regulatory or other experts were called on.

Another issue that we heard a lot about was diversity. And one of the things that I want to raise and discuss today was the proposal was for sort of aspirational diversity as much reasonable efforts to create diversity. Some people suggested that we should have minimums or caps so a cap, for example, of no more than two panelists from any particular region and so that's something I definitely want to hear from folks about.

Size, we've talked about the seven-member panel seems to be something that's supported, that - but that we would have this available pre-vetted pool of alternates and additional members. And that individual panels of three decision makers would - and that would be appealable to the full panel.

On independence that's another issue that we heard a fair amount about. So I think that the requirements that we stated are good plus some explicit funding obligations related to that. Another issue that we heard a lot on is that there's concern about people gaming the process, not participating in a policy development process so how we get around that is something we would need to address.

There is strong support for as much constructive engagement and alternative dispute resolution designed to avoid the need to resort to the IRP. Oh, what's going on?

((Crosstalk))

Becky Burr: Adam, what are you doing? The decision would be essentially that an action or inaction if not consistent with the bylaws and then substantive decisions on statutory rights it would be then for the board to determine how to act on a decision that it was or was not consistent with the - with the bylaws. It is not, you know, there's no monetary damages award or prescribed behavior or anything like that.

The strong support continues to be, although I have heard some cautionary tales on this that the decision be binding to the extent that that is possible. There are some limits on that. And I think that's an area that we need to understand more.

So that's sort of the substance. Now let me just talk about the sort of procedural issues. There are a lot of very complicated and important details that have to be worked out. So nobody is proposing that this is a, you know, a final fully-baked, fully-cooked here's how the court will work. And there's a fair amount of expertise that is needed to put together the rules and operating procedures.

So the notion would be that a subgroup of the CCWG would continue, assisted by Council, and I also mean - when I say the CCWG with the participation of ICANN Council in this, continue to work on the implementation details and then also work with the initial panel on the rules of procedure, etcetera, as part of Work Stream 2.

So the notion is that this is not something that is going to happen instantly. It is going to be something that needs to be put in place carefully and with iterative considerations about the detailed rules of the community. In the meantime, I think that the proposal would be that we adopt the standard by which the existing panel operates which is that it would determine whether ICANN has acted or failed to act in violation of the bylaws and that that would be a substantive, not a merely procedural rule.

That the bylaws would provide for the other aspects of this as they become nailed down and following additional consultation and input from the community. So this is very much a Work Stream 1 Work Stream 2 exercise here to get the sort of minimum amount that we need and to really focus - have a focused and a detailed effort as part of Work Stream 2 to get the panel up and running.

So that's my summary. I see Chris's hand.

Chris Disspain: Thank you, Becky. Just a specific question on the - oh that suddenly got very big, Adam, I've lost scroll control.

Becky Burr: Adam's trying to make us sea sick.

Chris Disspain: Adam is trying to drive me insane basically. Okay, thank you, Adam. Under expertise, so I heard you say that - and I agree with that arbitrational is not the way to go. And are we anticipating, however, that as part of the expertise package we will be going to people who have experience of, and I'm just going to use this term loosely, sitting in judgment on things?

It's one thing to say I'm an expert lawyer, that doesn't mean I can necessarily write a finding that is understandable to other people and compiles with the mores that one would normally expect. I'm assuming that we are - even though we're saying we don't want to go to arbitrational type things we are looking for people with expertise as sitting as independent assessors or arbitrators or stuff like that, which isn't here.

Becky Burr: And I think that - yes, it's not there and it should be.

Chris Disspain: Right, okay good. Thanks. And can I just ask another question? Just on your last bit, so what you're saying is - I wasn't clear about - I understand about moving stuff into Work Stream 2 because of the amount of detail that needs to be done, etcetera, etcetera.

What are the changes that would need to be made to the bylaws now in order - while we wait for Work Stream 2 to finish or not? I wasn't clear.

Becky Burr: Well I would propose, and I believe that there are substantive support for moving to the proposed scope of decision making which is a substantive review as opposed to just a review on the procedure. So it's essentially returning to the standard that we had prior to...

Chris Disspain: Right.

Becky Burr: ...the April 2013 change.

Chris Disspain: Understood. And then therefore the new stuff that we currently have like the standing panel would be suspended while Work Stream 2 is doing its job, is that right?

Becky Burr: Correct.

Chris Disspain: Okay cool. Thanks.

Becky Burr: Robin.

Robin Gross: Thank you. This is really encouraging, this work on the IRP so thanks a lot,
                  Becky. I have a question about the scope of the IRP. And I see it says that it's
                  for people - or to bring actions with respect to alleged violations of the
                  bylaws. And I just wanted to confirm or get some clarification that it would
                  also apply to alleged violations of established ICANN policies, is that right?

Becky Burr: Well I think that it's inherent in the bylaws that ICANN has to apply its
                  policies. So we're not creating a blanket any little policy kind of thing but any
                  violation that is inconsistent with the requirements in the bylaws would
                  certainly be covered.

Robin Gross: So if I could just ask a follow up question then? So for example some of the
                  things or some action that could be brought under the new gTLD program
                  maybe they didn't have to do with the bylaws per se but had to do with the
                  Applicant Guidebook or the way things were handled. Would that then fit
                  under here or would you have to be able to tie it back to the bylaws?

Becky Burr: Well so ICANN has under the commitments and core values an obligation to
                  apply documented policies equitably and without discrimination and, you
                  know, to follow its rules. So it depends a little bit because I think maybe there
                  are some things that are, you know, minor issues. But a substantive failure to
                  follow a policy in a way that discriminates, for example, would clearly be
                  reviewable.

Leon.

Leon Sanchez: Thanks, Becky. We have a couple of questions in the chat box. One from Rinalia, another one from Izumi. The one from Rinalia it's referred to exhaustion. She asks if you could elaborate on exhaustion. And who does the requirement apply to?

Becky Burr: So it depends a little bit on what the nature of the complaint is. So somebody who's just taken by surprise by an application of a policy in a way that was unpredictable wouldn't necessarily have had to, you know, so first of all there are two kinds of exhaustion. One is you can't sit out a policy development process and sit on the sidelines and wait until the policy goes into effect and then say wait, you know, full stop, that's not okay.

The notion would be that to the extent we're talking about policy development processes, particularly if you're a member of the community you have some obligation to be part of the policy development process and to raise concerns. That's - that is an important issue but it's an issue that requires a lot more thinking and clarifying.

Then there's exhaustion about, you know, ombudsman reconsideration, constructive engagement and mediation issues. I don't think that there's a requirement that anybody has contemplated that there be - that you have to go to the ombudsman. There are several folks who have said you should go to - or be required to go to reconsideration before. Others have said, no you shouldn't be required to go to reconsideration beforehand.

The constructive engagement process has been significantly criticized as a delay and so in the proposal itself we included a provision that any party at either time could invoke mediation and go quickly to a mediation provision.

And, again, all of those details have to be worked out. But the notion is to address, you know, gaming and to avoid people sitting out a discussion in order to bring a case. And then to try to resolve disputes as early as possible and at the lowest level possible without unnecessary delay.

Leon Sanchez: Thank you very much, Becky. I hope that answers Rinalia's question. Next in the queue I have Tijani.

Tijani Ben Jemaa: Thank you, Leon. Tijani speaking. (Ladi) said, how can you be more comfortable with a few people that you or others selected to have the last say more than the board that you selected and they are from you, the community. I think this is a valid question. And that's why I say, as you said, Becky, the decision should be binding at a certain level and we have to define this level in Work Stream 1 because it depends on this to accept or not accept it.

Second point the decision of the panel should be appealable.

Becky Burr: Pardon me?

Tijani Ben Jemaa: Appealable. Third point, and this comes from the last experience with the IRP about DotAfrica, the period of consideration should be fixed and should be definitely fixed. The - what was said it was three months to six months but the last IRP took two years. It was because one of the members passed away. I know. But if the president of a country pass away I don't think that the affairs of this country will be delayed by as much months as it was.

Because when you make it very large it is rooms of gaming. You have time for everything. So I would like to make it clear that this is a point that must be very clear and very - and well defined in our proposal. Thank you.

Becky Burr: So if I can just briefly respond? The period of consideration, those kinds of issues I think are part of the Work Stream 2 defining the procedures and processes. And those will come back to the community. So the notion is it's not you're handing off and the community's done, that will be an iterative process that comes back to the community.

Just one other thing. The question on determining what level is binding as a Work Stream 1 issue, I think that, you know, there's a standard that's articulated about, you know, things that are so fundamental to the board but I also think that there are, you know, that we have heard some questions about making sure we've got it right before, you know, we have full blown binding decisions, making sure that we've calibrated the what is in and what is out of the what's binding and not binding.

So my actual - my preference would be that we not close that down as a Work Stream 1 issue.

Leon Sanchez: Did you want to react to that, Tijani?

Tijani Ben Jemaa: Thank you. Becky, you are proposing a panel. If you don't give those details, if you accept it and then the details will not be according to what - what is considered as acceptable it would be too late to say the panel is not the right way. So I think that since we propose the panel we have to propose all those details which are not very (unintelligible) detail, they are essential for the functionalities of the panel.

Becky Burr: So just to be clear, we did not get any comments that suggested sort of different levels of binding-ness. There was a lot of suggestion that the process needed to be appealable. There were some suggestions that you could have an

out so that a super majority of the board could overrule a decision or elect not to follow it.

Those are all very closely tied it seems to me with the things that are so fundamental to ICANN's, you know, the corporation's and the fiduciary duties and things that, you know, that needs to be calibrated. I think we need to hear from other people but what I do think we need to do is be mindful of the Work Stream 1, Work Stream 2 distinction that says we need to do what needs to be done to ensure that decision that are made in Work Stream 2 can be implemented.

Leon Sanchez: Thanks, Becky. Next in the queue I have Alice Munyua. And I would like to close the queue at this point with Izumi I think it's - the last in the queue at this point, yes, Izumi, so we're closing the queue with Izumi and we'll go now to Alice.

Alice Munyua: Thank you very much, Becky, for that presentation. We are pleased to note that it has captured many of the concerns we have consistently expressed regarding the kind - okay, thank you, Becky for that presentation. We are pleased to note that it has captured many of the concerns we have expressed consistently regarding the kind of challenges and shortcomings of the client IRP.

We strongly support the proposal to move the proposed changes to Work Stream 2 to provide not only time for more thinking but for conducting an assessment of the current shortcomings and providing clarity on how the proposed improvements could alleviate the kind of challenges and shortcomings.

In addition we propose the US position on testing the effectiveness of this new proposal before they're implemented into bylaws or made binding. We think that's very important especially taking into consideration the current IRP. Thank you.

Leon Sanchez: Thank you very much, Alice. Any follow up? No. Okay so next in the queue I have Rafael Perez Galindo from Spain.

Rafael Perez Galindo: Thank you, Leon. And thank you, Becky. Much appreciated. I just wanted to commend your work and say all in all we support this enhanced version of the IRP. Just wanted to make a point about standing and it's mainly that it is stated in the proposal that any person materially affected by an ICANN action or inaction is entitled to initiate an IRP.

But even if it is for saying that interim relief will be available in advance we feel that the fact that already materially affected parties having standing in the IRP could prevent stakeholders from using this mechanism in case that the damage or harm has not be produced yet.

So for example, this could prevent governments from filing an IRP in circumstances where an action or inaction by ICANN affects compliance with local laws, for example. So we would like to fill this loophole and we would propose to expand the scope of legitimacy to file an IRP to prospectively affected party which demonstrates that severe harm will likely be done to the interest its defense. Thank you.

Leon Sanchez: Thank you very much, Rafael.

Becky Burr: Can I...

Leon Sanchez: Yes, please do.

Becky Burr: That's the intent. It's a loophole in language only, not in intent. That is the exactly what is intended to be the standard.

Leon Sanchez: Thanks, Becky. Next in the queue I have Asha Hemrajani. Asha. Asha, might you be on mute?

Mathieu Weill: (Unintelligible) mediation? If that was on the mediation it was a question whether, Becky, you could elaborate on the use of mediation as a form of settlement and how that might happen in practice.

Becky Burr: So we would have to set up a process that, you know, creates an outreach to mediators. I don't think that it's necessary to be an internal process but it would be a process that would be sort of organized and available internally so as to keep it as inexpensive as possible and as streamlined as possible.

                  And the notion really is to prevent endless constructive engagement that is actually not constructive so that a mediator could get quickly to the point of saying yes there can be a resolution or, no, it does not seem like there can be a resolution.

Mathieu Weill: And there was also a comment by Asha that diversity of panelists would help reduce costs.

Becky Burr: I think that's correct.

Leon Sanchez: Thank you for this. We have another question on the chat by Seun Ojedeji. And he wants just to clarify whether the IRP process will be executed by ICANN board, for example, in the selection of the seven members proposed.

Becky Burr: So the process for selecting the panelists is very much focused on the community - the community would identify a panel and nominate the panel and that would be subject to the board's confirmation. There were some calls to say the board should have nothing to do with the selection or confirmation of the panel but I think the board - ICANN is subject to the independent review and it makes sense that it should be part of the confirmation - it should have the ability to reject members that it feels are biased. But otherwise the majority of the selection will be undertaken by the community.

Leon Sanchez: Thanks, Becky. Next in the queue I have Bruce Tonkin.

Bruce Tonkin: Thanks, Leon. Just to clarify one thing on - with respect to the current bylaws. So the current bylaws have a provision to form a standing panel. And the board stands ready to form that if that's what the community wants us to do. My sense from I guess what I heard from you, Becky, and maybe others, is that the feeling is right now not to take any action until this group has sort of defined the processes for forming the panel, is that a fair assumption?

Becky Burr: That is what I believe the consensus is.

Bruce Tonkin: Thank you. I'll convey that back to the board. The o there question I just have is about appeals. So the experience we've had with the new gTLD program is everyone that's lost a decision automatically appeals basically through the reconsideration process. In your note here you talk about appeal to the full panel.

Do you see there's some criteria for appeal? Or do you just see it's automatic, you can just go to the full panel if you want to?

Becky Burr: No, I think that there will be criteria for appeal. Typically there are, you have to allege some kind of error in judgment or error in applying the law or error in fact although it's not usually fact is it?

((Crosstalk))

Becky Burr: ...so there would be...

Bruce Tonkin: ...court appeals process, yeah. I think that's important to be clear because otherwise it just becomes something that's more and more accessible to the rich. And it's like, yeah, I can afford to do an IRP and I don't care if I go wrong I can afford to go to the full panel. They'd just end up with a lot of inequity I think if there's no constraints on just delaying and delaying and delaying without sort of criteria for each step.

Becky Burr: Yeah, so I think that there also need to be provisions for, you know, sort of early action on any appeal that is frivolous, for example, or not substantiated or whatever, and that's all part of the details of the way in which the process operates. And, again, let me stress it's not that we're passing this off and saying, you know, the community will not have a look and input into what those things are.

Leon Sanchez: Thanks, Becky. I remind everyone that the queue was closed with Izumi so now I'm closing the queue for the second time with Rinalia. And next in the queue I have Paul Rosenzweig.

Paul Rosenzweig: Good flexibility, Mr. Chair. Becky, this is great work. I think the IRP is - I think somebody said the crown jewel of the reform, somebody said that back in Istanbul. And it's at the core of the answer to a lot of the stress tests is the access to the IRP. So my question really goes to timing which is I completely

understand the idea that we can't write the rules of procedure for this panel before Dublin. And so what needs to be done in Dublin is whatever the limited amount of mandatory bylaw changes and/or commitments is necessary.

But I'm worried some that it gets pushed off to post-Dublin and we get into a lengthy discussion process with disputes and people not liking this and that and we're looking at this a year from now without having gotten to the panel actually stood up with a formal set of procedures. How is - what's your view of the timeline? And what's your view of an action enforcing mechanism that will guarantee that we're not here a year from now fiddling while Rome is burning?

Becky Burr: So, one, I don't think we need to wait to create the subgroup that is focused on this and has the support of experts to start creating the detailed rules. To me that's very important. And it's important demonstration that, you know, of a real commitment to the process.

Second of all, the bylaws provisions that, you know, require this to go forward so the same kind of Work Stream 1, Work Stream 2 separation, we need to get in here whatever we need to ensure that this moves forward and gets implemented. And I think there's still some work to be done on exactly what that is.

And then third, although if it's just the community dithering, that's one kind of problem. If it's the, you know, board not implementing a community recommendation that's an entirely different kind of matter and one that we can address in the bylaws.

Leon Sanchez: Thanks, Becky.

Paul Rosenzweig: Just clarification, how in the bylaws? By setting a firm deadline or because there won't be an IRP to appeal to to require the setup of the IRP so what would be the mechanism if the - yeah if the structuring doesn't go forward?

Becky Burr: Well this whole member can bring a requirement - a case to enforce the bylaw provision.

Leon Sanchez: Thanks, Becky. Next in the queue is Izumi.

Izumi Okutani: Thank you very much, Becky, for your work. And I agree with the categorization of the Work Stream 1, Work Stream 2 and the way forward with this. And I want to comment a little bit on the scope. And so as well as being clear about the scope of what to be included I think it would be helpful to be clear in our proposal and a final document for the IRP to be not - not to be included, what would be out of scope, for example, the existing arrangement with the numbers community regarding the global policies or the IANA functions on the numbering.

I think there are other issues related to the ccTLD that would be out of scope for the IRP. And it would be really helpful to have clearly documented and reflected in our proposal as well as the draft for the IRP process.

Becky Burr: Yeah, so those - both of those things were in fact articulated in the proposal and will be carried forward. There was no controversy about them at all.

Izumi Okutani: Okay, thank you.

Leon Sanchez: Thank you very much, Izumi and Becky. Next in the queue I have Kavouss.

Kavouss Arasteh: Thank you. Two side questions. What is the relation between IFR and IRP?

Becky Burr: I apologize, Kavouss, please repeat your question. It's Mathieu's fault.

Kavouss Arasteh: Excuse me, I didn't hear, I was off.

Becky Burr: I'm sorry. I couldn't hear your question.

Kavouss Arasteh: What is the relation between IANA function review and IPR? How this
                  appear? Would it appear as a subset of IPR? How would be in the bylaws
                  would be a totally separate course of actions because of its direct relation with
                  naming and part of the transition related to the ICG final proposal is the first
                  question.

                  Second question in fact is once we conclude the IPR we should come back to
                  the model to see whether it would have some, maybe not, impact on that. And
                  now I coming to the question that I have. The question are, one, the number of
                  the panelists, if still there is a provision that one single person decide on the
                  matter it would be difficult to rely on one single person no matter how
                  impartial, how competent, how neutral that person could be.

                  Second is the diversity. We should avoid to have panelists from one single
                  country or one single area. There are expert specialists familiar in entire world
                  and we should implement and we should retain this diversity possibility.

                  Third is the propositions, who proposes. It was said that confirmed by
                  ICANN. I have difficulty that we would have establish an IRP - IRP, sorry, to
                  do with actions or inaction by ICANN and the ICANN select those people or

confirm those people. They may propose that the final selection would be by the community. It is very difficult that we have this situation.

And the last two questions that I have what are the criteria based on which IRP could be invoked. And last question would be could an IRP be invoked which depends on another IRP in process? And final question is the duration. We have an IRP currently if it is in place for years and still no decision has been made. How long an IRP could continue? And how community could have any control on that if we see that it has not been duly and timely processed. These are the questions about IRP and we would like to have some reflection on that in the document. Thank you.

Becky Burr: Okay I think that the documents will address those questions. Obviously whatever the ICG dependency is will be fulfilled by this so if the ICG says - comes out and suggests we need a new cause of action we will have to put that in there. But it goes without saying that any ICG dependency would be addressed.

I think that the notion that one panelist shouldn't be binding we may do something that says it's a choice of the parties that they want it to be binding and there's only one panelist. But I agree with that. Diversity, completely agree with you on the diversity issue. And I think that was something we heard loud and clear from all of the community on that. And that will be a priority.

On the selection of the panelists themselves, it's actually quite common that, you know, this notion that you have essentially an executive branch nominating judges and a legislative branch, in this case the community, confirming panelists, that's a fairly common construct. When we went out for

the proposal it actually did suggest that the panelists would be nominated by the community and confirmed by the board.

The sense that we got from the community input is that they actually wanted the community to have the final input, the final selection or that they wanted the community to have more authority so the notion would be that the community nominate - picks the panel. And the board can reject them but it can't pick its own substitutes.

Leon Sanchez: Thanks, Becky.

Kavouss Arasteh: Select - why and how the board could reject that, on what ground? I don't like them? They are not competent? Oh.

Becky Burr: I mean, I think that's actually quite typical. There are a lot of cases I know of where judges have been, you know, proposed judges have been rejected because people didn't like them. But I think that the point is, you know, will the board do that? No, the board will say we believe that this person doesn't have the expertise necessary or we believe that this person has a conflict of interest or a fixed position or something like that.

Leon Sanchez: Thank you.

((Crosstalk))

Leon Sanchez: Follow up by Kavouss.

((Crosstalk))

Kavouss Arasteh: ....but not - I don't like this because is not (unintelligible) please propose someone else.

Leon Sanchez: Yeah.

Mathieu Weill: Take it offline.

Leon Sanchez: Let's continue the discussion offline. I think that's valid point and we should definitely continue the discussion. So next and last we have Rinalia.

Rinalia Abdul Rahim: Last, okay. Thank you, Leon. Becky, I really appreciate your work on the IRP. It's really excellent. I have a simple question on diversity. And I fully support the diversity requirement. If there is a possibility that you're not able to achieve a fully diverse panel is that likely to delay the formation of the panel itself? And could it start with just a minimum number as opposed to waiting for a full seven?

Becky Burr: An interesting detail that I hadn't thought of that maybe you, you know, create a panel of five and look for the other two. I think we have to think about that but, no, diversity should not preclude the panel form being formed. On the other hand, I think there is adequate, you know, there's a very diverse pool out there. It's really more of us going out and looking for them and finding them.

So I see that as a really - and one of the important pieces of the diversity thing is not just to sit by and wait for applications to come but have a process in which there is really affirmative outreach to qualified candidates around the globe. And I'm confident that there are many of them.

Leon Sanchez: Thanks, Becky. So with this some conclusions I'd like to pose to the group that diversity is definitely important for the formation of the panel. And also

in this would like to have this be a community-driven process but in which where the board will also have a say and that needs to be very clear, the board will also have a say in this.

Our working group should continue to develop the rules of procedures for this panel. And we should also, I've seen some on the chat box about the topics that would be out of scope from the IRP. We should be maybe looking also at which issues would be falling out of the scope of the IRP. Another conclusion is that we will be looking also at appeals criteria and also trying to avoiding an infinite loop of appeals. So we will be further developing those criteria in this working group.

And one thing that I am very pleased to see here is that we do have support for this enhanced IRP version. And this is I think a big step forward also for our group and with this I think we can go to our next agenda item. And for that I will turn back to Thomas.

Thomas Rickert: Thank you very much. And I would like to ask Jordan to come to the table. Thanks, Becky, for - so we're now going to discuss the community powers of removing individual directors and recalling the entire board. And there is...

Mathieu Weill: Can we ask the board members to leave the room?

Thomas Rickert: And there is an associated question going along with that and that's the question of the caretaker board. And the way we are proposing to structure the discussion is that we're going to hear brief overviews from those that have been working on the report and the analysis of public comment. So we are going to hear quick summaries on both powers, then we're going to have a discussion on those.

And if time permits we will then have a quick presentation about the various options for a caretaker board from Rosemary and Holly. And we will discuss that issue subsequently.

So I would like to hand it over to Jordan for introducing the topic to us.

Jordan Carter: Thanks. And as is the usual style you have now seen from me the lead drafters will be giving the summary so Alan will give the summary about removal of individual directors and Keith Drazek will join us then to give the summary about the recall of the entire ICANN board. They've got writing instructions of quick summaries. Basically there are substantive changes here to talk about but the board thrust of the feedback was strongly supportive of both powers.

So, Alan, over to you.

Alan Greenberg: Thank you very much. There were not a lot of comments on removal of directors but there were a fair number. The first one that came through universally was the process has to be open, transparent, that it can't be shrouded in secrecy.

That didn't translate in - with one exception I think, one common exception, didn't translate to issues of cause because there was a feeling among many that you didn't want to be - have a process which could then be appealed. But in general the process must be conducted in the open and in clear light.

There was general support for the concept of removing of AC and SOs removing the directors supported by them. There were a couple of comments that said the community in the wider sense should do it. There were a couple of comments where it wasn't sure what they meant, whether they were talking

about the community in general or the AC SO community in particular that appointed them was a little bit fuzzy.

There weren't a lot of comments like that. There were a number that did explicitly support the removal directly by whoever appointed them. There was overall support for removing NomComm directors. There were mixed opinions on exactly how that should be and remember, we were talking about a very different reference mechanism at that point than we're talking about now.

If you recall, the original mechanism that was discussed in Frankfurt, I think, or somewhere, was that the community should be able to remove NomComm directors. We were given legal advice very quickly that if - in either the designator or member model if it was the NomComm it's the NomComm that had to remove. So we came up with the concept of a subcommittee of the NomComm. And we ended up with three options basically. Either the NomComm itself does it, a subcommittee or the subcommittee does it and the subcommittee could be designated in one of a number of different ways.

The suggestions that were made were either a NomComm, a subcommittee of the NomComm made up of past NomComm appointees, perhaps the ones that actually did the appointment, if you could still find them. That could mean there were multiple committees if there were multiple people being removed, that was a little bit complex.

The other suggestion was to use what was then being called the community council since that is in fact the community that wanted them removed to begin with and simply give them the designated power. That situation has changed now because we're now looking at a - the single member model.

Next slide. In terms of the AC SO directors, I think it's quite clear the general request was that we follow the (unintelligible) specified in the interim proposal and that is AC and SOs remove their own directors. And I think that's consistent with what can be done within the current model. I think we heard this morning that although it is the single member that does the removal, somehow that would be done on the instructions from the appropriate AC SO.

The NomComm appointment is a little bit more confusing. And we need to come up with the closure on that. I'm presuming that it will be the community as a whole that does it. Since there were real problems identified with the NomComm doing it particularly the NomComm normally is covered by sort of a veil of secrecy on the actual deliberations. And that would be counter to the very strong request that this be an open and transparent process.

Since we're looking at a community request I would presume that we will come to closure. But we haven't discussed this at all obviously since we're just looking at since this morning - that it be essentially exercised as the other community powers that is it require certain threshold of ACs SOs requesting it and then a vote at a certain threshold to enact the removal.

I'll raise an issue that the report did have. And if you look at the first two sub bullets of the last major bullet there were two statements spaced several paragraphs apart, one saying the petition to initiate NomComm appointment removal would be from two SOs or ACs or a stakeholder group of the GNSO.

A quick poll said no one knew what that meant. We suspect it might have meant a house of the GNSO which is the entity that appoints the director. Wasn't clear if that if that was replacing an SO or replacing an AC.

And there was a later statement saying it requires a majority of the AC SOs to petition it. So since these are conflicting statements I think we probably scrap them all and go back to basics and say what do we want the threshold to be? And essentially evaluate this one like we're evaluating the rest of the community powers and a sign petitioning thresholds and then voting thresholds. And that's about it.

Jordan Carter: Great thanks, Alan. And we're going to go straight on to Keith presenting the other and then we'll do the discussion. So if you're ready for a hot seat swap. Thanks, Alan.

Mathieu Weill: Jordan, if we've got questions then Alan needs to stay up there.

Jordan Carter: We were going to present the two together and then...

Mathieu Weill: Yeah, I was just saying he shouldn't leave.

((Crosstalk))

Jordan Carter: Yeah, yeah, we just need another chair. Sorry. Didn't mean to send you away. I did - definitely did not. Keith.

Keith Drazek: Okay. Thank you very much, Jordan. And let's make sure we have the right slides up.

Jordan Carter: We need to swap to the other presentation. Thanks.

Keith Drazek: So while that's coming up, hello everyone. Keith Drazek for the transcript. So the next topic will be the community power. It was 5.6 in our proposal, recall

of the entire board. And I can start speaking to a review of the public comments while the slides are coming up.

There were a total of 28 comments in this section, 25 comments suggested agreement, 3 divergent comments and 6 comments noted concerns or recommendations. There was broad agreement, 89%, that this power would enhance ICANN accountability. And there was a strong recognition that the still-undefined implementation details are critical to ensuring that this community power is both effective and not introducing any unintended consequences.

So flip back here. So the concerns that were found during the public comment period were the need to establish an appropriately high voting threshold and the two percentages that the CCWG proposal laid out were either 75% or 80%.

There was a need to address unintended consequences: the potential risk and instability during the transition of a board that is recalled; the need to carefully develop the process for establishing a caretaker board; and the need to carefully establish the obligations and powers of a caretaker board.

Next slide. So the question of how are these issues resolved, and the answer largely is not entirely. We have some work to do. The voting threshold, however, there was a clear preference in the public comment responses for 75%. There were two or three comments that suggested 80% but the strong support was for 75% so that will be included as the position or the percentage threshold in our next proposal that goes out for public comment.

The issue of risk and instability is still an open issue and more work is needed. And the questions around a caretaker board is still an open issue, more work is needed.

So what are the open issues? Are we reaching a decision in Paris or to be included in the second proposal? And the answer is largely, details to be included in the second proposal.

Work Party 1 will work now with the legal advisors to craft recommendations addressing implementation details including addressing concerns with risk and instability, the caretaker board appointment and the caretaker board obligations and powers.

Other points to note and consider are the need to synchronize with the reference model. We anticipated that there would be likely changes coming out of the discussions of these two days so that we will need to ensure that whatever we come up with for this particular power is consistent with the voting mechanisms or the community council or whatever we're going to call it.

And then finally, to ensure that we're aware of the CWG transition dependencies in this regard because this was one of the items that was called out in the CWG transition proposal. And I'll stop there and then we can take questions. Jordan.

Jordan Carter: Thanks. And, Thomas, you want to do the queue?

Thomas Rickert: Yes, I'm more than happy to do that. And since there's a queue forming let me just remind you that we have overwhelming support for these powers. So

let's please not go to very fundamental issues, let's speak to the refinements to the suggestions that we had on the table.

So I note that Wolfgang wants to be added to the queue but first one to speak is Chris, please.

Chris Disspain: Thank you very much. And I'm not going to speak again since I'm fine with it. Thanks. Alan, just help me here, we're talking about in the individual director cases we're talking about - we're still talking about removal without cause, aren't we? Or have we changed that?

Alan Greenberg: No, no, there was no mention of cause in the reference doc, in the proposal. I believe there was one comment that said there should be - it should be for cause.

Chris Disspain: Right.

Alan Greenberg: Which in my mind has some follow on implications. But there were - we're working on the majority at this point.

Chris Disspain: It's no problem. I just - there's just - there are some things that flow from that. So the first one is on your - one of your slides that said the SO AC decides, I'm assuming you're talking about just deciding on process or could the SO AC - could the ccNSO decide that the way it's going to run its process was it would have to - it could only remove for cause?

In other words, how much power are you giving each of the SOs and ACs in this? Are we saying it's without cause but you can make your own process? Or are we saying you can do whatever you want to do? So I'm not asking for an answer necessarily just to think about that.

Alan Greenberg: Well, I'll certainly tell you my understanding is the complete process is up to the AC SO and therefore you could impose...

Chris Disspain: Cause.

Alan Greenberg: ...a cause reason should you choose to.

Chris Disspain: Okay. And I have just a couple more points. Have we asked the question - should we ask the question do we need to be concerned about claims of prejudice or claims of some sort of, you know, you're removing me because I'm a woman or - I'm not a woman in case anybody is wondering. You're removing me because I come from - do we have concerns about that that we need to address? No? No. Okay cool, good. So that's - Holly's answered that question. Thanks.

Thomas Rickert: So just briefly we have certainly discussed for this meeting and there was this issue of cause versus no cause. Let me just, you know, before - there might be other questions surrounding that. It is our impression as co-chairs and rapporteurs that we deem the board members, being representatives of their respective communities, and having said that, it's up to the respective communities how they wish to seat or remove the directors they place on the board.

So we think it would not be appropriate for us to prescribe how to - how the different groups shall deal with it. And we don't that much like that no cause, there will be good reason for a group to do that. But there's no legal requirement for us to establish a threshold or cause and therefore it should be up to the respective groups to determine how they wish to deal with that.

Chris Disspain: And we're not fussed as a group - and again I'm just asking a question - we're
                    not fussed as a group about the possibility of capture within any of the SOs
                    and ACs where you might have a very fine election where there's one or two
                    votes in it, the board members come onto the board and then you have this
                    ding dong where the lobbying has occurred in the SO and AC, the voting
                    structure - not the voting structure, the vote changes so suddenly there's a
                    vote. That director gets removed, replaced with another one then that director
                    goes back into their SO and AC and starts lobbying again and so on. I'm just
                    asking whether we have any concerns about that.

Alan Greenberg: The general feeling in talking to people seems to be that the threshold for
                    removal should be larger - that generally the threshold for appointment is a
                    majority of whoever it is that's making the decision. Removal decisions there
                    seems to be a general consensus it should be a larger amount. Could that still
                    happen? Yes.

Chris Disspain: Well my point was simply if you don't mandate that then you leave it up to
                    each SO and AC. I'm just asking whether we think that's us fulfilling our
                    responsibility or are we just passing the buck to each SO and AC?

Alan Greenberg: I can't imagine any of our AC SOs not saying that. On the other hand the
                    director selected by the contracted party's house in the GNSO is selected by a
                    relatively small number of people if you look at the councilors alone. And I'm
                    - it's a good question. We haven't discussed it at all. We didn't ask the
                    question. And I guess we need input if we're to specify something.

Jordan Carter: Closely related issue, Chris, the draft said last time and says this time that
                    where the decision making body either is the SO AC or the NomComm
                    removal requires a 75% level of support. So there's a higher threshold already
                    implied there.

The thing that the report is a bit silent about is obviously the appointment processes are set out in the bylaws so the removal processes should be set out in the bylaws as well. But what that wouldn't include is some kind of standard that the decision has to be judged against.

Chris Disspain: That's the question. How far are we going to prescribe for each SO and AC? I think that's what we need to decide.

Jordan Carter: Yeah.

Chris Disspain: There's a - the process itself can just be we'll have public comments, etcetera. But are we saying you must have a super majority or whatever? That's our question.

Jordan Carter: And the answer to that one is clearly yes. But that's the only thing that was said in the draft text that we should prescribe.

Thomas Rickert: But let's maybe settle on keeping those two minimum requirements. Yeah, let's do it as lightweight as we can until we hear differently from you or the community. Let's then move back to the queue. Tijani, please.

Tijani Ben Jemaa: Thank you, Thomas. Tijani speaking. AFRALO was the one who spoke about the cause. And I do understand your concern of Alan about an endless appeal process. And to solve that if we give the power to remove and (unintelligible) members to the community and not to the appointing party then we not be any necessity for the cause because the community will not remove any director only because they don't want them or because it is not serving the interest of this particular party.

So I made the proposal in this sense. And I do think that there is no barrier to that. I understood from - I don't know who said that, that the appointing party should be the one who removes them - the board - the member. I don't understand that we can give the power to the community to remove the whole board members and don't have this possibility for one single or some board members.

So for me the power should be given to the community and not to the appointing party. This will prevent from a lot of problems. Another problem that will be solved by that will be the NomComm appointees since all the board members will be treated in the same way and they will be removed by the community and not by the appointing party.

Second point, about recalling the whole board, I was - and AFRALO was the supportive - much supportive of the community to be able to remove the whole board. But we can make it one single process. The community can remove one member until 15 member, and when we go to 15 it is the whole board. We make it simpler, minimum change. Make things very clear no way to game anything etcetera. Thank you.

Thomas Rickert: Before Jordan answers let me just say that the queue will be closed after Sam.

Alan Greenberg: Just one clarification. Tijani made reference to why Alan thinks something, Alan does have a personal opinion, but what was written here was the opinion of the subgroup that looked at it and then WP 1 in general. So just to be clear.

Jordan Carter: Thanks, Alan. And on your first point, Tijani, I understand and respect the perspective that you bring about, the community making the decision. But the vast majority of the feedback that we've got doesn't agree with you so that's why the proposal is for the appointing bodies to be the removing bodies.

Tijani Ben Jemaa: Was it asked to the community if they want it to be the appointing body to remove the director? It wasn't - there wasn't a question in this sense so people didn't make other suggestion if you want.

Jordan Carter: Well just relating to what we were just talking about, the model was presented and alternatives were obviously possible. You did present one. Others didn't - the feedback, the momentum is not with your suggestion. So that's just the point that we're at.

Thomas Rickert: Okay, Rinalia.

Rinalia Abdul Rahim: Thank you, Thomas. First of all to clarify that I speak on my own behalf and not on behalf of the board. I want to highlight the importance or the principle of fairness in dealing with the individuals that are selected to be board members.

So when you select a board member that board member has to be cognizant of his or her responsibility and what could trigger his or her removal. Therefore cause, articulation of that cause and the parameter of what could constitute as cause must be present and be visible and acknowledged by the person that is being appointed. So I think articulation of cause whether it's overall for all board members or for each SO ACs I think that is fundamentally important to the person.

The next point I want to make is that I think it is extremely crucial to treat all board directors similarly in terms of thresholds for kicking them out. And the reason is that once they are appointed they are responsible for the entire organization and the interests of the entire organization that includes the entire community, not just the community that represents them.

So I understand that the SO AC that appoints a specific individual director wants to have a say and that's okay but I think the threshold must be the same for both NomComm and the SO AC appointed director. Thank you.

Mathieu Weill: Yeah, this is Mathieu speaking. I think you're raising a very good point. There needs to be respect and due process in this regard just like for any other decisions made. And board members serve the community, they're dedicated, they spend a lot of time and they're owed a certain amount of consideration.

And regarding the cause, the one thing we don't have, and I think our group will not be able to provide right now, is a standard about what's expected from the board members in the ICANN community. In a regular corporation that's pretty standard, there are regulations and laws that say the board member is in charge of strategy and entering this and this and this. It's all set up.

There is a little bit of that in terms of fiduciary responsibilities for ICANN but there's also the expectations of the community and how they interact with the board. That was actually pointed out by Larry Strickling in his remarks in Buenos Aires.

So I'm all in favor of moving forward to clarifying this with the board and probably with help of maybe outside counsel with experience with board governance because that would be helpful. And I know, for a fact, that there a lot of standards about this.

And making this an item for further work I think that would be extremely useful for ICANN. But it has to be a joint work. And it wouldn't be realistic to expect this as part of Work Stream 1. But I agree with you, there is currently a

lack of clarity about this in the community which generates a lot of - might generate a lot of frustration and concerns regarding to the removal.

So I think that was one part of the Work Party 3 work program to start discussing this, hasn't got any traction but maybe we can still put that on the table for further work down the road to accommodate the concerns that the removal would take place for totally arbitrary reasons and set up a standard that board members could be assessed against.

Jordan Carter: And one brief addition on the second point you raised, Rinalia, yes the proposal does require the same threshold to be met wherever a director comes from, whoever appoints them so at least that decision threshold is exactly the same across all types of director.

Keith Drazek wanted to add something as well.

Keith Drazek: Yeah, thank you, Jordan. Just in light of the conversation, and I know there's still a queue, this is - these two community powers are clearly very important powers and ones that need to be approached very carefully. It's something that we in the Work Party 1 recognize. It was reflected in the public comments that the risk of unintended consequences, as I said, and the potential for instability, is something that we need to take very, very - consider very carefully. And we will do that.

You know, we don't take these powers lightly at all and we need to make sure that they're approached accordingly. Thanks.

Thomas Rickert: Thanks. Sebastien.

Sebastien Bachollet: Thank you. I think it's time for me to express my discomfort in all this
discussion. Because either you open the discussion without limit or you say
you can't go outside of this round of discussion, and that's not what I meant
for this meeting here.

So second there are things - the comment period it's not a voting period. And
sorry, but the percentage of people who say yes, or say no, it's not at all - was
not at all a goal of this comment period. If you want a vote ask for a vote. And
I hope that you will have more vote than the comments. The comments to
have more comments seen one side and other side, it's quite easy. And then I
am not thinking that it's a good way to go.

The other point is that the first comment period was to get new ideas. You
decide that because your idea put on the first comment was a good one
because more people were saying yes then we don't need to take care and to
integrate or to think about the other proposal like the one made by AFRALO
and I guess some of my proposal too.

And my other point is that I am sorry, Thomas, but maybe I am wrong but
when I was board member never, never it was told me that I was representing
my community who elect me. Never. Then if you want to change the rule in
the middle of the way you can but that's not the current situation.

It's maybe what we would like; it maybe what we dream; it's maybe what we
want to have but then we need to change something. And I hope that at least
the board members - the current board member - will - or the ex-board
member if they are in the room - will say so and the legal also are able to say.

Then my last point it's as I would disagree I am disagreeing with the current
proposal. I would like to have a minority view. And I put on the table a

solution to have not to answer the question you asked about the risk and instability take care about the appointment and so on. And I put a proposal who I hope to solve all that issue.

I would like very much to have an answer why it's not to be consider. It's in line with what Tijani said - Tijani go up to 15, I stopped to 7. And I explain in my comment why. But I really think that no, it was not the time to say yes, it was the time to give other possibility, other way to go. And we here need to think about all that - sorry, the VP 1 must have been done that. But if it's not, and I understand, that it was not the case, then we need to do it here. Thank you.

Thomas Rickert: Thanks, Sebastien. And let me clarify that I'm cognizant that board members are meant to act in the interests of the community. And the point that I wanted to focus on, and let's not get sidetracked, is that the seating and the removal should be up to the respective communities that delegate board members to the board.

With respect to the other points - I think we can't ignore the community's wishes. We reached out to the community to give us guidance. And we've analyzed the comments that we received and we used to work on the basis of going with the models or the suggestions that get most traction for our consensus call. And I guess that's the way that we're conducting this, this is the agreed approach that we take.

And, Sebastien, you're certainly more than welcome to file a minority statement if you are displeased with what we are doing. So that's out of question, you can certainly do that. But from a chairing perspective in our joint goal to find consensus we have to go with the models that get most support inside this group. Keith, please.

Keith Drazek: Thank you, Thomas. I'd just like to respond to Sebastien. I was the one who led the effort on the recalling the entire board, which was 5.6 in the proposal. I do recall your proposal that was submitted in the public comment phrase for recalling a subset. I think it was 7 of the board members.

And it was the only recommendation submitted in this particular section for recalling the entire board. We had 89% support in the public comment response for recalling the entire board. I would acknowledge that your recommendation perhaps could be considered as some variation of perhaps the individual recall and ways to say maybe there is another power that we need or a bridging power that we need.

But this particular recommendation, this community power, was recall of the entire board. And it received 89% support. Thank you.

Thomas Rickert: Thank you. Next is Kavouss please.

Kavouss Arasteh: Thank you. From the very beginning I raise a constitutional issue. When you have board is a aggregate of each member to preserve the public interest. In the performing the duty each board member shall serve not representing the respective community nor any region but acting as custodian of international public interest or community public interest.

It would be a mistake if, as example, GNSO remove a director because in the view of GNSO that director did not satisfy the requirements foreseen by GNSO but that director collectively and collegially with other colleagues acted properly in the general interest of public.

By allowing the designator to remove the director you introduce a degree of dis-stability that giving preference to particular community against the interests of other communities. I have no problem that the community invoke the removal of the board - sorry, a particular designator removal of the board but should be approved by the entire community.

In order to see that whether collegially that board has performed its duties as foreseen. Director or not just to preserve the interests of particular community is to preserve the interests of the entire community. It is unconstitutional and inappropriate. We must do that. We can invoke but the whole community must approve that to see whether collegially the action was correct or not.

So please can we for the last time, listen to what I'm saying that it would be constitutional if you do act - you're breaking the collegial responsibility of the board and you breaking preservation of the common public interest. Thank you.

Thomas Rickert: Thanks, Kavouss. Jordan.

Jordan Carter: I understand the two perspectives here. And I think they're being well articulated. One is that the - I think the underlying concern is that the ability of an appointing body to remove the director that they've appointed risks turning directors into ambassadors of their appointing body, that they will stop paying attention to the global public interests, that they'll stop accepting the fiduciary duties that they have to the whole ICANN organization.

The only logic that I can deploy countering that is that it is a very common thing for directors to be able to be removed and that doesn't change the fiduciary duties that they have. What the existence of a power like this will do is it will keep directors more attentive to the needs and desires of their

communities. But it is wrong to say that it is unconstitutional to propose this power in the way that it's being done.

It is very, very clear in law in many jurisdictions, not just California that the default and always acceptable option is that the people who make the appointing decision make the removal. And if we want to build a web of connection that's different to that then we need to put this whole part of the proposal on the table. And we don't have a mandate to do that.

So I think that the power - the way that it's been set out the consensus that is - it's not just consensus, the analysis that has been developed is that this is the right way to do it, supported by the legal analysis. So, co-chairs, I don't know where we go with this discussion but there is a logic to the current proposal.

Thomas Rickert: Yes, thank you Jordan. And we will now hear Sam and as I indicated earlier, the queue is closed after Sam. We will break for lunch afterwards and...

((Crosstalk))

Thomas Rickert: Sorry.

Kavouss Arasteh: Sorry, a follow up question.

Thomas Rickert: Yeah. Kavouss, we are already 15 minutes over time...

((Crosstalk))

Kavouss Arasteh: Yeah, what is the difficulty that a designator...

Thomas Rickert: Kavouss, sorry.

((Crosstalk))

Kavouss Arasteh: ...and then going to the community. Please, explain me what is the difficulty of that?

Thomas Rickert: Kavouss. Kavouss, I was just about to make a suggestion. We're 15 minutes over time. We have numerous individuals that have ignored me closing the queue. I was suggesting a way forward. We are now going to hear Sam and I apologize for the oversight, we're going to hear Wolfgang. We will break for lunch then and we will take stock after lunch. We will discuss what the rapporteurs - we will analyze where we are and then suggest a way forward.

I think that's the best way - we're all low on energy now. We need food. We need a little bit of fresh air, potentially, and then we will reconvene. Sam, please.

Samantha Eisner: Thanks. This is Sam Eisner. I think what Jordan was just saying and following on from Kavouss's statement and also from Rinalia's statement, there's a tension between what's viable and understood to happen at law versus looking at the effects and the - for lack of a better word, political effects on the organization and a potential destabilizing effect on the organization.

And so to the extent that the viability of the concept of removal of directors by their appointing entities is put into place within ICANN that we make sure that we don't destabilize the organization too much by not having some sort of objective standard or community call to it.

I think there likely is a way forward to marry the two but you can't - we can't just say because the concept is legally viable and it happens in organizations

that we don't look at how it would actually impact ICANN to the larger and external community by not having some sort of standards and how we handle the governance structure of the board.

Thomas Rickert: Thanks, Sam. Wolfgang.

Wolfgang Kleinwachter: This is Wolfgang Kleinwachter for the record. I'm speaking in my private capacity. And I'm fully support the proposal. I think nobody wants to see ICANN in a situation like (FIVA) where it's difficult to get rid of people who have occupied certain positions.

However, you know, I want to make one comment, one question and one proposal. The first comment is I think we have to have very clear standards and criteria so that you have a clear understanding before you trigger the process for the removal under which condition this could take place. I think this is the work which still has to be done.

Number 2 is a question. Did you consider to enhance the quality of the selection process? I think this is what Strickling said in Buenos Aires, you know, I was chairing the NomComm, George was chairing the NomComm, (Sielo) was chairing the NomComm. In the NomComm we try to send the best people we have under the 100 or so candidates to the board. So it's a process which is confidential. That's why it's not so known in the community. The confidentiality protects the candidate.

But at the end of the day it's the belief of the NomComm that they did make a good job to send the best people. So that means to reduce the probability of a removal could include that we, you know, go through the processes of the nomination and to reduce some risk factors.

And here comes my proposal. So that means if you get a high job in the US government you have to go before your final nomination to a hearing - a public hearing. So that means probably this could be help to reduce the risk of removal. If after we have nominated candidates before they get to confirmation they have to go through a public hearing so that the community gets more familiar and has, you know, in the process a certain additional voice.

So it's still very vague proposal. I know that has a lot of unintended side effects probably. But, you know, to have a higher quality in the selection process reduces the risk of this unpleasant process of removal. But basically I'm in favor of this.

Thomas Rickert: Thanks, Wolfgang. I suggest we, you, continue the conversation over lunch. We will reconvene in one hour sharp. And then we will hopefully be able to determine a way forward. Thank you very much.

END