
TERRI AGNEW:

Good morning, good afternoon, and good evening. Welcome to the At-Large Ad Hoc Working Group on IANA Transition & ICANN Accountability call taking place on Monday, the 13th of July, 2015 at 12:30 UTC.

On the call today, we have Olivier Crepin-Leblond, Tomohiro Fujisaki, Alan Greenberg, Cheryl Langdon-Orr, Seun Ojedeji, Leon Sanchez, Yasuichi Kitamura, Tijani Ben Jemaa, and Alberto Soto.

We have apologies from Sébastien Bachollet, Fatima Cambronero, and Mohamed El Bashir.

From staff, we have myself; Terri Agnew.

Our Spanish interpreters today will be Sabrina and Veronica.

I would like to remind all participants to please state your name, not only for transcription purposes, but also for our Spanish interpreters. Thank you very much, and back over to you, Oliver.

OLIVIER CRÉPIN-LEBLOND:

Thank you very much, Terri. I gather everyone is back home after this meeting that we had – that many of us had – in Buenos Aires. It feels like such a long time away. We had some action items from our last call prior to the meeting and it was just for a Doodle to be sent out, so we can really jump over to I think a call that we'll be doing shortly with the CWG IANA and then most of the call today will be about Cross Community Working Group on Accountability. Lots of work on this.

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Before we start, did we miss anyone in the roll call by any chance? I see no one else that we might have missed on the roll call. I note Christopher Wilkinson is being added as well.

The second question is can we just adopt the agenda, please, or are there any additional items that anybody wishes to add to this? I don't see anyone. Okay, we have a green tick from Seun. Let's get going.

As I said, agenda item 2 was the action item for a Doodle call. Number 3 in our agenda is the review of the IANA Coordination group progress. I don't see Jean-Jacques Subrenat on the call yet. Mohamed El Bashir sent his apologies. Does anybody wish to speak to this item or shall we just skip it and ask for a written update from Mohamed and Jean-Jacques?

I don't see anyone wishing to speak to this, so we will ask for a written update from Mohamed and Jean-Jacques on the IANA Coordination group work.

We're at agenda item number 4. That's the CWG IANA. In this part of the work, there's just a couple of things. First, as you will have, I hope, all been aware the final report of the CWG IANA was presented to the ALAC. That was then voted on and unanimously approved. That was then passed on over to – well, the details were passed on over to the CWG IANA co-chairs, and with all of the other ICANN supporting organizations and advisory committees having ratified that final proposal to various degrees this proposal was forwarded to the IANA Coordination Group. So it's now in the hands of the ICG. They picked it up and worked out the details on this.

One topic and subject that has risen is the one of – well, effectively, something to do with the intellectual property rights on the name IANA.org.

Before we launch into this – and we’ve got a few minutes to discuss this – I just wanted to ask whether anybody had any comments or questions on the actual final report, the proposal that was ratified?

I see Alan Greenberg, so Alan, you have the floor.

ALAN GREENBERG:

No, my hand went up when you were talking about something else, so if anyone has any comments on the report, I will let them speak first.

OLIVIER CRÉPIN-LEBLOND:

Okay. Thanks, Alan. Does anybody else have anything to say about the report or the ALAC ratification of that? No one, okay.

I just have one comment. I very, very proud of the group. I think it’s a fantastic piece of work. Yes, we didn’t get everything we wanted, but at the same time, I think that the proposal itself, considering the fact that it was done in a multi-stakeholder fashion, that it was done bottom-up, and that if you recall the first version of the proposal was completely diametrically different to what we have here in many different ways, it really shows that the system itself to reach this kind of report work.

It takes time. I think looking at parliamentary procedures and what we’re currently seeing in Europe with regards to a certain country’s best, it doesn’t take so much time. In fact, one cannot say that we’ve

done some work that was very slow. I think it was actually very swift, considering if you had the same sort of process done by governments in parliament, it might take even more time than that. So I'm very proud of the group and let's hope that the ICG makes good things of it.

Now, Alan, you had a comment on the next point, which I believe was the intellectual property, or was it something else? Alan Greenberg?

ALAN GREENBERG:

Well, I will comment on your comment and then go on to the intellectual property issue. I, too, am very pleased with the outcome. I'm not nearly as pleased with the process. Although, yes, what we ended up with is completely different from what we started and a far more rational and reasonable proposal than what was on the table originally, I am not at all convinced that the multi-stakeholder process would have been that successful if there hadn't been significant outside prodding along the way, although the outside prodding is technically from a stakeholder, not one that was actually participating. I find that someone problematic. Not surprising, but problematic. Nothing we can do about that at this point.

On the IANA issue, I found it positive that a comment was made I think by Steve Crocker, but I'm not 100% sure, recently pointing out that the IP issue, the intellectual property issue, is really a long-term background issue and not the real one that we need to focus on which is use of the IANA.org domain name and making sure that can go forward, if there should be divergence in how the groups intend to manage their own

logical registries in the future. I think that may bring a little bit of sanity to the process. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Alan. I totally agree with the point as you made, the concern that you had about an external party needing to intervene to move things along, while the ALAC by itself was unable to shift things. There is going to be a need for a deeper analysis of the process and at every stage of the work, and I hope that we will be able to partake in maybe even drafting something to that extent.

But once the whole dust has settled and we can take a step back and think of where things went well, where things could've been improved, and whether it became a marathon and not just a sprint. [inaudible] a bit of a marathon for at least some of us, or at least those people that are not paid to partake in these things. That's a longer-term problem of the multi-stakeholder [inaudible] solve that now.

With regards to your point on the intellectual property issue, I don't see anyone else putting their hands up. I'll share my concern. I was just flabbergasted that we spent most of the last call of the CWG IANA talking about this, after a massive number of e-mails on the mailing list, after a discussion that took place in the Buenos Aires about this as well, etc. That's only just on one thing. There was also the same discussion on the IETF mailing list. I still – maybe someone will be able to explain this to me here, because I'm still very baffled as to what the importance of this is.

One talks about this, about the IANA.org domain. If one performs a WHOIS request, actually it goes to internic.net on all of the machines around the world. It doesn't go to IANA.org. If one does a request regarding the root servers, then it goes to root-servers.net and that's registered to VeriSign. It's not even registered to ICANN. I just don't understand it. I would've thought root-servers.net would be more important than IANA.org, which at the end of the day, is just a website. And at the same time, you could call it IANA tomorrow; you could call it Veronica. Actually, maybe not Veronica, but any name you want. Veronica is another service for those of you that were there back in the day.

Another [inaudible] name. What's in a name anyway? Alan, maybe you have the answer for me, but I'm just baffled as to why we spend so much time on this when there are other issues. I can share one issue, for example, which is the one that at the moment the US government contract does not allow for subcontracting of any of the IANA functions. The technical community – so the protocols community and the RIRs have said they will take the US government contracts, make as few changes as possible and continue contracting with ICANN. If we have the work done by post-transition IANA, ICANN will need to subcontract to [PTI]. They will, therefore, be in breach of subcontracting rules.

I discussed this informally with people from the IETF and their answer was, "Oh, we'll work something out. Don't worry about it."

So on the one hand, we've got this, which is a contractual problem and it's actually pretty significant and the whole thing could be blocked completely if one community would not allow for these services to be

subcontracted, and on the other hand, we have this flurry of activity about a name. Alan, please enlighten me.

ALAN GREENBERG:

Yeah. On the subcontracting one, I presume that if they say they'll work it out, they will work it out and we will have a change in that particular clause. I'm not going to agonize over it until something blows up because the fallback is something which we really don't want to think about, given the vehemence some people had was requiring a PTI. I personally think there's nothing in it for anyone other than costs, but that's my perspective.

In terms of IANA, one of the communities virtually has no impact and that's for the RIRs. For the names community, the several hundred registries would have to change some pointers and users might get confused if they were really trying to find IANA. The real impact I'm told – and I don't have this [inaudible] firsthand – is that there is, for reasons that are buried in history and that we should be ashamed of, the domain name IANA.org is buried in code. That is people writing code wanting to use various IETF parameters actually have the domain name in the code. That, of course, to change that in any short term would be problematic. My understanding is that's the major operational impact.

I've been told that it could be 100% wrong, but no one denied it when I said this. But any case, outside of our control.

OLIVIER CRÉPIN-LEBLOND: Thanks very much for this, Alan. I think we all felt that probably [inaudible] enough time talking about it. Are there any concerns or questions from anyone on this? I know the second point of discussion, which actually took just a few minutes, was about the implementation of the recommendations that are made in the IANA Stewardship Transition Working Group, cross-community working group.

I was just going to ask one question of everyone here. To what extent should we be involved in the implementation of the work that is there? There is talk in the working group about having a maybe a smaller committee or something. I must say I was half asleep by the time we reached this point due to the previous discussion. How far should we go with regards to implementation? Should we have our five members on the implementation team?

Seun Ojedeji?

SEUN OJEDEJI: I think there are two aspects of implementation that we need to clarify. The first is the actual drafting of the details of what were written in the proposal. [inaudible] going to be a PTI. The PTI was going to be governed by bylaws, etc. That is one part of the implementation.

The other part is actual putting those drafting documents into action, and that is the second part of it. [inaudible] that those documents are actually acted upon and become the [inaudible] document for [inaudible] structures.

So for the first, I think it is very important that we have to be part of that. The second part of the implementation is what I don't really think we need to be specifically monitoring that as I expect that the entire community actually been monitoring that. I don't think at CWG we should be monitoring that.

However, perhaps at the level of ALAC, I may suggest that we [inaudible] may have to task to monitor such implementation. [inaudible] I do expect this to be a formal thing that we'll need to communicate to either ICG or to CWG. I think it's [inaudible] arrangement that we can have. That's my contribution. Thank you.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks very much, Seun. If I understand you correctly, yes for being part of the drafting of the PTI bylaws, for example, or any of the bylaws or rules of procedure of any group that is being created. And for the managing the implementation, the monitoring of the work, you would recommend the ALAC that would have to put a team together. Any other thoughts on this? Anybody else? Any reactions? Anybody for this, against? Any other ideas?

I guess everyone agrees with you. That's good. Seun Ojedeji again?

SEUN OJEDEJI: Yes, sorry, Olivier. I just want to [inaudible]. I don't think the CWG has a clear direction on that yet. I think that what we are trying to create to get the view of ALAC, which will actually [inaudible] to CWG fact-finding initiative. Is that we're doing or are we actually [inaudible] part of the

implementation board, drafting, and subsequent following up with the implementation. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks for this, Seun. Actually, what I'm trying to do is to tap the view of our working group, of our IANA Issues Working Group. IANA Issues and ICANN Accountability Working Group. Ultimately, I think we in the working group know a lot more than the ALAC itself. We need to be prepared. I'm just trying to be proactive here, so that we don't get taken up by things as they move along and we have to play catch-up at that point and discussions take place without us. This is a topic that's likely to arrive very soon forward. It's an agreement from you. Excellent.

Let's have Alan Greenberg.

ALAN GREENBERG: Thank you. There's a lot more groups that have much more at stake at this than we do and I don't think there's going to be any radical divergence from what we're talking about right now, other than things that may well be forced by the ICG and will have to come back to the CWG itself, which is not disbanded at this point.

I think we need to have one or two people who participate in whatever the activity is and they'll probably be something akin to an implementation review team that will be involved. There almost surely will be decisions to be made as you go along the way. But I don't think they're all that onerous. I think we need to be involved and should something come up where there is controversy and we are against the

rest of the world or something, then whoever is doing this is going to have to raise the issue. I don't think it's going to be that onerous, and really I'm not convinced there's a huge part that ALAC has to play in this. I think for due diligence we shouldn't drop out completely, but I'm not overly concerned about it.

OLIVIER CRÉPIN-LEBLOND: Thanks very much for this. Anybody else? I don't see any other hands, so I think we have covered all the items on CWG IANA, and I will wait a couple more seconds. I see no hands. Have we got, perhaps, Jean-Jacques Subrenat on the call or Mohamed? I don't see either of them. I see Alberto Soto put his hand up. Alberto, you have the floor.

At the moment, we cannot hear the interpreter. Alberto Soto is typing.

TERRI AGNEW: I was just letting you know I was checking.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks, Terri. Can we have a reply from anyone, please? Alberto, Sabrina?

TERRI AGNEW: Alberto has dropped from the Spanish channel, so we'll try to get him back again.

OLIVIER CRÉPIN-LEBLOND: Thanks for this, Terri. We are time limited. Let's move on to the next agenda item and that's CCWG accountability. For this, I hand the floor over to Alan or Leon. Who wishes to lead on this?

ALAN GREENBERG: I don't much care. I can try to give a summary and Leon can tell me where I'm wrong.

OLIVIER CRÉPIN-LEBLOND: Okay, Alan. Please go ahead.

ALAN GREENBERG: Okay, thank you. Let me just pull up the agenda, so I can see it. There's not an awful lot to report. There is a furious amount of activity going on trying to update the interim report with both comments that were received in the public comment period and the issues that were raised during Buenos Aires because as most of you probably know, some of the substantive core of what was put out for public comment changed the first day in Buenos Aires. And the whole concept of unincorporated associations as a major component of it essentially disappeared. The concept is still there, but it's in the background and doesn't require creation of legal entities as such, or creation of new entities that are legal entities.

But there's a huge amount of work going on because virtually all parts of the proposal are being changed, and generally in line with comments. But there were large parts of the proposal that just, due to time, we didn't flesh out. That's taking a lot of time. The attempt is to try to have

draft text for most everything by the time we get to Paris. There's a huge amount of work going on.

The issue of models, that is membership versus designator, is still going on. My personal opinion is due to a number of fatal flaws, membership is not going to be the final answer, but those who are advocating membership certainly are not supporting me in that. I believe membership will go off the table by the time we get to finish Paris. If you look at the pointers I have in the agenda, you'll see my position on how that's going to happen. But I'll point out we did have a miracle when we had a meeting of the CWG, where suddenly ContractCo sort of disappeared at a time when no one was really ready for it to go, or no one expected it to go. I'm hoping we will have a similar miracle and that will be off the table.

However, a new model has been added in. One that was reviewed by the CCWG very early and dismissed is now back, and that's a model – well, let me go over all three of the models right now.

We understand what Membership and Designator mean, I hope. In one case, you are a formal member of the organization. In the other case, you are designated to be able to appoint board members and there's a number of other rights that designators can be given. They cannot be given budget refusal and strategic plan refusal. Those are fiduciary requirements that the board maintains in that model. But you have the right to do a number of other things, including approved bylaw changes.

The difference between the unincorporated association you'll remember is that it was believed that to be able to exercise privileges of

a designator or a member, you had to be a legal entity. To do that, you either had to somehow transform the AC and SO into a legal entity, which people saw to be problematic, or you had to have a legal entity, the unincorporated association, somehow affiliated with the AC and SO and that affiliation was problematic in many people's minds.

It turns out that an AC and SO can get the powers of an unincorporated association by simply declaring they want to avail themselves of the rights and the bylaws. That makes them close to an unincorporated association but not a name. That seems to satisfy most of the parties going ahead.

If the ALAC, for instance, declares that we wish to avail ourselves of the privileges allowed to be given to us by the bylaws, then we de facto have enough legal presence to exercise those powers. And that applies to both Designator and Membership.

The third model, which is one we objected, is that we do not try to get any leverage of legal status for the ACs and SOs, but convene a group – at one point, we called this community counsel – that would have the representatives of the ACs and SOs on it and that group would have the legal status. So there is only one entity, one member, one designator. It becomes a little bit complicated how one appoints directors and withdraws them through that entity, which will probably involve contract, but our lawyers have yet to come back with the details on that one. But for various reasons, it seems to be on the table again and we're looking at it.

Hopefully coming out of Paris we'll narrow down from three to one and know where we're going from there. That's about all I have to say, but I'll turn it over to Leon. I'm sure he has more details that I can remember at this point.

LEON SANCHEZ:

Thank you very much, Alan. I see that there comes [inaudible] to the Designator model or the Empowered [inaudible] model. I think that the Membership model, my feeling is it's of course not a conclusion nor a statement as co-chair of the CCWG, but my personal feeling. That I that I think that the Membership model is off the table at this point. There are so many complexities into adopting a Membership model that the discussion of the group has gone through considering. The last model is called the Empowered SO/AC model. That's of course based on [Designator].

Do you want me to handle the queue, Olivier? I see Tijani's hand is up. I don't want to hijack [inaudible], just asking if you want me to handle the call.

OLIVIER CRÉPIN-LEBLOND:

I think that for your whole section you are very much in charge of your own queue.

LEON SANCHEZ:

Thank you very much. Okay. I see Tijani's hand up. Before I continue, I would like to turn to him. Tijani, you have the floor.

TIJANI BEN JEMAA: Thank you very much, Leon. Hello, everyone. Alan, I don't remember very well why we objected to the single member model, but I see a solution for several problems, such as for example the legal entity, second the accountability of the associations to the community. [This time] there is no associations. More or less, most of the problem goes by the Membership model are removed by this single member model. I am really inclined to contemplate it at least. Thank you.

LEON SANCHEZ: The single member model I think carries of course other complexities. Going through Membership model either with a single or with multiple members has the [inaudible], for example, GAC to take part on this model. So I think that's why we are not obviously discarding any model at this point. I would think there would be difficult to adopt any membership model, either it is multiple member or single member model, but we should definitely discuss that in our Paris meeting.

I see Alan's hand is up, so Alan, could you please take the floor?

ALAN GREENBERG: Thank you. I wish I could agree with Tijani, but I don't. The single member model – or single designator, for that matter – simply takes any of the problems with the Membership or Designator model and changes the details.

For instance, one of the problems with membership is should only one AC or SO decide at the beginning to be a member – and there's a

moderately good chance that could happen – then that member, for instance, can dissolve the corporation unilaterally and irrevocably.

If the GNSO is the only member, the GNSO could, for whatever reason – and if we’re considering a board going rogue, presumably would can have a GNSO going rogue – then the GNSO could, or the ALAC, if it’s the only member simply dissolve ICANN.

The concept of dissolving ICANN when ICANN is the sole stewards of the IANA names function is mind boggling. Where does that fit anymore? The corporation that was the guardian is gone. Yes, the board itself could do that, but presumably boards have fiduciary duties whereas a member has absolutely no duties and no accountability that goes along with that kind of decision. So I think there’s some problems with that.

However, in the single member model, or in the single entity model, we still have the problem of several of the ACs and SOs may choose not to exercise their voting rights, and therefore as a single member, that single member may end up being in control by a single AC or SO. We already have several ACs and possibly an SO that said, “We’re not really interested in playing.” It’s still problematic. We’re just transferring the responsibilities. The AC and So no longer has legal rights, but the person you name does. So we’re now transferring it from the AC and SO to specific named individuals.

We haven’t gotten the legal brief yet from the lawyers on this and I may have some of these wrong, but from my perspective, it just moves the issues to have different details. Thank you.

LEON SANCHEZ: Thank you very much, Alan. I have Tijani again. Tijani, please take the floor.

TIJANI BEN JEMAA: Yes, thank you, Leon. Alan, I'm speaking about the single membership model means community council being the member of ICANN. Not one of the SO or AC becoming the sole member of ICANN. In this case, as you said, first there is no problem of [inaudible], but will not want to be part of this council. Why they will not accept [inaudible] means if they don't want to take part of the decision-making, [inaudible]. There is no legal body or sovereignty party, etc.

Second point. The members we are appointing, we can change them whenever we want. The entity is member. Our member are not members. They are part of this member and they can be changed when we decide to change them. So we are exercising our power through them.

This model seems to me to be very simple and not having any complication. More or less, we are keeping everything as we have now. We added only one layer, which is the community council which will be the means to exercise the powers. That's all. Thank you.

LEON SANCHEZ: Thank you very much, Tijani. I see Alan wants to react to that. Alan?

ALAN GREENBERG:

Thank you. I really think we shouldn't be having an extensive discussion on this until we get the brief from the lawyers, because we don't know some of these things. My understanding is we would have to name people to this council and they may end up having some liability because of that. But I don't know enough.

The SSAC, for instance, has said very clearly they wish to give advice on security and stability. They do not wish to give advice – and vote, presumably – on issues that are not directly related to the security and stability. They may change their mind. They're now a chartering part of a chartering organization, but my indication is they're now a chartering body to make sure that we don't try to give them rights they don't want, or at least that's one of the rationales.

This is up in the air. There's going to be discussion on it and hopefully we'll know better at that point. Thank you.

LEON SANCHEZ:

Thank you very much. I see Seun Ojediji.

SEUN OJEDEJI:

Yeah. Hello, Leon. Thank you very much. I think it is four days or five days to the CCWG face-to-face and there's actually no document [inaudible] discuss better and also more informed view about this. So it looks like CCWG representatives are just going to go to that meeting and then – because they [inaudible] issue [inaudible] right now. So it looks like we're putting them on a very tough spot.

My question to Leon, is there any indication that this [inaudible] analysis will come out before the CWG face-to-face meeting? Based on what I'm hearing from Tijani, personally [inaudible] about the single member model. It's what Alan was saying. But it depends on Tijani is saying. It looks like it's becoming more interesting. So it should be good to know what is legally possible and what is not. That's [inaudible] follow the flow very well.

For now, for me, [inaudible] before. It looks like this little Empowered model is looking for feasible, more practical. Again, we [inaudible] the details right now. [inaudible] face-to-face. Thank you.

LEON SANCHEZ:

Thank you very much. We have ask [inaudible] to have legal recommendations before our face-to-face meeting and also have them discuss this outcome in [inaudible] in Paris. We have asked them to have all [inaudible] ready for tomorrow, which is the 14th. We will be [inaudible] documents on July the 14th, so we will [inaudible] a mailing list as usual. And in this mailing list, we should have the lawyers' input. This would, of course, provide the CCWG [inaudible] participate our face-to-face meeting either attending virtually. We would have two days to review the whole list of documents. [inaudible] in time, so that we go to our Paris meeting with all the information that we need to discuss [inaudible].

I think that Alan has his hand up, but now it's not anymore up. I just wanted to double check whether you wanted to say something, Alan.

ALAN GREENBERG: No, you said it all. I'm trying to type it in the chat, correcting my spelling mistakes. There is a meeting tomorrow at 12:00 UTC.

LEON SANCHEZ: Thanks. Okay. So, yes, we do have another meeting tomorrow from the CCWG before our Paris meeting. We will be reviewing of course many issues. The final agenda hasn't been circulated already, but I think that of course one of the main issues will be [inaudible] in our latest meeting. It will be the legal issue and having lawyers explain the different questions that might be already pending on some kind of reply from the lawyers.

I, too, would vote for [inaudible] Empowered Designator model. It seems like the best option we have so far.

There has also been a lot of work within the CCWG with regards to addressing the different comments that we received through our first public comment period, and as an outcome of this work that we're doing, is that we form a Working Party 3 on emerging issues.

This Working Party 3 on emerging issues have divided its work in three sub-groups. The first sub-group is related to SO and AC accountability. The second one is related to staff accountability, and the third one is dealing with diversity in our proposal document.

We will be holding a call right after we finish this one and we will be reviewing the three papers that we have set up so far, and our purpose or our objective is to of course try to address the different comments that we received from the public comment period. [inaudible] and

provide not only the actions that we need to undertake with regards to Work Stream 1, but also on Work Stream 2 as [inaudible] needs to be developed in these three issues.

So what you have on your screen now is the SO/AC Accountability draft paper and here we went through analyzing four documents. These four documents are the ICANN bylaws, the Affirmation of Commitments, the ATRT recommendations (both 1 and 2), and the operational rules and procedures of the various SOs and ACs.

What we did here is to analyze whether these documents to address the subject on SO/AC accountability. So far the accountability, the proposals that we set up for public comment – that we post for public comment – is centered on the [inaudible] accountability site.

Of course there were concerns raised that since we are providing the community with new powers, there might be the need or there is the concern that we should also enhance not only the board's accountability to the ICANN community but also the SO and AC's accountability, not only to the community itself, but also to their constituents. This is an issue that we definitely need to look into.

And as far as [inaudible] we went through the Affirmation of Commitments to find out whether the Affirmation of Commitments refers to SO and AC accountability in some way, and so far we identified that in paragraph three and paragraph nine in the Affirmation of Commitments. While not directly addressing SO and AC accountability, they do [inaudible] to some kind of accountability that could be extended to SOs and ACs.

In the ATRT recommendations, no direct recommendations that were found, so we are also thinking that maybe the ATRT should include a review on SO/AC accountability in the future. This would be of course one of the many [inaudible] we would be doing.

With regards to the bylaws, the ICANN bylaws, as you might have read, [inaudible] referred to the SOs and ACs or reserves this right to SOs and ACs to establish their own charters and [inaudible] governments, which leads us of course to reviewing each set of SO and AC procedural documents.

But it might be important to also include, put in the bylaws, certain provisions that signal to of course an enhanced accountability also in SOs and ACs. So far, the four recommendations or the four suggestions that these sub-working groups of Working Party 3 would be doing is to amend the CCWG's current draft document to include [inaudible] proposal, the commitment to have each SO and AC perform a complete review of [inaudible] accountability mechanisms as part of Work Stream 2 to be implemented after the transition takes place.

So second suggestion would be to include the evaluation of proposed mutual accountability roundtable. This is a concept that was introduced by Willie, one of our advisors. We would be suggesting that we evaluate this mutual accountability roundtable as part of the Work Stream 2 work in order to assess its viability and [inaudible] necessary actions to implement.

And this mutual accountability is an interesting concept, which not necessarily would replace the public forum, but in some way, it would

mean that we would be building some kind of mechanism in which all SOs and ACs would be [inaudible] in front of each other, and there we would raise any issues that we may have amongst the different SOs and ACs and that way we would find some way to hold accountable each one of us.

And of course it's just a concept that [inaudible] so far [inaudible] put on the table, and as we suggested [inaudible] maybe would be worth digging a little bit deeper into it and see if it's viable and we want to [inaudible].

Then the third suggestion would be to establish a commitment to carry a detailed working plan on enhancing SO and AC accountability as part of Work Stream 2, and of course proposed amendments to the current CCWG documents. So the IRP is also applicable to SOs and ACs activities as well.

There have also been a couple of suggestions with regards to including in the periodic reviews the subject of SO and AC accountability as well. So I think that the final document will be reflecting these suggestions as well.

So at this point, I would like to open the floor for [inaudible] SO and AC accountability draft paper. It would be, of course, more than welcome any input that you may provide.

I see Olivier's hand is up. Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Leon. I have several comments on a number of things. First, on our own agenda, I've actually typed in the links to the different Work Party 3 work spaces. I noted that they weren't on our agenda and I might ask staff to add them to the agenda for reference for those who weren't on the call, and I guess maybe even for us when we have to recap on what's been going on to be able to refer to these points quite quickly to the workspace of the CCWG accountability is growing at an increasingly fast rate.

Secondly, on this, I notice that we don't appear to have members in each one of these sub-working parties. The staff accountability section only appears to have four volunteers, none of whom I believe would present a balanced view I think of – they all have specific points they would like to push and that's just my personal view on being them [inaudible] in the past. I really hope that we can find one of our members to be on that group so as to moderate the push for staff accountability, when some of the SOs and ACs I think are far from being accountable at the moment. Another personal view.

Thirdly, the point that you mentioned that you list here regarding amending the current draft document and including that each SO and AC perform a complete review of their existing accountability mechanisms, I have suffered this weekend reading the GNSO review document and found that the self-review appears to [always] mitigate the review from an external party. I'm really concerned that if we have SOs and ACs self-review themselves about their accountability, they will undeniably say, "We're accountable. We're fine. There's nothing we should do."

Just as an example, Westlake Consultants is the external consultant for the GNSO review. They produced a report that made several recommendations, some of which are with regards to the actual involvement of outreach and so on, and with some geographical regions that are currently not being represented well at all in working groups and immediately the GNSO itself in responding to this are saying, “Oh, well, global stakeholder engagement is doing a lot of work in this. We don’t need to do work on this,” and hence the recommendation itself was watered down very much from the time the external review were made the recommendation to the time the GNSO actually acted or is presenting it now to act on.

I’m very concerned. Sorry for the long intervention here, but I’m very concerned that again we’re going to have some SOs or ACs saying we are absolutely accountable, when really they’re not. Thank you.

LEON SANCHEZ:

Thank you very much, Olivier. And you are right in what you say. We would definitely need to find out a way to address that issue in a way that the review not only takes place from the inside, but also try to find some way that the review is efficient so that it’s not only a matter of saying [inaudible] and we are accountable. Good news for everyone.

The other thing is that, yes, some sub-groups have rather low participation from volunteers and this has an explanation, and this is that the Working Party 3 was just formed one week ago and it has been tasked to deliver its outcome by tomorrow.

So we have three issues, very little time to take care on the issues, and there has been a call for volunteers precisely on the staff accountability sub-working group since [inaudible] [four] volunteers, but we just have [two]. So we have doubled our efforts in staff accountability and we went up 100% in participation.

So [inaudible] I think that there is so many things happening in the CCWG that [inaudible] ICANN as far as I can tell now is that we don't have as many hands as we [inaudible] for the many subjects that we need to take care of. So yes that is an actual concern. I would agree with you.

Next I would like to put on screen our draft paper on staff accountability as well. I don't know if staff has it. Oh yes, they do have it. Okay. [inaudible] staff accountability. We are looking into building a whole culture of accountability within ICANN. This would mean that, of course, not only the board would be accountable to the ICANN community, but also the staff [inaudible] in the notion that while accountability for board is [signaled] in different provisions not only in the bylaws but [other] documents, this [signaling] is not precisely addressed or directed to staff.

So what we're trying to do here is to have those sections in the different documents that refer or apply to the board of directors be extended so that they are applicable to staff as well. So in this review, we [went] as well to the Affirmation of Commitments, and so far we identified paragraph 9.1 E as some kind of mechanism that is already in place and that refers to staff in some way. But as I said, there should be many

other mechanisms that are already in place that would be or should be [inaudible] to the staff.

In the ATRT recommendations, staff was also constantly referred to, but there is no particular recommendation that relates to staff accountability.

And in the bylaws, we have some provisions that [inaudible] staff to accountability, not only to the ICANN community, but to the larger community outside ICANN and these mechanisms are those found in article 4 section 2.2a, section 2.3f, article 5 section 2, article 13 section 4.

After having reviewed and [inaudible] mechanisms, the three recommendations that this group would be making, and this of course [inaudible] those that have volunteered for the subgroup. [inaudible]. So in the next section we proposed mechanisms that are also applicable to staff action or inaction. This would mean that most, if not all, of the proposals that [inaudible] would be extended so that they are applicable also to the staff action or inaction.

Then our second recommendation would be to include work as planned [inaudible] that considers the creation of a code of conduct, transparency [criteria] to be followed by staff in relation to their interactions with all stakeholders, the establishment of regular independent – this would mean internal plus [inaudible] to track progress and identify areas that need improvement. Establish appropriate processes to escalate issues that enable both committee and staff members to raise issues where appropriate. And the third

suggestion would be to establish a commitment to carry a detailed working plan on enhancing staff accountability as part of Work Stream 2.

Here I'd like to stress the fact that, as you can see, we're trying to [be fair]. Most of the work to Work Stream 2, and this is of course because we feel that with the proposals that we will be doing for Work Stream 1, we would be able to of course carry this [inaudible] as part of our Work Stream 2 program. We would only be adding those provisions that need to be in place for Work Stream 1 were needed, but we wouldn't really be modifying a very [inaudible] way the proposals that we so far have [inaudible] public comment.

So at this point, I would like to open the floor again for questions or comments with regard to the staff accountability paper. Okay, I see Olivier, your hand is up again. Olivier, could you please take the floor?

OLIVIER CRÉPIN-LEBLOND:

Thanks very much, Leon. Unfortunately, I haven't had the time to read that paper before you just presented it here. It's been very helpful. I was hoping others would have questions and I could actually read the actual bylaws referred here, article 4 section 2.3a, section 2.3f, etc.

I have some concerns, again, regarding staff accountability. Making staff accountable to the wider Internet community is no small feat. I'm not quite sure how one does that.

We have a structure. In any organization, there's a structure. We have an organization here with staff that needs to be working under the CEO,

the CEO working with the ICANN board. The ICANN board is going to be made accountable to the community. I'm not sure why we then need some kind of direct link or for staff to be directly accountable to the community or directly accountable to something more than the ICANN community that we already have I guess through the current process of staff, CEO, board, community.

I would appreciate clarification on this. Thank you.

LEON SANCHEZ:

Thank you very much, Olivier. I don't have a clear answer for your question. I think that the examples that have been raised with regards to this [inaudible] far back before I got involved with ICANN. If I provided answers to them, I might be saying some nonsense on the issue. But my feeling is that those who have raised the issue of holding staff accountable to not only the community but the outside ICANN community feel that there have been a couple of situations in which staff has acted in a way that of course is not aligned with not only ICANN's mission and bylaws, but also to their [inaudible] with regards to the controversial issues that have been raised.

I'm really sorry that I cannot provide a clear answer to your question, but I think Alan has his hand up and I think he's willing to react to this directly. So Alan, could you please take the floor?

ALAN GREENBERG:

Thank you very much. I'll react rather vehemently. I think the main reason is pragmatism. There are just innumerable times that, yes, in

theory the board should be holding the CEO accountable and the CEO should be holding staff accountable and issues should be resolved. They're not. And I think it's about time that we raise this issue in a public forum.

Olivier, you were on the ATRT 2 with me. We started off by saying there should be a principle of openness. Things should be open by default unless there's a reason to close them. There should be a culture of transparency. There isn't. We are still to this day having decisions made by staff. They're made by staff. We don't even know who, but they become rules and there's no way to get around them.

We issue complaints at times due to lack of transparency and they go into a black hole. How long have we been talking about travel issues? I don't want to focus on things where we get perks, but they're such easy ones to focus on because there are thorns in the side of the community and no one seems to want to do anything about it. There are some much more substantive ones that have to be looked at in addition to those apparent ones. I think it's about time we talked about this openly instead of quietly in private. Thank you.

LEON SANCHEZ:

Thank you very much, Alan. Olivier, do you want to [inaudible]?

OLIVIER CRÉPIN-LEBLOND:

Thanks very much, Leon. Looking at this document, it mentions here the four different locations and the ICANN bylaws, and it says having reviewed and [inaudible] the existing mechanisms related to staff

accountability, it is clear that current documents do not address the concerns raised by the larger community on this issue.

I'm not sure I agree with that. I agree with the bylaws as they are drafted. To me, it looks more like the implementation of these bylaws or these bylaws not actually being followed. So it doesn't mean that the current documents do not address the concerns. It's the current documents are not followed. Isn't that the case?

LEON SANCHEZ:

It might be the case, but then we need to make sure that they are followed because [inaudible] some provisions to bylaws and they are not followed, then [inaudible]. I think we need to find a way to actually and efficiently implement those provisions.

Would you want to propose any amendments to the document, Olivier?

OLIVIER CRÉPIN-LEBLOND:

Thanks, Leon. I'm not going to propose a formal amendment as such, but I certainly think that going into Paris we need to, as a group, need to focus on saying, "Look, what we're seeing here is some asking for bylaws to be redrafted," when really it's more of an implementation issue. Exactly I think as you just mentioned there. How do we make sure that's what's written in the bylaws actually happens and is actually implemented and be procedures – the actual internal procedures of ICANN – are such that ultimately staff will indeed be accountable. That's a deeper issue, probably, and it's one that I gather will probably generate much discussion.

I would shy away from going into the travel thing because then we're just going to end up going down the wrong path. But we do have to look at maybe think of specific examples where staff did the opposite of what the community asked for where there was no transparency. I think we should quote from the ATRT 2 experience of, at some point, really feeling that there was obstruction on the part of staff to being able to provide us with information because of internal procedures being such that we needed to make a DIDP request, etc. before even having access to, for example, the whistleblower policy inside ICANN, or rather whistleblower process. That was something that was not documented anywhere that appears to be super hyper-secretive, and at the end of the day, it's the basis of many of the accountability of many companies out there and they gladly publish it. Why the heck was ICANN not publishing? Just an example. This sort of thing.

It's good to have bylaws that say we should be accountable, transparent, etc. The bylaws are already there. How do we implement them? How do we make sure they are implemented? Do we need more bylaws to make sure that other bylaws are followed? Because if the bylaws that are there are not followed, how would other bylaws, additional bylaws, make any difference to those bylaws? They'll be ignored as well. Thanks.

LEON SANCHEZ:

Thank you very much, Olivier. Yes, I see your point. Maybe it's a suggestion [inaudible] in this draft document exactly pointing or trying of this to point out this flaw in the system, and some of the mechanisms proposed in this would please try to make sure that what we have in the

bylaws is actually followed and implemented, like for example, the Code of Conduct would be I think one additional mechanism that at least would be in the mind of trying to have staff follow what the bylaws says. Of course this suggestion that you do in rewording this final paragraph [inaudible] would be a very useful input. I will make sure myself that we reword this final paragraph to reflect that.

We do have some provisions already in place, but the fact that they are not being implemented or followed creates the actual accountability issue on [staff side].

Next I would like to have on our screen the draft paper on diversity. This was a draft set up and provided by Sebastien Bachollet and it of course tries to address the issue on diversity. Diversity is also one of the concerns that has been raised or that has been forced out through the many comments we received in our first public comment period. I don't want to go through all of the paper. It's not really long. It's six pages of work here.

I think that the central point here is that of course we received some comments from public that we should address or take care of diversity with regards to the many mechanisms or proposals that we are including in our draft document, and we have some suggestions in this paper, like for example, making sure that the IRP complies with criteria that [inaudible] address diversity and we have some proposed criteria here that tend to favor, of course, diversity within ICANN and its different structures.

This criteria referred to region or region, culture, language, gender, age, disability, stakeholder group, etc. So I think this is not, of course, an exhaustive list of criteria that would need to be considered or actually met when trying to select the different appointees to the different mechanisms, like for example, the IRP or maybe the [community] council, but I think this is rather just reference list that should guide those that need to designate the different participants to the different mechanisms to take into account, so we can reach balance and address adversity within ICANN.

There are some recommendations, of course, as well in this paper. Since we are short in time, and I do need to make the [inaudible], I don't want to go into detail with all what's been put in this paper because we have also the review of the different documents. We have the review of the ICANN bylaws, the Affirmation of Commitments, the [inaudible] recommendations and [inaudible] documents for each in. Rather than going through them in detail, I would jump into the next steps. Before I do that, I see Olivier's hand is up. Olivier, could you please take the floor.

OLIVIER CRÉPIN-LEBLOND: Leon, thank you. I realize you are under time pressure, so I'll refrain. Thank you.

LEON SANCHEZ: Thank you very much, Olivier. The next [steps] are being proposed in this draft document, which was [inaudible] review the current CCWG document and [inaudible] next proposal [inaudible] diversity as an

important element for the creation of any structure, including the one to the CWG transition. Number two would be to include the evaluation of the proposed [evolution] of the ATRT into accountability, transparency, and diversity [reviews]. And of the structural [inaudible] accountability, transparency, and diversity reviews of SOs and ACs.

Then number three would be to identify the possible structures that could follow, promote, and support the strengthening of diversity within ICANN. And lastly, establish a commitment to carry a detailed working plan on enhancing ICANN diversity as part of Work Stream 2.

This is the first draft of this document. It hasn't even been discussed within Working Party 3, so we need to look at it as a very early stage document that will be discussed in our Working Party 3 right after I finish this call. I would be [inaudible] those that [inaudible] of course provide their input so we can have a finalized version of this document that addresses different issues with regards to diversity.

I see that Olivier is making a comment on the chat box with regards to the GNSO review in focusing a lot on diversity, especially its working group level in addition to [inaudible]. I don't know if we still have some ten minutes, Olivier, but I would like to comment on that.

OLIVIER CRÉPIN-LEBLOND: Sorry, Leon, I didn't get your last [inaudible] here.

LEON SANCHEZ: Yes. I was saying that we still have ten minutes to go, and if you want to elaborate on your comments, you would be most welcome, of course.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks, Leon. No, my comment was with regards to the previous points made on the diversity document, and the GNSO is also focusing a lot on diversity in its review process. I gather it will be a big theme with many of the SOs and ACs in ICANN. It will probably help if this working group also asks [inaudible] for diversity, but it's well understood that this is a big [inaudible] problem that we have not only in ICANN, but in the wider Internet governance world that there are some parts of the world that are likely to have larger pool of volunteers in other parts of the world, both because of economic issues, but also cultural issues, etc.

The GNSO review on this, the text on this, is actually quite extensive and goes to some depth to explain the problems and challenges which we're faced with. I don't think there's a silver bullet for this one. We're going to have to work on some really [inaudible] solutions for this. Thank you.

LEON SANCHEZ: Thank you very much, Olivier. Next in the queue I have Alan. Alan, please take the floor.

ALAN GREENBERG: Thank you. I think Olivier's second to last comment is the applicable one. There's no silver bullet. We can talk about all sorts of esoteric favors to these languages, probably the number one one that impedes people from participating. To be blunt, I don't think we're ever going to be able to put enough resources into it to fix that problem. We do not have the resources of the European Union or the UN to allow language

to be irrelevant in all of the activities of ICANN. So we have some real problems.

We also insist on demanding rights that are completely counter to diversity. We say groups must be balanced, but we also are adamant that each subgroup within ICANN be allowed to name its people unilaterally to these groups, and that implies that unless they accidentally or are able to have diversity in their appointees, the group will be diverse. You can't have your cake and eat I think is the expression in English, and we're demanding that. So I think we have to become realistic on what the outcomes are.

That being said, we have a real problem not in how we pick people for activities or councils or boards, but in the pool of people we have to pick them from, and we have to widen that pool if we're ever going to be anywhere near successful. Thank you.

LEON SANCHEZ:

Thank you very much, Alan. I do agree with your final comments, definitely. [inaudible] to be done. We have limited resources, but it's still something that we definitely need to address.

I see Olivier's hand is up again. Olivier, would you want to react to that?

OLIVIER CRÉPIN-LEBLOND:

Thanks very much, Leon. I was going to suggest that going into Paris I'm sure these topics are going to be discussed, obviously. I was going to suggest that someone makes a suggestion on having identification of skills in those parts of the world that are not well-represented in those

working groups and at ICANN in various stages, various levels, and perhaps even also rewarding for skills.

In other words, having travel programs based on skills and not travel programs just based on “oh, we need a body from that part of the world,” and that body when brought to a meeting in that part of the world just ends up visiting the place rather than doing things on a long-term basis.

The thing of skills and rewards for kills I think, personal feeling, is not being exploited enough. Thank you.

LEON SANCHEZ:

Thank you very much, Olivier. So with this, I think that the CCWG part of the call would be reaching its end. I’d like to hand the call back to Olivier for our next agenda item.

OLIVIER CRÉPIN-LEBLOND:

Thank you very much, Leon. I think we’re pretty much finished with this part of the call. Any other business? I don’t see anyone putting their hand up.

Next weekend is, as you know, the CCWG Accountability meeting taking place in Paris. It’s a full two days over the weekend. I believe that with travel going to Paris and travel returning from Paris it will transform itself into four or five days for some people.

When do we want our next call? I was hoping we could have one next week perhaps in the second part of next week. Are we okay with that? I don't see any pulse on this call anymore.

What will be the agenda? Eduardo, I gather the feedback from what happens in Paris I think will be particularly important. I don't expect much to be done on the ICG or CWG IANA level, but certainly in the actually there will have been a lot of discussions in Paris. We could make it a one-hour call perhaps indeed aimed to make it a short call with first an update, clearly laying out the questions that we're going to have.

Obviously that doesn't prevent us from participating remotely this week and on the work that's taking place in Paris, but obviously we also need to give support to our members on that CCWG.

Perhaps a one hour call? Alan, Leon, would you say 90 minutes or 60 minutes for your part of the work?

ALAN GREENBERG:

I'd schedule 90 minutes and hope we could be shorter. Sorry, I'm not right at my computer right now.

LEON SANCHEZ:

Me, too. I agree with Alan. I would schedule for 90 and hope we make it 60.

ALAN GREENBERG: I'd like to think we're going to be able to say what the outcome is in many of these issues. I'm not putting a lot of money on it, but I'm certainly hoping that's the case.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks very much, gentlemen. So here we go. Next week's call we will have it on the—

ALAN GREENBERG: Are you still there?

LEON SANCHEZ: I think he's dropped.

ALAN GREENBERG: It looks like we've lost him and it's time to end the call.

TERRI AGNEW: We'll try to reach him back quickly.

ALAN GREENBERG: I think we're going to have to do a Doodle for the call anyway. I would suggest we thank everyone for participation and let people get back to their real lives or their next teleconference.

CHERYL LANGDON-ORR: The next call! How exciting!

UNIDENTIFIED MALE: See you in two minutes!

ALAN GREENBERG: Thank you for your excitement, Cheryl. I really needed that. Bye!

CHERYL LANGDON-ORR: Listen, mate, I've got to do something to keep myself excited.

ALAN GREENBERG: Sorry, I have to tell you you didn't motivate me, but good try.

CHERYL LANGDON-ORR: Oh, Alan, I'll just try harder.

TERRI AGNEW: And once again, the meeting has been adjourned. Thank you very much for joining. Please remember to disconnect all remaining lines [inaudible].

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Terri. Thanks very much, everyone.

[END OF TRANSCRIPTION]