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MATHIEU WEILL: This is a [inaudible] call for a question on [inaudible]. Can everyone hear me?

UNIDENTIFIED FEMALE: Yeah.

UNIDENTIFIED MALE: I can hear you, yeah.

MATHIEU WEILL: We're not going to do a roll call, but rather maybe have Jordan introduce the topic. Then what I'd like to have is [inaudible] whether the question is clearing up to proceed, and then we'll get to the action items. Am I the only one with an echo right here?

UNIDENTIFIED MALE: No, I was hearing that as well, but it's now stopped. Thanks.

MATHIEU WEILL: Maybe, Jordan, you can introduce us, the question that was raised in Work Party 1. I know you shared [inaudible].

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

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JORDAN CARTER:

Sure, I can do that. Thank you, Mathieu, and thank you, everyone, for coming on this call on such late notice on the weekend and at very unreasonable times for some of you. Hopefully this will be quite quick.

We were working through in Working Party 1 on Friday a [draft] I e-mailed to you from Keith Drazek that was basically part of our taking public comment on board and preparing version two of our public comment report, or the second public comment report.

There was a reasonable amount of feedback on elements of the caretaker issue. What happen if the entire board is recalled? And a few different views were on the table, a few different points from maybe in the original paper that we did.

Some of the things that I'm keen to make sure we achieve is that there is a solid and dependable caretaker arrangement specified in the second public comment report. What we don't want to see happen is there to be a lockup or a problem with this community power in the final proposal because people don't have confidence that if it was exercised there would be a workable governance [of] ICANN while the new board was put in place. Obviously, the company can't be without a board at any point in time.

I remember – I think it was with you, Holly – an exchange in Istanbul, just a verbal one at some break in the meeting where you said these are not issues that have never been contemplated before and that there will be pretty straightforward ways to do it.

So I think what we need a an output after the Paris meeting is some text that will allow us to explain how a caretaker thing will work and for the

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lawyer to be [inaudible] to the fact that this issue will need to be discussed at the Paris meeting.

So I've given some thoughts in the e-mail that' in the document on the screen and I think there was already some material in the public comment report we consulted on in May, and the draft work that Keith had done that I [flicked] around.

I think that's all the introductory comment needed, really. I guess the question I've got is whether that's all clear. Mathieu, back to you.

MATHIEU WEILL:

Yeah. I'm not in the Adobe room, so I can't share the hands raised. But I think you're right, Jordan. The question is to council whether that's clearing off and whether [inaudible] deliver the kind of expected result described by Jordan.

Holly, go ahead.

HOLLY GREGORY:

Hi, everybody. Jordan, thank you for teeing this up. It is something that's been on our minds and that we've been thinking about and looking at and we've done some research over the last several months from time to time. We'll dig that up and focus in on it now.

One of the questions that I have for you is you speak of a caretaker board. One possibility is that the recall mechanism is devised so that at the same time that you recall, you actually put in place the new board, the new fully-functioning board. I'm wondering if your focus on the

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caretaker board is because you either thought that wasn't possible or decided that there was some reason not to go that route.

JORDAN CARTER:

I think that's a reasonable question, and I don't think anyone has contemplated that happening because I think the model that was in our heads was that you'd use either the standard [electoral] processes in terms of the SOs electing new candidates, or you'd have some [inaudible] NomCom reappointments. So I don't think anyone had contemplated that in the decision to exercise votes in favor of [inaudible] the whole board that at the same time or within the same people there would be [inaudible] reappointment or a new appointment process.

And there hasn't been any detailed consideration of what size of board would be appointed in that thing. There isn't clear understanding of powers of such a board, whether they can be limited to [backdoor] [inaudible]. So we just haven't thought about that approach, Holly.

HOLLY GREGORY:

If I may respond, even though my hand is down. What I'm trying to get a sense, Jordan, is how much leeway do we have to look at and propose solutions that may be workable and not simply the caretaker model that's under contemplation?

One of the concerns that I have with a caretaker model is the extent to which you can limit a board – whether there is such a construct in law and whether you can limit any board role for a short period of time in

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that way. We're certainly going to look at it, but it would be good to know whether the instruction is to simply look at that and see if it could work or also think about how you could expedite putting in place a real board that would reflect the same number of people – the SOs, ACs, etc. – ability to designate their director.

I just want to make sure I understand what's on the table. Are you looking for the broader idea around solutions to this problem or do you want us to focus on a caretaker notion? I'm understanding a caretaker notion to be a very either – two possibilities in combination. A very short-term board that would have potentially full powers if we cannot find a way to limit powers for a short period of time; or alternately, a group that's there both on an interim basis and with limited powers. Again, I'm just not sure that we can do the limited power notion.

JORDAN CARTER:

Okay. I think that in terms of doing the limited power notion, we're coming back to one of those central issue of enforceability. Certainly I think that we could arrange for a board in this situation to agree and to have a community expectation that we won't exercise some of the powers they have. Whether that's legally enforceable or whether you can legally limit those powers I think is a separate question that we do need your views on.

My instinct is always to get you guys as the advisors to work on the problem, not our first draft solution. My preference would be if you could put up a couple high level options about the ways to produce that, I think the CCWG can discuss them, but I would say if you were

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going to take that approach [inaudible] model and the other dealing with the whole appointment thing that you're doing. It would be wise to do them in relatively high level and just giving people the flavor of the two approaches and getting early feedback about which approach people felt was more useful [to further] explore.

So if you felt that was workable, that's certainly my preference because I don't have any mandate on this call to close [inaudible]. Getting your judgment would be helpful.

HOLLY GREGORY:

Jordan, I think that makes great, good sense because it also allows us to be efficient. So we certainly don't want to go down the path of trying to put lots details into models that the community may not be interested in. I agree with that. High level, get input before we then dig down and drill on [inaudible].

MATHIEU WEILL:

I think the overall requirement the security – the [inaudible] operations. That's why we came to discuss the caretaker board. So I think both of the options you're describing, Holly, may have interesting characteristics with that and limitation. So it will be good if we can have these high level descriptions.

My question is whether you think those high level descriptions – discussion on the high level descriptions could take place in the Paris meeting or not, [inaudible] opportunity.

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HOLLY GREGORY: It definitely could. I just need a couple of – I just need a chunk of four or five hours, because we have looked at this issue. I just have to get the material together and prepare something. I'm thinking of maybe one slide or two slides at most that sketches out the concept, based on something that we think is doable but does not have all the detail so that people can start to explore it.

My hope would be to have something by the time we get to Paris that I could share with people in Paris or maybe circulate beforehand, depending on how the workflow goes in the next couple days.

JORDAN CARTER: Ideally, if it was possible to get something in [freeze pack], that would be ideal. [inaudible]

HOLLY GREGORY: When does the [freeze pack freeze]? That's what I'm concerned about. I don't know that we can get it in time for the [freeze pack].

UNIDENTIFIED FEMALE: 6:00 East Coast time on Tuesday.

HOLLY GREGORY: Yeah, I don't think that that—

JORDAN CARTER: Okay. If it's not workable, it's not workable. That's okay.

UNIDENTIFIED FEMALE: You might need the plane ride, Holly.

HOLLY GREGORY: Well, no, it's really [inaudible] traveling on Monday for a board meeting in Chicago. That's my difficulty. But Mondays – I got today. [inaudible] and I don't know that that's doable.

JORDAN CARTER: Okay, thanks. Rosemary, your hand is up, so please go ahead.

ROSEMARY FEI: I just wanted to know whether you imagine that the implications of recalling the board would include that the various appointing entities, whatever form they take, would somehow be precluded from reappointing the person that they removed.

JORDAN CARTER: I definitely don't contemplate that kind of restriction. I don't think there's any reason to try and do that.

ROSEMARY FEI: Okay.

JORDAN CARTER: I haven't [inaudible] in the CCWG.

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ROSEMARY FEI: So an AC or SO would be free to simply reappoint the person who had been recalled.

JORDAN CARTER: Correct.

ROSEMARY FEI: Okay.

JORDAN CARTER: So what you'd imagine happening, the scenario would be that in this kind of case, there might be one particular board [inaudible] the community is trying to get at and they can't do their whole process, or they've generally lost confidence in the board, which is why they're removing – in which case, they're not likely to reappoint all of the same directors. But [inaudible] confidence doesn't [apply] necessarily, but they will have [eventually] lost confidence in every single one of the members.

ROSEMARY FEI: Jordan, I guess what I'm thinking is, I just want to explore that for one moment. If there's one or two people who the community is – the people have lost faith in, the AC or SO who's designated can certainly remove them without putting a recall process in place to get rid of that person. You would only assume use of recall procedure if you couldn't

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get the AC or SO who designated them to get rid of them – in which case, then allowing the AC or SO to simply reappoint them doesn't work.

JORDAN CARTER: That's true, in a [direct linkage] sense. I use this [inaudible] around. The main intent of this power I think is for a general [loss from] the board and the way that it's managing the corporation, governing the corporation. I think with respect – oh, sorry, Mathieu, go ahead.

MATHIEU WEILL: It was just to elaborate. The way I see this power is a way for the community to signal the need for a big change of approach and strategy rather than a change of persons. The removal of individual directors would be useful to change persons against either behaviors or whatever. The recall is the way to say the community is no longer satisfied with the overall approach you're taking, the board is taking, and there needs to be a new team, or a new direction, or a new project. It's just like when you remove a government in a country, sometimes it's the same Prime Minister taking on, but the signal is received that he has to change the project.

JORDAN CARTER: Thanks, Mathieu. Are there any other clarifying questions about what we're looking for at this point in terms of a high level approach to discuss with the CCWG in Paris, and knowing that where things settle there I think will need to have [inaudible] and making sure that the

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model is backed by [inaudible] when we finalize the documents in the seven or eight days [inaudible]. Are there any questions that need to be clarified today?

[HOLLY GREGORY]:

I think we're pretty clear on what the problem is that we need to solve for and what's been contemplated to date. One of the things that you mentioned in the little document that's on the screen is that the board could be the outgoing board, and I'm not sure that I understand. The notion there would be we voted to recall the board, but it doesn't happen right now. It happens at some point in the future. The change happens at a point in time when we've been able to hold an election. So what we've essentially done is we've told the board they're going to be leaving, but they're still in place for a time.

One of the things that we're thinking we need to protect for is it is possible that if you told members of a board that they were being recalled that they would all simply step down and that's the worst case that we have to solve for, where suddenly there is no board because there's a concept in law that you can't force people to stay in that position [but for] the last person to go.

MATHIEU WEILL:

I think the metaphor that's useful in understanding this is the caretaker convention in certain sets of parliamentary democracies where after a general action [inaudible] change in government. So only the ministers in the outgoing government remain the ministers. You still have a set of authorities that are limited by custom or by the constitution until the

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new government is sworn in or an administration change in the US, when there's the transition period.

Obviously, if people resign and won't hold the office, then we can't [inaudible] situation where it isn't [inaudible]. That's why [you'd] have to use your creativity in advising us on some options for dealing with that worst case.

HOLLY GREGORY: Okay.

ROSEMARY FEI: I had another question. You I think also mentioned in your initial proposal with some thought – or maybe it was in the edits you're doing to it; I'm not sure now – some thought of having the chairs of SOs or ACs that ordinarily have appointing powers, have them serve a this interim caretaker board.

I just wondered how problematic you would see the fiduciary duties that would fall on those people. Would that be likely to create big problems with getting people to serve as the chairs of the SOs and ACs? Is that likely to be problematic?

JORDAN CARTER: Rosemary, that's a comment that came through in one of the public comments, or maybe more than one of them. I think it's problematic for the reason you've described and for a general incentive problem that it might create in encouraging SO/AC people who weren't going to get

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elected to the board through the normal process, and to destabilize things and then get on in a different way. I don't know if I'm being paranoid in worrying about that.

That's just one of the suggestions that has been made. It doesn't have any [inaudible] standing. I haven't heard many people arguing for it in the CCWG.

ROSEMARY FEI:

Okay. I was actually a little surprised to see it and that's why I wondered what you thought of it. I realize that what you individually think of it is not determinant of – nor what we individually think of it. I was surprised by that.

JORDAN CARTER:

Yeah. So was I, to be honest. Holly, your hand is still up.

HOLLY GREGORY:

One of the things I was thinking about is [inaudible] certainly understand the concerns about having the chairs of the ACs and the SOs, having the chairs [inaudible] step into that role, but for the fact of each SO or AC would've had to vote, so it's not really in the chair's control to have recalled the other board. And if you really constrained it for a two- or three-month period and that entity doesn't have the power to change bylaws and then locks themselves in place, I think the concern around them using this device as a capture mechanism can certainly be greatly lessened.

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My question is if not that kind of a group, some kind of group who already has roles that you can immediately point to as stepping into the caretaker role board because of their position in another leadership role in the organization, where would you look for the people with positions, the people that you could name so that – we can't have a bylaw that names individuals, but says we'll take people from these positions and make them, for a very short time, a caretaker just long enough to get another election.

UNIDENTIFIED MALE:

I think, Holly, that's a good question. I don't, however, think we should discuss the answer on this call because I think that that's one of the question to ask the whole CCWG. I promised people on our list that this would be mainly about clarifying the questions about the assignment rather than digging into the substance. I think that's a good question. The SO/AC leadership group is the obvious place to go in my mind, but that doesn't mean there won't be other places that are obvious in other people's minds.

HOLLY GREGORY:

Okay. Alrighty. That's fair enough. I'm trying to think through the possibilities. It's just helpful for us to have ideas about what's possible. Not that it's what you think we could do, but I'm just trying to figure out what's the other bucket of official positions that you could go to. We could say it could be executive officers of ICANN, but I think that would be even—

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ROSEMARY FEI: In most non-profits, that would be a logical place to go, but I don't know that it would be here.

HOLLY GREGORY: Yeah. Well, I think the community would resist it. I'm just trying to think about where we've got our buckets of people. I guess you could take the NomCom or something. You could take a whole on a series of—

ROSEMARY FEI: You could take the IRP panel.

JORDAN CARTER: I think it would hurt for you guys to do a bit of thinking [inaudible] discussion of the whole group. But I'd rather we didn't carry on discussion tonight, if that's okay

ROSEMARY FEI: Okay.

JORDAN CARTER: Is there any other clarifying questions about the assignment? We should flag them now. Otherwise, I think we could probably draw to the close. Mathieu, do you have anything else you want to say? I have one more thing, but I'll ask you first.

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MATHIEU WEILL: I think it's really clear we've got a timeline, we've got the question clarified, and we even have some form of estimate about what it's going to take to get there. Holly and Rosemary, unless you have any further question, I think we can draw this call to a close.

HOLLY GREGORY: Terrific.

JORDAN CARTER: I just want to add one more thing before you guys do any last points, which is that there is quite a strong current going on of not setting up new things and a doctrine of conservatism in terms of changes and stuff. There's a greater extent that your solutions don't introduce new mechanisms or bodies or processes. I guess [inaudible] approach is probably the best hat to be wearing [inaudible] looking at it. Sorry, Mathieu. I just wanted to get that out.

HOLLY GREGORY: Absolutely understood.

MATHIEU WEILL: Okay. Thank you very much, and thank you for making yourselves available so quickly and at such odd times on weekend. Thank you also to staff for organizing this. We'll see each other very soon.

ROSEMARY FEI: Terrific.



HOLLY GREGORY:                    Looking forward to it.

[END OF TRANSCRIPTION]