ICANN

Moderator: Brenda Brewer
July 23, 2015
8:00 am CT

León Sanchez: Good morning everyone, good evening, good afternoon, good night - whatever the time zone that you are is. Can we please have the recording started?

Coordinator: Recordings have been started. You may begin.

León Sanchez: Thank you very much. And welcome to the CCWG on Enhancing Accountability Meeting Number 44 on the 23rd of July, 2015. We have a long agenda ahead us.

And at this point I would like to do the roll call based on the attendees on the Adobe Connect Room. But I would also ask for those who are not in the Adobe Connect Room but are on the phone bridge to state their names if there are any so that we can add you to the roll call. So are there any attendees that are on the phone bridge but are not connected to the Adobe Connect Room?

Greg Shatan: Hi, this is Greg Shatan. I'm only on the phone bridge now. I'll be on Adobe later.

León Sanchez: Thank you Greg. Anyone else? Okay I see, I hear no one else being just on the phone bridge. And well as usual I remind you of filing your statement of interest if you haven't done so. And as usual the staff will be happy to assist you if you need any help on doing so.

We would also like to apologize to our GNSO counselors and members of this group and all participants of this group because we know that there is an overlap between this call and the GNSO Council call today. So we tried by all means to avoid that clash but it was impossible. So we do apologize to all of those who are in the position of the clash course of these calls.

So as I said we have a very packed agenda and I see Kavouss hand is up. Kavouss would you like to say something at this point?

Woman: (Unintelligible) already. He started already. Kavouss.

Kavouss Arasteh: We have signed a paper. We have signed a paper. Is it the same thing the CCWG or is it just simple declaration verbally? In ICG the ICANN secretariat approached us and we put everything in a very simple paper putting cross on various areas indicating the issue of conflict of interest. This is very important.

I'm not asking you do that necessary, but I think this should have it and we should mention something that the conflict of interest were properly processed during the CCWG. That is helpful for the public comments that now people have respected this issue of conflict of interest. Thank you.

León Sanchez: Thank you very much Kavouss. I really have no idea which document you're referring to, but we'll certainly look into it, and I'll ask the staff to provide some information on this document that you stated. And I guess it relates to

the statement of interest that everyone needs to file. So thank you for reminding us that this is very important.

And with no further delay and since we have a very long agenda ahead, I'd like to turn to Mathieu for our next agenda item. So Mathieu?

Mathieu Weill: Thank you very much León. This is Mathieu Weill speaking. Our agenda today's very busy with a number of sections of the draft report for public comment Number 2 to review. And you see two key sections. We've tried to put the items that we believe need the most discussions up front so that we have sufficient time.

And the goal on this review sections is to make the decisions that will enable the finalization of the drafting, which has to take place before tomorrow and then be transmitted to the independent council for review over the weekend. And then we finalize on the next call on Tuesday.

And so the first item we had to on our list as a follow-up from the meeting in Paris is the removal of individual board members. And some additional work has been conducted by Work Party 1 in the very short time that we had this at the beginning of this week.

And so I would like to now turn to Jordan for a quick introduction and identifying which key decisions you are requiring or needing from us at this point. Jordan?

Jordan Carter: Thanks Mathieu. Is my voice coming through?

Mathieu Weill: Absolutely.

Jordan Carter: Great. Hi everyone. It's ten past midnight here in Wellington or five past. Staff, could you put the latest version of the removal of board members power on the screen? We'll just start with that, and it's a red line that should be reasonably easy to digest.

Now if my memory serves, which it might not, we did talk about this on our call two days ago. And it was here and it went. The changes should not be too substantial. Yes, that's the wrong version of the document, Grace. Yes, sorry. We just need the version that's the absolute latest that was circulated, which is Version 5, which I e-mailed around about 13 hours ago.

We're doing removal of individual directors here. Sorry, go on. There's no point talking without the doc.

Mathieu Weill: So Jordan...

Jordan Carter: So you want me to resend this to you, please let me know. The basic change that was made to draw to your attention is on the previous version of this paper, we still hadn't resolved in the case of SOs in the at-large community that appoint directors, whether they were the only parties that could lead to the recall of those directors.

And we did resolve that question by a clear majority on the working party call whatever it was - 7:00 a.m. this morning, so 17 hours and so ago - and removed it. So I just want to draw that to your attention.

The remaining points for CCWG discussion that came up in the WG1 call where there wasn't agreement is that you'll recall in Paris we talked about the development of possible community standards as part of Work Stream 2 that

could help to guide SOs and ACs when they were dealing with decisions to remove or not.

That was part of the package that was also included the notion of discussing recall removals of individual directors in the community forum or ICANN community assembly before any decision was made.

So that's represented in Paragraph 11 of this paper, just on the end of Page 2 and overlapping onto Page 3. So there was some concern about that. Someone with Working Party 1 did not want to refer to those standards. I think that there was - you know, it's up to those people to express their point of view. I'm just reporting back here that we agreed to send the document through with that as it was for decision here.

So that's the key decision to make - whether we leave that reference to standards in there or not. And I think that the rest of this is ready to go. So Mathieu, can I hand it back to you unless you'd like to draw attention or anyone to any other aspect of this.

Mathieu Weill: No thank you very much Jordan. I think that's a very clear and concise introduction. And we can move to the queue for questions. And I think Sebastien has the first place in the queue. Sebastien?

Sebastien Bachollet: Thank you Mathieu. Sebastien Bachollet speaking. Jordan can you tell us what was Work Party 1 regarding the option was (unintelligible). I didn't see the Version 5 and I don't know what was your choice as a group. Thank you very much.

Jordan Carter: Sorry, could you just restate that question, Sebastien? What the decision was that we made about what?

Sebastien Bachollet: You start saying that there were one decision to be taken by the Work Party 1. And if I go to the Version 4 that was the last version I was ever to read, there were - the WP1 recommend and there were three option. And you say at the beginning of your presentation that you made a choice. You as the group, WP1, made a choice by a large majority. And I would like to know what was your choice. Thank you.

Jordan Carter: So in the previous - in the Version 4 of this paper, there was the same paragraph 4 that's there at the bottom of Page 1 now. There may be some very small grammatical changes, but otherwise there was that Paragraph 4.

And then there was an alternative paragraph in brackets which suggested that for the seven directors appointed by the three SOs and at-large community, a process that led to a decision by the community mechanism could lead to that director's removal.

And the three options underneath that bracketed text were whether we should suggest to the CCWG only the non-bracketed, so Paragraph 4 that's there, whether we should ask the CCWG to choose between those two options or whether we should suggest to the CCWG that it presents both options for consultation in this paper. And we discussed that and there was no one who was voting.

We eliminated the options option if you like because we realize we don't want to go out in this public comment with options on questions for the community to respond to. So it was either asking the CCWG to decide about the bracketed text or whether to go with what you see there in Paragraph 4. And there was unanimous support on the WP1 call to just leave the text that's there in front of us.

Mathieu Weill: Thank you Jordan. Next is James.

James Gannon: Hi. James Gannon. So I'll speak to the issue that Jordan mentioned about Paragraph 11. So if everybody wants to move to Paragraph 11, this is around the standards for possible petition to remove individual directors. Now I was one of the ones who didn't agree with having a set of standards that would directly lead to the removal or petition to remove a director.

Jordan has done some work on this since our last call, and I appreciate that. So the end - the top of Page 3, the substandards which would help establish has been added and that's a great addition. But I would still like to suggest to the CCWG that on the end of Page 2 that the text from and the expectations which if not less could lead to a petition for their removal.

Myself and a number of others have issue I suppose with that specific section of text. We I think as a group have decided that having standards for board directors is obviously a great thing and it's definitely something that we should pursue. However we have issues with that specific section of text that reaching those expectations may lead directly to petition for their removal.

I would like just to be a little more unambiguous in Paragraph 11. I would suggest the removal of the phrase "and the expectations of which though if not met would be expected to lead to a petition for their removal."

I think if we took out that second half of that sentence there the paragraph would be a lot more acceptable to the larger group.

Mathieu Weill: Thank you James. I think there's some wording refinement suggested in the chat already. Next is Alan.

Alan Greenberg: Thank you. A couple of things. First of all you'll note there's some highlighted - the percentages are - not the percentages, the fractions are highlighted in Paragraph 6. There is still an ongoing discussion on in general thresholds to remove - are you still hearing me?

Mathieu Weill: Yes I can hear you Alan.

Alan Greenberg: Okay thank you. There is still an ongoing discussion on what thresholds should be used or could be used for community removals. A few of us have identified some real troublesome problems because of abstentions and things like that. So I think we have to (unintelligible) those numbers frozen at this point. That's for all of the community powers, not necessarily this one.

With regard to the reason for removing directors I have some real concerns on that. I believe ultimately the - if we ever remove directors it's not going to be for a specific cause other than they're not meeting our expectations. And whether that's because of particular behavior patterns or - you know, I don't think we can specify right now.

And I don't really want to set expectations that we will have to list specific causes and potentially enter into debate. We're talking about giving them an opportunity to defend themselves. And my understanding is under California law, a member can remove, period.

It doesn't - it's not subject to qualification. It's not subject to appeal. And I have a real problem if we're setting expectations that we're going to have a laundry list or anything resembling a laundry list of the reasons that we can use for removal. Thank you.

Mathieu Weill: Thank you Alan. And I think it's worth reminding us that in the discussion in Paris, others had strong concerns about the ability for SO or AC to remove in what they perceived as arbitrary manner their board of directors.

So my understanding is that the proposition that's currently in this document is an intermediate position, a sort of compromise between those positions but that we can get to a level where everyone can live with. Kavouss you're next.

Kavouss Arasteh: This text from the very beginning and once you have passed the paragraph that will be your note saying that this paragraph is. Otherwise you're jumping from 6 to 11, 11 to 21. And it is difficult to follow. This is one question.

And the second I agree with you that it should not be arbitrary. It should have some justification. But it's difficult to list all justifications because some of them may be subjective. Some of them may not be subjective. So we should avoid to say arbitrary removal. We should say by some cause or some reasons but to list them it is very difficult because we may not be able to list everything now. Thank you.

Mathieu Weill: Thank you Kavouss. Greg?

Greg Shatan: Thank you. Greg Shatan for the record. First I think that on the Work Party 1 discussion there was no concession or decision taken that the text was, you know, agreed by all parties. So it's still - you know, it's basically been taken to this group to make a decision.

So for my part, I have concerns, deep concerns with the way this text is currently standing. Fundamentally I think it needs to be the right of each SO and AC that appoints directors currently to be able to remove those directors without interference by any other SO or AC. So the idea that they have to

petition the rest of the community to - in order to remove a director who they believe is fundamentally no longer meeting their requirements as their appointed director is I think a huge mistake.

I think it goes in the - really in the wrong direction from where we currently are. It's also really - it goes against the spirit of the statute. Under the letter of the statute, in California law, of course if we had a sole member then that member is technically appointing that director.

But we've always said that that should be a mere pass-through. There should be no interference on the way in. I think there should be no interference on the way out either. This is kind of - it's like forcing somebody to stay in a marriage.

Mathieu Weill: Can I ask Jordan to confirm whether that's actually the way the text is currently drafted? Because I'm afraid there might be a misunderstanding here. Jordan?

Jordan Carter: Greg, the story you just described is the opposite of what the text provides for. The text is really clear that where there's an appointment by the SO and AC - so the directors -- and the only body that can remove them is that SO or AC.

And the petitioning thing is simply a (unintelligible) threshold within the SO and AC to start consideration of the questions. So I don't know where you got the idea that we were proposing in this version of the text that SOs and ACs have to appeal to any other body. The whole point of what I tried to explain - obviously not very well just before - was that that isn't the route that we're recommending going down.

Greg Shatan: Well I'm looking at Paragraph 6. It says there needs to be a petition to start the - regardless of whether the director is appointed by an SO or AC, there has to be a petition that's started. And then there needs to go to the meeting of the community assembly. And then that community assembly is supposed to make the decision whether the director is removed or not by a three quarter vote.

Jordan Carter: No I'm sorry, it doesn't say that Greg. No it doesn't. It says "the decision-making body." The SO/AC's governing body or the community mechanisms. So what's intended to be common is whether or not it's a nominating committee director or an SO/AC one. Someone has to trigger the question.

So it's the SO/AC itself in A or for a NomComm appointed director it's any SO or AC. The steps that if you like can interference is the B one which requires the discussion to be had about the question in the public community forum.

And the logic behind that is that these things shouldn't be done behind closed doors. And that's - I'm not endorsing or criticizing that object. I'm just saying that's the logic that's represented.

Greg Shatan: Okay well...

Jordan Carter: (Unintelligible) can see there would be the decision made for the SO/AC appointed directors the decision of the SO/AC Council. And for the NomComm appointed directors the decision is the community mechanism of the single member. (Unintelligible)

Greg Shatan: That's not well respect - that's not well expressed at all. And the main problem is in 6c. Since there's no clear delineation of the decision-making

body, it really needs to say - at least it should say the SO/AC's governing body in the case of a director nominated by an SO or AC or the community mechanism in the case of NomComm directors or something like that because it's not clear.

It's just not clear. And I see it's not clear to others. Maybe in - I don't know if this is the document you de-lawyered but maybe you overdelawyered it because it's no longer readily understandable.

Jordan Carter: This is not the document I delawyered.

Greg Shatan: Oh okay. Well maybe it needs to be lawyered a little then - or at least clarified. Well 6c needs to be clarified because it leads to misunderstanding in that case.

Secondly I just want to say that I'm against this idea of criteria. I just want to say that I'm against the idea of criteria, and especially the idea the criteria has upon the basis of any decision. I agree with Alan. It's - the point is if it's just not working it's not working. And there shouldn't be a requirement, and I don't think it's something arbitrary.

Removing a director is serious. Finding a new director is also serious. It's not going to be arbitrary. So that should not be part of this proposal and 6c needs to be cleared up so it's clear that the community assembly has no ability or right to stop an SO or AC from removing their director. Thank you.

Mathieu Weill: Thank you Greg. Alan - second time.

Alan Greenberg: Thank you very much. By the way, I agree that 6c does need clarification in that parenthetical. It doesn't need to say which of the either/or's. It needs to say for what the or's are. That's easy to fix.

I'd like to go back to the issue of criteria and reasons for dismissing and let me give you an example is the kind of thing that troubles me most. We have used as the classic example of an improper removal by an AC/SO that if the director does not support or does not object to a specific budget item, that the AC and SO will just unilaterally remove them.

And we've said that that's really the wrong reason that we would want to remove a director. We shouldn't punish them because they didn't vote the way we wanted in a specific vote.

On the other hand, we have the ability of selectively removing directors as a surgical way of addressing overall ICANN budget issues. That's exactly why we have individual removal of directors so we don't have to remove the whole board. We can just remove the recalcitrant directors who are insisting on a budget the community doesn't like.

So we're using the exact same rationale for both the kind of removal that we're saying is bad and the kind of removal that we're saying is good. And I don't know how we put that in words to describe that. Well sometimes budget refusal or voting for a budget item we didn't like is something we can't remove them for.

And voting for a budget item is something that we explicitly want to remove them for. I think that's a real conflict, and I don't think we can fix it other than relying on the good sense of the community. Thank you.

Mathieu Weill: Thank you Alan. I will close the queue after Sebastien. Kavouss?

Kavouss Arasteh: This is for the 6a, b, c, and d. It's quite clear and I don't understand why we have to go to such a detail of the issue and so on to describe clearly. You have the petition. Petition is met. (CA) will be established, questioning, answering, (unintelligible). And then each day you after you start the process and then you have a threshold of those who vote and threshold of those who participate in the issue that needs (quorum).

                  So I think quite clear. I don't see why we have the read aspect, why we have to spend another two or three hours to draft something and come back to that. Thank you.

Mathieu Weill: Thank you Kavouss. Jordan?

Jordan Carter: I (unintelligible) my hand by accident. I just want to - I will make the point since I do have the mic that the intention of the paragraph 11 is not to impose any restrictions or any limitations out of the community mechanism of single member for NomComm directors or on SOs or ACs to qualify the removal.

                  I personally am a strong supporter of there not being any restrictions on that power. And it has never been my intention to draft in a different way, given the writing instructions that the CCWG Working Party has come up with.

                  So if we can clarify that a bit by deleting the thing after the first comma on that last line on Paragraph 11, "and the expectations," blah, blah blah, then it simply sets out the development of standards that will help guide people about expected behavior. And they would help us that those standards could help establish common expectations across the community. And then it explicitly says, even in bold, there not be criteria for limitations on.

So I think that that text after the comma does add a bit of possible confusion, so it should be ditched. And I think the discussion about that Paragraph 6 has been helpful. I think it should just be repeated. So after paragraph 4 which talks about SO/AC directors, please explain how it was done with a paragraph (unintelligible).

Then after paragraph currently numbered 5, for the NomComm directors you'd have it again. Totally separate processes. You have no and/or's, no cross-referencing, no requirements to read the whole document in order to understand every part of it. Those are helpful clarifications.

Mathieu Weill: Thank you Jordan. I had been supposed to close the queue after Sebastien. And I think we all have a (unintelligible) list of items so far. And we've actually progressed a little bit. So I think we will be able to take stock hopefully sooner. Sebastien?

Sebastien Bachollet: Yes thank you, sorry. Thank you Mathieu. Sebastien Bachollet is speaking. I wanted to - I have a question. We discussed in the Paris meeting about the question of the independence of the board members.

And I don't see - maybe I didn't read that well - but I don't know where it was (unintelligible) mentioned and what we will do on that because I think for the moment all the discussion is contrary to what it's told to the board member and what they need to behave. And I have trouble with this way of doing this appointment of the committee. Thank you.

Mathieu Weill: Thank you Sebastien. I think this expected standard of behavior in Paragraph 11 meant to be where we could discuss about these things so that we have everyone's expectations clarified. That's my understanding of the process.

Greg and Kavouss please be very short. Tijani I was supposed to have closed the line already but it's your first time. So Greg and Kavouss you've been speaking already so please be very concise. Greg?

Greg Shatan: I'll just say briefly that Section 11 I think is improved if we remove "and the expectations," etcetera in that first sentence. I still have deep misgivings about trying to codify these expected behaviors but I think that can be argued in Work Stream 2 unless people believe that this binds us to Work Stream 2 develops those, in which case I would object to it being that strong.

I think it should be a recommendation to consider the development of community standards rather than anything that would bind us. So that would be my suggestion on 11, recommending considering the development of. Thank you.

Mathieu Weill: Thank you Greg. Kavouss?

Kavouss Arasteh: Not on this question. On the general I see now here ICANN community has somebody. It doesn't mean that you have removed community forum. And we have removed community council. These two terms no longer appears in the text. We have decided to put ICANN community assembly instead of community forum or the community council. Is it correct understanding or not? Thank you.

Mathieu Weill: Thank you Kavouss. I think that's a question that was raised at the later stage in the Paris meeting. I suggest we take it when we discuss the community (unintelligible). That is somewhere where we need to harmonize the wording. It's a very good point but probably not at this point of the discussion. Tijani and then we will close.

Tijani Ben Jemaa: Thank you very much Mathieu. Tijani speaking. I'd like to ask what is the - what is the use of this standard of action for the board members? It seems that it has any effect since, you know, we don't want to use it at all, even to have the sense even to call some people, even people are afraid that this standard of action will be more or less cause or criteria for removal.

We said it will be the reference for the discussion about the removal of the director. People don't want it. So what it is for? We'll use it where? Is it usable? Thank you.

Mathieu Weill: Jordan do you want to briefly respond?

Jordan Carter: I could but I got distracted in the middle of Tijani's statement, I apologize. Mathieu can you respond?

Mathieu Weill: The question from Tijani was how does the expected behaviors would be useful if no one wants to use it. I guess Tijani was referring to other interventions that we're saying that we're not interested in in being prescriptive to the board. And...

Jordan Carter: Well from my point of view the reason that they're useful is I'm not aware of any - the contemporary or recent declaration if you like on the part of the community about the sort of behavior it expects from the board or from board members. So to the extent that a useful (unintelligible) views on that.

So if it was possible to come to a consensus to (process) on that, I can't see that as anything other than positive. And I think that was the notion, that if there was some agreed community statement about what it wanted that board members would at least have that...

((Crosstalk))

Jordan Carter: ...as the thing that was - sorry are we having two conversations at once?

That it would be a...

((Crosstalk))

Jordan Carter: ...desirable thing to have in another in and of itself and the binding otherwise that is kind of beside the point from that point of view.

Mathieu Weill: Thank you Jordan. Alan I have closed the queue twice and you've been speaking already a number of times so I will be tempted to close now the few because we have other items.

I think we have identified for certification in different parts of this section. The Paragraph 6 will be restructured as Jordan described to be more explicit. And that's certainly a place where we will need some experting help provide more clarity to the external reader.

And we will also review the wording of Paragraph 11 taking into account the fact that we obviously have divergent views about this board director removal. We should never forget there were some comments on this.

And the attempt here is to provide a some - someplace where no one is perfectly happy with the solution but it's still something we all can live with.

So I think that's with the appropriate corrections we are getting as close as possible from that point. And I'm looking forward to the a next version where I encourage everyone to really think hard what they cannot live with and why

or whether that's something they cannot live with and why or whether that is not the place where we could probably move forward with.

I think we have a good balance in the spirit of the discussions in Paris around this.

And with that I'm moving now to the next section and Thomas will share this section. Thomas?

Thomas Rickert: Thank you very much Mathieu. And I'm afraid that it's again on Jordan to help us with this discussion. We're now going to discuss the board recall.

Just by way of introduction we have to discuss refined language on the board recall mechanism. And also we should try to close the discussion on the Caretaker Board question.

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

Jordan Carter: Thanks Thomas, lovely. So this paper is in front of you. And what happened here was that our wonderful council did a really big marked up version of this paper that took a draft that we had, the two paragraphs that we had and added onto it. And a lot of procedural detail was...

((Crosstalk))

Jordan Carter: ...among it that among it included the model four that was suggested there was some consensus around in Paris for what to do about the Caretaker Board.

And the essence of that was when an SO or AC came to a meeting to remove the board it would have to nominate a replacement director at that point.

So what this has done is basically implement that. And my concern was it was a big redlined document. We were just at the end of a two hour working party call.

And WP1 doesn't feel like it's had enough time to consider this properly. So this doesn't come with any particular recommendation yet from WP1. And unhelpful as it is we are going to be discussing it at our call next Tuesday on the 27th.

And but that said it's helpful to sketch out the key points about it today which is the petition to trigger this (unintelligible) has to come from at least one SO and one AC and it's only valid when 2/3 of them sign it to trigger the power.

And that there's a bunch of process stuff set out in the next bullet point if you work through the document that is kind of the mechanism if you like for how this would work.

The yellow blob is noting that if there is a recall vote a current member of the board would not be able to serve on the interim board which is a short term board that takes off office until the reelection process rolls in with new directors.

On the top of Page 2 it includes that liberation stage with the SOs and ACs to discuss this power before they exercise it.

And then the division is led by the SOs and ACs through their own processes after that and the votes are tallied up and the threshold is set out there.

As we've already mentioned elsewhere we need to go through these voting thresholds and the committee mechanism and really sort them out for the consultation.

And there's some more explanation of that in Paragraphs 6. Then in Paragraph 7 and 8 is available as we set out bit more about the interim board that would take office.

And it would be for a fixed period this proposed 120 days with the lawyer's initial pitch on there.

And James asked the question about the guidelines for interim board members. I am not entirely convinced but I did manage to add that. But it's been added in the Workstream 2 registration even if it hasn't been added in this version I think is what Mathieu was saying.

So if you carry on down there it specifies that when the replacement board comes along so that's when the SOs, ACs have elected new members people who were previously on the board can be reappointed.

The next bullet point notes that for the legal reasons our advisors set out the interim board does have the same legal powers as the general board but there's a suggestion in the bylaws will show the caretaker convention that needs to be there.

So I don't really know how you want to handle this one Thomas. People might just raise any issues they thought was the general approach which again is that it's a decision of the community mechanism of a single member with high thresholds and a high petitioning threshold to get the discussion moving.

That if once the people come to the meeting to make a decision or a call about they're saying to have alternative directors ready to go.

That forms a short-term interim board which is then replaced by a replacement board where people are appointed into their seats on the same terms and so on that the removed board members were.

And I think I might leave it at that.

Thomas Rickert: Thanks very much Jordan. That has been most helpful and thanks to you and your group for refining this.

As you can see what has been called Option Number 5 for the Caretaker Board has now found its way to the language of this updated proposal.

Now the queue is forming. You know, we are basing this discussion on the previous discussions made by the group and a forming consensus.

Can I please ask you to make explicit reference to the parts of this language that you are either supportive of or that you would like to see amended and also if you can please do make suggestions on what rewording needs to take place so that you can support what's now in the AC room?

Lastly I would like to ask you to keep your (unintelligible) as brief as possible and also to only address points that are a must if you wish for you to buy into this.

So let's maybe reserve wordsmithing for a later stage when we finalize our upcoming report. Sebastien?

Sebastien Bachollet: Thank you Thomas, Sebastien Bachollet for the record. Yes I have a few questions to understand before going to say something about my position.

But at the end of the Page 1 SO and AC must nominate at least once a one such prospective director. I have trouble to understand what that means. Is it each or it is an altogether one?

I have also questioned on the 8th we are talking about coming to your recall on individual directors the - oh sorry. And my question is I guess it's only from the NomCom but it's not very clear.

The Point 9...

Thomas Rickert: Sebastien can you - sorry, can you say that one again Sebastien about Para 8?

Sebastien Bachollet: Yes. The end of the Paragraph 8 it's written the last line community recall on an individual director. I guess it's from the Nominating Committee if I understood well my quick reading. But if not I will be happy to know if it's for all or just someone from the NomCom?

Thomas Rickert: Just the NomCom one, just the NomCom one.

Sebastien Bachollet: Yes and I at least in my understanding of English and it's not the best one I know you must say it again that it's individual director from the NomCom.

On the Point 8 - 9 sorry, I really totally disagree really very heavily. We need to have diversity requirement. If not it's a way of capture. It's a very easy way of capture by part of the community.

And I think that diversity is a must in any case even for an interim board especially for the interim board of all the capability of a so called normal board.

And my I guess it's my last point but it's also for me a very important one so when we talk about replacement of the board I just want to remind you that I asked the question in the previous meeting about capture.

I didn't see a lot of things on this question. But the fact that one committee, the NomCom here is able to change more than half of the board voting member or just if we include the President and CEO it's for me a very important possible way of capture by one of the group of the board, one of the group capturing the board. And we need to answer this question. Thank you very much.

I don't know if I answered your question Thomas but to be clear I will not buy this (unintelligible) like it is today. And I will not buy either the one recall where we remove a single board member. And if you want me to elaborate later on I will do so. If not that's okay. Thank you.

Thomas Rickert: Thank you very much Sebastien. And actually I applaud you for being so specific in your comment so that's very helpful.

With respect to your general concerns relating to the board removal recall mechanism this is well noted. You've gone on record specifying this already. So I think there's no need for you to explain more this or a moment where we are applying for changes to the language.

Let me try to capture the points that you spoke to and respond to them briefly. With respect to your first question is my understanding that it is one each.

With respect to the second question we will note an action item for Jordan's group to make the language more explicit if need be with respect to NomCom, with respect to the diversity requirement or the exception they are for the Caretaker Board.

I hear what you're saying. It was my impression that there were huge concerns inside the group that we could need diversity for an interim board.

I sympathize the notion that we need to take diversity very seriously. So I would really like to encourage those that also want to make diversity a requirement for Caretaker Board to make themselves heard.

Again it was my observation from the group that we might not be able to do that. But again I am willing to put it into the language if there's more traction for that.

And with respect to the issue of capture I would suggest that we put that in as an action item for Cheryl and Steve to include that as a special topic for the stress test to ensure that by us installing caretaker mechanisms that we don't open the floodgates for capture.

But let's have it tested before we tweak this language. That is my recommendation. And unless I hear otherwise from the group I suggest we move on on the basis of that.

Next in line is Julie.

Julie Hammer: Thank you very much, Julie Hammer from SSAC. I just want to raise the issue of how board liaisons might be treated under this situation of recalling the

entire ICANN board and indeed in relation to the last community power about recalling individual board members.

As you know, liaisons don't have a vote on the board. But in most other respects they are usually highly participating board members.

So I guess my question to the group is how firstly do we need to explicitly mention whether this proposed way of treating board members and the recall of the entire board should also apply to liaisons or do we need to specify that they do not form under this process?

Thomas Rickert: Thanks very much Julie. I guess that's a good question. In my view the liaisons are not being seated by the SOs and ACs. So I support Jordan's view in the chat that if we remain silent nothing happens to them.

I would suggest we test that with legal counsel we're using. So we take note of your point. But I guess the idea is that liaisons will not be affected by this. Does that answer your question Julie?

Julie Hammer: It does. Is it a question though that needs - is - does the answer need to be recorded in this paper though I guess that's really - so that other people don't raise the same question?

Thomas Rickert: I suggest that we task Jordan's group with making reference...

Julie Hammer: Yes.

Thomas Rickert: ...so our wish that liaisons are unaffected. And we would check with legal counsel whether we need to have specific reference to that for the bylaw drafting.

Julie Hammer: Okay thank you.

Thomas Rickert: And thank you. Alan is next.

Alan Greenberg: Thank you very much, a number of points. First of all in Paragraph 2 the lead in and in the first bullet there seems to be two different thresholds for how many ACs and SOs have to petition.

                  One of them says 2/3 of the SOs and ACs the other one says one a majority - sorry one SO and one AC. So I think that's a conflict unless I'm reading that and that needs to be clarified.

                  I'll point out that by saying by including NFC and AC there, there is only one AC that likely to be participating. That's effectively giving a veto to the ALAC.

                  I don't mind at all but I'm not sure that was the intent. So we may want to consider that.

                  On the paragraph on the NomCom I don't think that what we referred to - that's the paragraph -- I don't know where it is. I think it's numbered 8, the one about NomCom holding in reserve.

                  I don't think that's what we agreed to in Paris but we may want to check that with Cheryl because she was sort of the NomCom person who was speaking there and I may be right or wrong.

                  In terms of the liaisons the incoming board has the ability to unilaterally remove all of the liaisons, any or all of the liaisons except the GAC liaison.

So I don't, you know, I don't think we need to worry about that. The incoming board if they're unhappy with the liaisons can get rid of them except for the GAC one. And that one I think we probably have to live with.

Lastly on diversity I would like Sebastien to propose a methodology by which we can do that. Since we are asking each AC and SO to name a person and that happens in parallel I don't understand how we can have a mechanism to ensure diversity. We don't have the NomCom coming in after the fact as we do normally and selecting people based on the current mix. Thank you.

Thomas Rickert: Thanks Alan. And with respect to your last point as you will remember I have asked for others to support Sebastien views if they think we need to install a diversity requirement for the interim board or this Caretaker Board.

And in the absence of this additional support I think to move on with the language suggested in the text as it's used in the AC room.

I - let me just try to capture the point that you mentioned. I'm sure that Jordan and team will check for consistency with thresholds.

We take note of the language on ACs is captured, not allowed or rectified as need be to not give ALAC a special light in this.

So I think this maintains the spirit of our thinking. We just need to make sure that the language is correct. So I think that doesn't need further deliberations by the group.

I'm not sure I entirely understood where you saw the diverging or the different positions that have been put into this paper proposed to the - our Paris discussion.

But if we have Cheryl on the call which I'm not - yes Cheryl is there - I guess maybe Cheryl can double check, shed some light on it at a later stage in this call. so that's also taken note of. Thank you very much Alan. And the next in line is Kavouss please.

Kavouss Arasteh: Yes I have put my question in the chat in Paragraph 2. The first bullet please add simple before majority because majority has no meaning. Simple majority has a clear legal meaning. That means 50% plus one. This is very simple.

On Paragraph 8 I put in the chat why in case of recall of the board NomCom will provide AC directors only required to have two candidates. Why two? That is the question.

And in Paragraph 9 to perhaps address the point made by Sebastian we may add the word Necessarily which will ease or not is - sorry, is not - which is not on subject is not necessarily subject to diversity.

We cannot go to diversity for the short term of few months. That is very, very difficult. But we may qualify that in one way or other. Thank you.

Thomas Rickert: Thank you very much Kavouss. I am not sure whether your answer - I can sufficiently answer. Your question has been sufficiently answered in the first point by Jordan in the chat.

There are no further hands raised which leads me to believe that, you know, we have mainly wordsmithing to be done.

So pending Cheryl's confirmation of the different views discussed in Paris we might be good to go with the language on the table or with the spirit of the language on the table. James has raised his hand. James please fire way.

James Gannon: Sorry, James Gannon. So I'd like to reach out to both the chairs and others but I think we might have an issue with Paragraph 8.

I thought the agreement in Paris was that the NomCom would stand out from - it would not participate in electing anybody to the interim board that they wouldn't participate in that process at all, that the two candidates were the separate issue for not related to the interim board.

So I think we need to - I think we might have an issue in Paragraph 8 that we need to discuss. I think that's different to what was agreed in Paris with regards to the NomCom's participation in the interim board that we agreed that the NomCom would not elect anybody to the interim board and until its next AGM.

Thomas Rickert: Good. I guess that's helpful. Jordan maybe you can also help me with this. Shall we try to make sure that the language is aligned with what's been discussed in Paris, you know, now that these points are made, recollection comes back?

So I think we might to put in an exemption for the NomCom. Jordan?

Jordan Carter: Well I think I don't think that we settled it. And I think that there are arguments both ways. And one simplicity argument is that you leave out the NomCom appointment (particularly) short-term interim board.

And if there's selected some reservists so they can be pulled into service for the replacement board if you like.

And but the downside of that is that what you'll have on the board of directors is the chief executive. And you'll then have between four and seven directors appointed by the At-Large community and the SOs and that's it.

So to me the logic of getting - of making sure there are a couple of NomCom people there is to balance that out. And so that's just the logical point. I don't have that theological or ideological view about it.

If people think it will make life easier to not have them on it that's fine by me. I just don't know where their view of the group is.

Thomas Rickert: Good. But Jordan let me maybe add for those that haven't been attending the Paris meeting. Legal counsel has clarified that we do not need the fully seated board for the interim board so we can do with less people.

And if there are concerns with the group about the NomCom being able to put more - to put the full number of people to the table why don't we then maybe move to a compromise position where, you know, the SOs and ACs they bring names to the table when it comes to this discussion?

For NomCom we encourage NomCom to, you know, if it is reasonably possible they should bring in a sufficient number of all board members they nominate but we would make it a must for them. And maybe that can help reconcile the different views.

Jordan Carter: I - that - it's creative Thomas. But I think it's exactly there already.

So the NomCom has eight appointees on the board generally. This will ask it to supply two candidates. And I agree that the language isn't entirely specific in saying that it either must or can.

So we can say can. But I think that is already a compromise for a much smaller board. You can imagine each SO and AC only appointing one and these two would give you a board of six compared to the normal 16, seven instead of 16 including the CEO.

So if in that first red part of Paragraph 8 we said in addition the NomCom will amend its processes so that it would be able if, you know, I don't really know how you make it less determinative that this and...

Thomas Rickert: Can you say shall?

Jordan Carter: Okay this is such a bad idea to try and do the drafting right? If we are clear about the intention then we can do the drafting in WP1 but just be clear about the intention.

Thomas Rickert: Okay. Well that's what I'm trying to get at to make the language or to capture the ideas of what shall be in the draft. So James I'm not sure whether that's a new hand and so please do speak up?

James Gannon: Hi, James and yes it is. And so I'll be very brief. So my concern and I'll say why I would support the NomCom not necessarily appointing board members to the interim board is if the NomCom has to find two potential directors on extremely short notice those directors may not be sufficiently up to speed on the crisis situation that ICANN may be in at the time of a full board recall.

So I would have concerns about the ability of the NomCom to find somebody on such short notice who have sufficient staffs that they would be able to fulfill the requirements of the interim board.

And that's remember it's only an interim board that we're selecting here whereas I would have a higher level of confidence in the AC and SOs being able to find director candidates who will be able to a sufficient level to take over those critical responsibilities at a time of extreme, you know, disablement of ICANN possibly.

So that will be my argument for possibly not including the NomCom. If the NomCom was able to find directors that match those requirements that were set out in Workstream 2 then I would support their ability to that but I would be strong against requiring them to do so.

Thomas Rickert: Thanks James. I guess that's helpful for us to understand. However I would trust the NomCom will not place people they do not deem appropriate on the board.

And I think that if we don't make it mandatory for them to seat all board members they have control over that might sufficiently safeguard ICANN from being landed with inadequate board members.

So if I can ask you James not now but between now and the next session to consider that and hopefully agree to it I would suggest that we move on in the basis of keeping this spirit of what we've discussed we are going to close the queue after Tijani. We need to move on to the next point.

I take note of Kavouss' question not having been sufficiently answered. I'm afraid we need to move on with the agenda.

So Kavouss can I please ask you to send an email with your question and we will make sure that either I or Jordan answer that instantly or you can also put it in the chat and we would try to publicly answered it in the chat. Alan?

Alan Greenberg: Thank you very much. Just to point out that way, way back in the chat Cheryl did confirm that the decision was the NomCom would sit out on the interim board and presumably would use any people they have in reserve to name to the permanent board which is for the rest of the term. She seems to have perhaps have rethought that based on James' comment.

But the confirmation we were looking for earlier was made. It just slipped by very quickly, perhaps no one noticed. Thank you for your much.

Thomas Rickert: But are you okay with proceeding on the basis of what was just discussed making it optional for the NomCom or make...

Alan Greenberg: I...

Thomas Rickert: ...that language a little bit more explicit?

Alan Greenberg: I presume - I'm not going to speak on behalf of the NomCom never having sat on one and never having chaired one.

I suspect Cheryl - I think Cheryl said yes that could work. But I don't really want to speak on behalf. I was just clarifying what was - did happen in Paris.

I take that not to be an objection which I thank you for. Next in line is Tijani. Tijani?

Tijani Be Jemaa: Thank you Thomas. Sorry for I was yes, yes, yes.

So if I understood well if we decided that we will have each SO and AC appoint only one member we would have a total four members from the AC and the SOs and plus a CEO five. That's why we said and party said at least two members from the NomCom, at least you would have at least seven members for the board. I don't think that the board can function with only four or five members. Thank you.

Thomas Rickert: Thanks Tijani, and maybe Jordan's group can reflect that in an updated language so that there should at least be the aspiration of how to NomCom members. Kavouss has raised his hand, Kavouss.

Kavouss Arasteh: I'm trying to put my comment in chat, but it seems that you can attempt to say that you don't understand what I'm saying. In Paragraph 8 you have an addition saying that in addition, the NomCom will amend its processes.

So as to be able to supply two candidates for the interim board. Why two candidates? NomCom has eight board members. If you were to call the entire boards, 16 directors, NomCom should have eight directors to be supplied for the interim, unless I misunderstood the situation.

You want to view it in NomCom, during the interim not to have eight directors, not only two. Is that the case? Thank you.

Thomas Rickert: No Kavouss. I guess there's a misunderstanding here and we may not have communicated that clearly. Now there is no legal requirements to have the full number of board members.

Concerns have been raised, and not only to abide by many participants or individuals of the group that NomCom might not have eight illegible or qualified candidates at their fingertips at the point in time when the board is recorded. Which is why it is allowed for the NomCom to trace a lower number.

That is not to marginalize the role of the NomCom, but to help the NomCom out of the predicament of being forced to provide more members to a caretaker board then they have available.

There is full flexibility for the NomCom to place eight people on the interim board, but they do not have to do so. And it is my belief that wherever the NomCom has the sufficient number of qualified in their repertoire, they will bring them forward.

Okay, I think that should answer the question. If not Kavouss, I'm afraid we really need to take this offline. I'm not sure, is that an old hand or a new hand?

Kavouss Arasteh: What you said is different from what is in the Paragraph 8. So Paragraph 8 should be amended exactly as you said. Saying that there may be not possibilities that NomCom has eight replacement director during (there). So therefore the minimum two it should provide.

It is not mentioned there. So please kindly advise those written parts of 8 to revise it exactly as you have indicated. And I thank you very much.

Thomas Rickert: Thanks very much Kavouss. And we've already marked as an action item to make that language more explicit. So you can expect an updated version of the language for the next call.

And in response to Martin's question in the chat, Tijani has recorded from the Paris meeting that we talk spoke about the number of two. And (in my queue) we should have that at least as an escalation for the next language to be reviewed by the whole group.

But I think that we're getting very close to where we need to be. I take note that there haven't been any concerns apart from the general concern raised by Sebastian over the other aspects of this language.

So we should limit our focus and our discussion to the points that have now been tagged as still to be finalized for our to do list. So with that, I think we should close this part of the agenda.

And for the next part of the discussion, I'll turn over to Leon.

Leon Sanchez: Thank you very much Thomas. And I will be discussing the power of the (budget) veto. There are some outstanding questions. I think one of the key issues is the number of successes of (leaders) that we can - that we're trying to or would be willing to go on when exercise (this) power.

And we have mainly three outstanding questions that we need to answer. And I hope we can discuss this openly. The first one being, which would be original type for the community can see the budget before deciding to veto it.

Especially during their requirement that (unintelligible) the public consultation. So we need to find out how much time would be, of course, reasonable for us to review the budget that the board would publish. And then we exercise a veto of it.

Then the second question would be, which would be a reasonable time for the board, the time to consider the community objections to a budget or a strategic plan before there was some (whereby) budget.

So as we discussed, this would be a (terrative) process, which we would of course review what the board has come up to. Provide comments and then in that respect, of course, the board would need to revise and answer to those comments and then come back to us with revised budgets.

And the third question is a key question that also deals with the dependencies that we have with the CWG. And the question is whether we believe that the ICANN and the IANA budgets should be treated separately in terms of thresholds and a lot (meaningful) for the IANA functions based on the previous year's budget.

So with that, I would like to turn now to Jordan again to just take us through the general aspects of the (deeper) on budget veto, Jordan.

Jordan Carter: Thanks Leon. And this is quite a gory paper with a whole bunch of redlining in it. You have highlighted in your introduction one of the kind of key issues where - so this version of this paper was on - was discussed at WP1 18 hours ago. And they haven't been updated yet.

But where we still have a little bit of uncertainty about whether we need to call out separately the IANA budget or not. We're getting mixed signals on the emails from the CWG. So I think we need to keep that conversation going to resolve that one.

There was agreements to limit to round trips two vetoes in a row. But then there was a difference of opinion about what happens after a second veto. So

when you veto - if the community mechanism veto's the budget, it goes back to the board and the board has to propose or revise budget.

If it - if the community then veto's it again, a second veto, the question is what happens after that. Some people, including myself, have assumed that after that second veto, the board proposes a third version of the budget.

And if you run out of vetoes, there's nothing else you can do as a community using the veto power. You've had your two vetoes. The board has insisted. And then you can use the other community powers if you'd like. You can remove the board or you can remove directors, have your impact that way.

Other members of WP1 have said that actually what happens after a second veto, if the community doesn't accept the board's second budget, the corporation will continue on the previous year's budget for the entire year.

So the second veto doesn't then lead to a third and fourth proposed budget. It just leads to the caretaker budget, carrying on for the rest of the year. So I think we need some clarity about that.

I have a different recollection of it from (Steve) and from Jonathan. So Leon, it would be helpful to somehow just test the views of this CWG on this if you'd like.

Alternatively, you're welcome to lead us for discussion in the Working Party 1 meeting next week, because if you've read this paper carefully, you'll see that there are some - it's not worded in the most straightforward way at the moment. It does need a pretty clear redraft.

So we do need to know and answer that question about what happens after the second veto. So I don't have anything else to add to that.

Leon Sanchez: Thank you very much Jordan. So as you see the discussion or the key aspects to answer with regards to the budget is how many times do we want to give it a (round trip) for vetoing the budget.

And I see already Jonathan Zuck has is hand up. And Jonathan, could you please take the floor.

Jonathan Zuck: Thanks Leon, Jonathan Zuck for the record. Yes, I think to boil this down, the essential question is whether or not, you know, the board could outlast the community by simply continuing to propose the same budget until the community ran out of vetoes.

Or if there - or if it would be the prior year's budget that would prevail until something came about to change it. I don't know if it would be for the entire year because I guess the assumption would be that there would be some escalation of board removal, board member removal or some of the other tools that are available, kind of the tools that are available to the community that might bring about a new budget.

We're talking about limiting the number of round trips. That's a question of what happens when you reach that limit. And does the board win or does the community win, if you will? And that's essentially the scenario that we were trying to tease out in the last WP1 meeting.

And it was (Steve)'s any my recollection, and I don't know everybody else's from the chat. But the assumption was that the board would be stuck with the prior year's budget at the point of which the community ran out of vetoes.

Leon Sanchez: Thanks Jonathan. So what I'm hear...

((Crosstalk))

Leon Sanchez: Thanks. So what I'm hearing is that we would be leaning towards may be an unlimited number of round trips. Is that correct?

Jonathan Zuck: Well in further discussion, that limit on roundtrips has actually been called into question as well. Should there just be - should the community mechanism to preserve the prior year's budget simply be continuous vetoing so that there's always a chance for a new budget as opposed to being stuck, you know, with the prior year's budget for the remainder of the year simply because the community's run out of vetoes.

So the compromised, I guess, position between the two recollections in Paris is that you remove the cap on vetoes. And then the community has the ability to preserve the prior year's budget by simply continuing to veto the budget proposal from the board until such time the board presents a budget the community can live with.

Leon Sanchez: Thanks Jonathan. I see Kavouss has a concern that's been put in the chat box. And this concern relates to protecting the IANA budget. And I see some support for of course protecting the IANA budget.

So I'll see the...

((Crosstalk))

Leon Sanchez: Going larger. So next in the queue will be Mathieu.

Mathieu Weill: Thank you Leon. This is Mathieu speaking. I think when considering this question about number of iterations of potential vetoes, we need to keep in mind the thresholds for obtaining a veto, which is a two-tiered level of support on Round 1.

And then later it's three quarters, which means that if there was adverse consequences for the IANA budget for instance, obviously these consequences would be displayed up front, or at least after the first round of veto probably.

And so that would mean that these consequences would be accepted by the past - by at least two thirds of the community and then three quarter after that. And if we look at how our community votes are spread, that means that two thirds of CTNSO, GNSO, ASO, ALAC and then three quarter are the same vote against the budget.

And they will be aware of the consequences for IANA. And as a CCG early manager, obviously the IANA budget is of prime importance. And I guess the CCNSO votes if they go against the budget. It will be because there's a problem with the IANA budget, or I am aware, we are aware of the consequences for the IANA budget.

And if you look at ASO, I expect it would be similar. So with 50% of the votes being an accessory to get that veto, I think we should not be too preoccupied of a veto that would affect the IANA budget because it's going to be on the table.

And ASO and CCNO certainly won't get IANA budget into trouble. So I think we need to keep things a little simpler because we have high thresholds.

And avoid getting into too many complex details of giving the board the ability to have the last word in everything.

I'm more personally in favor of actually an infinite number of vetoes because of these high thresholds. And a budget that is not supported by at least 25%, which mean one ASO or AC to me is not a good thing for ICANN in itself. Thank you.

Leon Sanchez: Thank you very much Mathieu. Next on the queue I have Greg Shatan.

Greg Shatan: Thank you. Greg Shatan for the record. I'm wondering if in terms of trying to resolve this issue of two vetoes, infinite number of vetoes, whether we should give some consideration or more consideration to having some kind of a meet and consult requirement.

Or because it seems to me that this is - because there are issues with the budget. And we know - we're not giving line item vetoes. But clearly it seems to me that this is the kind of thing that could be worked out in discussions.

So, you know, and try to solve the problems. I'll expect frankly that even if we didn't put it in the document informally, there would be discussions that would, you know, hopefully take place. So that would result in some - in a mutually acceptable solution to take the language regarding the (jacket) price, which maybe we could even take here.

Because it seems to me that the idea of trying to lob in vetoes as budgets kind of back at each other is probably not realistic to think it actually could occur, but we should make sure that it can't occur. That there is as rational process of trying to eliminate the conflict. Thank you.

Leon Sanchez: Thank you very much Greg. Next I have Jordan.

Jordan Carter: Thanks. I just wanted to respond to two points. One is in response to what
Kavouss was saying in the chat. Kavouss, the draft does in fact say that this
process applies separately to the IANA budget.

And what I said in the intro was that we need consulting with the CWG to
make sure it says that in the right way. So I think we do need to keep doing
that, but the point is well made and definitely taken onboard.

The fact that it maybe isn't very clear in the draft is more ammunition for my
thinking. And I do - we do need to do a bit of an editing job on this paper
before WP1 deals with it next week.

In the other parts I wanted to review is to sort of review what Greg just said,
which was the idea of the discussion phase. I do think that all of these, you
know, with all of the exercise of these community powers, the idea we were
trying to come to in Paris was that there should be a discussion at the ICANN
community (unintelligible), whatever we're calling the community forum
before any of the powers are exercised.

So before there's a first veto, there should have already been a conversation
between the SO's and AC's. And that's, remember that forum will have all of
the AOCs. It won't just have the ones who are casting votes.

So it will be (in boards) and all of the SO's and AC's having a discussion
about why it is that there's these objections before the first veto is cased. So
no one is going to be under any misapprehensions.

And then if there's a second veto requiring even higher thresholds to deliver it that would also be preceded by such a conversation. So, you know, I think we should incorporate that in all of the powers. Personally I think that's where we were going. So that's about the sum of it.

In Work Stream 2 we can work on further improvements, discourse and dialogue there. So that will also affect for those who want to agree with the points of discussion and bylaws has to be part of these things, along with the hard edges of the powers involved.

Leon Sanchez: Thanks Jordan. And I think this clears Kavouss' concern. And I see that Kavouss, your hand was right after Jordan. And then...

((Crosstalk))

Leon Sanchez: So I'll go to you now Kavouss.

Kavouss Arasteh: Yes thank you. Paragraph 106 of CWG, after describing the dependency of the CWG to CCWG continues as follows. If any element of these ICANN level accountability mechanism is not implemented as contemplated by the CWG (stewardship) proposal.

The CWG (stewardship) proposal will require a revision, specifically the proposed legal discussion and overall CWG (stewardship) proposal requires ICANN accountability, so on and so forth.

In the GAC and several others, when we agree to the proposal of CWG, we made direct reference to this Paragraph 106 and we quoted part of this paragraph.

If by this overall budget, the IANA budget will be at risk because of the veto of the board after one time or two time and so on and so forth. We would have serious difficulty for the entire transition of ICG.

We need to either ensure that this IANA budget will not be affected or make a separation between IANA budgets and overall budgets to have different procedures and different tasks.

This is very important. On 29th of July, at 5 o'clock in the morning UTC, I would declare to the ICG that I am not ensured that this provision is valid. Therefore, I warn the ICG to put that unfortunately there is no guarantee that the IANA budget is ensured to comply with the CWG, therefore transition may not take place. Thank you.

Leon Sanchez: Thank you very much Kavouss. So I said I guess that apparently the paper does reflect that the IANA budget would be treated differently, independently with (separate) threshold of the general ICANN budget.

And the worst case scenario of mine would be that the IANA functions, however early in this case that the BTI would be functioning under the previous year's budget is the worst case scenario.

So I guess that this would somehow address your concerns and of course, the CWG dependency. But of course it gets the objectives into the (power operation) of this document. Next in the queue I have Greg Shatan again, Greg.

Greg Shatan: That's an old hand.

Leon Sanchez: Okay then I have Jonathan, Jonathan.

Jonathan Zuck: Thanks. Yes I just wanted to answer a couple of questions. I mean the cushion of escrows coming up in the chat, I just want to make clear, there's no scenario under which there is no money for ICANN.

All that happens in the context of a veto is the equivalent of what we call here a continuing resolution, meaning that the budget from last year just continues into the current year.

So this talk of escrow, et cetera, isn't related to the budget. Escrow is really to insolvency or not having enough money to run the IANA functions. This is just about the budget for the following year. So that's one point. There will always be money for IANA despite any conflict between the community and the board.

The second, Kavouss just to be clear is that the proposal you have in front of you right here and now separates the IANA budget from the general budget. So the thing you're suggesting has been incorporated into this current draft. The two of them are treated separately and should be addressed separately.

So I think both of those points are important. And it's just a question of, you know, how to break the deadlock to keep it from being last year's budget or the prior year's budget indefinitely.

And that was sort of the source of the question by limiting the number of vetoes, et cetera. But there is no scenario under which the budget for IANA is somehow not available.

Leon Sanchez: Thank you very much Jonathan. So we know that to provide guidance to the working party, I would like to just come to closure on what we discussed. And

I would like to just confirm whether we agree that the IANA budget and the general ICANN budget should be treated independently. Is there any objection to this?

Okay so I see no objection to treating and reflecting in the paper that the working party will be refining that the IANA budget and the ICANN general budget should be treated independently with regards to the veto process.

Then the second question or the second point that I would like to confirm (how to guide) Working Party 1 is that we do agree that even that we will be treating the IANA budget in an independent way and a separate way from the ICANN general budget.

We agree to have let's say an infinite number of round trips to the number of vetoes. Are there any objections to have an infinite number of round trips with regards to the veto process? Okay, so I see no objections to having an infinite number of round trips.

And then the next two questions would remain. And I note that there is an objection by Sebastien Bachollet. I believe that that refers to the infinite number of round trips to the veto.

So the objection is noted, but I think we have an overall agreement from the rest of the working group. So this would provide guidance to the working party.

So are there any other questions or comments with regards to the budget power at this point? Okay so now the only two questions remaining are the times for reviewing, either the budget and for the board to come back on their revised budget.

So here I would ask for your guidance on whether 15 days is enough for the community to review the proposed budget and 15 days for the board to come back with their revised budget. I see Kavouss's hand is up, Kavouss.

Kavouss Arasteh: The nature of the community, I don't believe that 15 days is sufficient. I suggest that (unintelligible) or increase the 15 days to 30 calendar days, 15 days is not enough. Thank you.

Leon Sanchez: Okay so 15 calendar days, I believe it's written doesn't stretch the timeline too far. But it also gives a little bit more of time to consider the budget. I see Jordan. Jordan would you like to react to that?

Jordan Carter: I just want to tease out the timing thing. So first of all, the budget won't have been a mystery in its genesis because there will have been a community engagement process in developing the budget.

Secondly, there are three time periods to think about here. The first time period is how long after the board announces the budget is there available to - for the SO's and AC's to petition to consider a veto.

And what we've said is that that period should be 15 days. So the first - the petitioning announced is supposed to be 15 days. And here I can't just find exactly the paragraph that that's in. And that's why we need to restructure this document so it's all in the right order.

And then what happens after the petition? So then the proposal was that there would be a period there for a discussion in the community forum and then a decision. So already with those two 15 days, you've got a 30-day maximum period from when a petition can be initiated.

So in draft that seems like long enough. And with adding sort of 30 days overall to the budget planning process. So those two steps are over the time period to petition, maximum of 15 days. If the petition happens that cause's a discussion there would be another 15 days for that consideration to happen and then a decision taken afterwards.

And my personal view is that we should standardize that three-stage process across all of the community powers so that everyone will easily know how it works. And we just need to get the language right on that as well. And I wish we'd had time to do that for this paper, but we haven't quite got it there yet.

Leon Sanchez: Thank you very much for this clarification Jordan. I think so you just want to know the times didn't become, I don't know, but rather they are tied to a process. And I see Jonathan's hand is up. Jonathan could you please take (unintelligible).

Jonathan Zuck: I guess what I was going to do was reiterate what I did say in the chat, which was that there was some concern raised about by (Krista Spain) that the budget was already stretched for timing.

And so that's sort of the context in which we're doing this. So trying to figure out, you know, these turnaround times is somewhat constrained. But as Jordan said, the other requirement that came out of Paris is that the objections to the budget would have to be based on issues that were raised in the community feedback process already.

So it's not like, "Well here's a new budget and now you have 15 days to review it and decide whether to veto." It's 15 days after it's already gone

through an extensive public review process in which issues were raised that the Board chose to - not to accommodate.

And so I - that's why a short turnaround time seems appropriate, that and overall the budget's already stretched in terms of its timing. So it's important not to let this drag on indefinitely.

Leon Sanchez: Thank you very much Jonathan and I'm closing the queue. We still have a number left and next in the queue is Kavouss.

Kavouss Arasteh: Yes. After the explanation of Jonathan now I understand. The total period for the review would be 30 days consisting of two 15 days. The first 15 days is for the petition.

The second 15 days is for the community to react, but the total will be 30 days - in my view is sufficient. We should not have longer than that one because if you have longer we have adverse affect.

But it is not mentioned properly or discuss properly in the text. We should say that the total period is 30 days consisting of two 15 days. The first is for the petition. The second is for the decision.

If that is it in that way the misunderstanding will be removed. So I apologize. I misunderstood it but now I understand after explanation if it is properly reflected in the text. Thank you.

Leon Sanchez: Thank you very much Kavouss. And we will ask the Working Party to reflect it this way so there is no room for misunderstanding. Next on the queue I have Sebastien.

Sebastien Bachollet: Yes thank you Leon. It's Sebastien. I just want to reiterate my point of view. It's very difficult today to have the budget voted at the June meeting of ICANN and it happens that it's pushed to - already to July.

And I don't think that I think they will help to have a best budget. We need to be able to have the community, the Staff and the Board working during the creation of the budget to do the work.

And I reiterate my point of view is that it's what we need to do and not to try to add the new processes in top of already very back edge and to create a budget. Thank you very much.

Leon Sanchez: Thank you very much Sebastien. So I think it's likely to cut this issue on the power plot to be doing and we still have some items on our agenda and very short time. So I would now move on to the next agenda item and turn back to Mathieu.

Mathieu Weill: Thank you Leon. Mathieu Weill speaking. This item is about the community mechanism, which is basically a common point of all the powers. And I think we have considering the time we have left and the remaining items to be discussed to probably focus on one item that is of importance for the remaining of our work and was mentioned by Kavouss earlier, which was the name of this group. But Jordan would you like to introduce any other topic on this one?

Jordan Carter: No.

Mathieu Weill: Okay so that's - I think we have - you've used in your group the ICANN community assembly type of wording. We've been using community...

((Crosstalk))

Jordan Carter: Yes and there's been a number of names floating around: community council, community forum, community assembly. You'll remember I think at the end of the past meeting we were trying to be clear that this would jar a discussion forum able and aware of the decisions of the - a certain - I see have been made, the voting ones that form them and it does include all of the SOs and see it's not only the ones with votes to the forum for dialog. The four powers are an exercise.

Mathieu Weill: Thanks Jordan. And I want to turn to Kavouss but probably what we could do would be to test the waters on the potential names so that we can provide clear direction for the drafting and avoid a lot of rewriting at the end. Kavouss?

Kavouss Arasteh: Yes it could - did I understand it correctly that we have community mechanism as a sole member model and then...

Mathieu Weill: Yes.

Kavouss Arasteh: And then we have ICANN community assembly. They are two different things, right or wrong?

Mathieu Weill: So the assembly or forum is a group where people meet, while the sole member is the legal construction that passes on the message as the sole member of ICANN, but they're two different things.

Kavouss Arasteh: So the ICANN community assembly is the coverage under which this community mechanism sole members and so on and so forth - they meet and decide.

If that is the case we should have some explanation or some title and explaining title ICANN community mechanism, and underneath of that we explain that the community mechanism as the sole membership or sole member is under that and so on and so forth.

We don't have any more - anything about forum, nothing about council. We have one single definition, one single term: ICANN community assembly. Is it a correct understanding or misunderstood?

Mathieu Weill: Jordan I want you to respond.

Jordan Carter: A mix Kavouss. You're right that we will only refer to the ICANN community assembly or whatever it is that we choose to call it. We want one name and absolutely no confusion.

But it is not the body where the decisions are made. All of the decisions are made by the four or five or however many SOs and ACs have the power to cast the votes, and the decisions are made by those SOs or ACs according to their own processes.

What the forum does is bring all of the SOs and ACs together to have a cross community discussion a little bit like this CCWG before any of the powers are exercised.

So it's the cross community collaboration and discussion about these accountability powers, and that's what the forum is for. That's what the assembly is for.

Sorry. I should use the single language unless we are changing it. So we need to have a separate section in this part of the report and we will do that. At the moment it's a paper that hasn't been finished yet for WP1 to discuss.

So if we can keep at this point the discussion as Mathieu suggested just to what we want to call it, that will be good because then over the weekend we can update all of the drafts so that we've just got the one label.

And we'll have a paper for the next meeting that sets out the details of what the assembly is and does.

Mathieu Weill: Thanks Jordan. Very quick one and then Kavouss and then we'll test the waters using the AC room so prepare your green or red ticks.

((Crosstalk))

Kavouss Arasteh: It's fair enough - the explanations? I understood this is something that Malcolm proposed in Paris as community forum and now we call them ICANN community assembly.

Is the arrangement before community decides on something and so on so forth some source of consultation but is it properly explained or - and/or discussed? If that would be the case I have no problem. Thank you.

Mathieu Weill: Thank you Kavouss. We will do that. Alan?

Alan Greenberg: Yes just - I just wanted to clarify what Jordan said. All the ACs and SOs - it is all the ones, not just the ones who are participating in the community mechanism and that's an important thing that came out of Paris and we don't want to lose so just clarity. Thank you.

Mathieu Weill: Thank you. So I'm not going to ask for preferences but rather objections, so can I get red ticks for anyone objecting to the term ICANN community assembly in the AC room please?

I'm seeing one from Samantha. Now please reset. Is there - would there be any objection to the term community forum? Red tick please. Red crosses. Sorry.

And that's Sebastien so I think - and Alan. So I think Work Party 1 can work something out and that's not going to be our most difficult decision to make.

And with that I will now thank Jordan for the tremendous amount of work that has been done with the Work Party 1, and encourage him to still continue because a lot remains to be done and move on to Thomas where we try and address a bit of Work Party 2. Thomas?

Thomas Rickert: Sorry. I was talking to a muted microphone. Yes in this next agenda item we're going to talk about the mission and the core values. And so that's being taken care of by Becky and I would like to ask Becky to show us two of the recent changes that have been made to the document.

Becky Burr: Thank you. Okay this is - we have - I think we discussed this earlier this week. We have done some revisions pretty much meant to clarify. The changes here are just in - on Page 1 are just wording changes, which we discussed on Tuesday.

The changes in that ICANN shall have no power to act other than in accordance with and it's reasonably appropriate to achieve its mission.

Following that call we decided that necessary might be too constricting, and so appropriate to achieve its mission was the proposal from W Party - WP2.

There are no changes in the balancing provision for much - we - what we talked about. The human rights issue remains open and there are strong feelings from some participants that the sentimental bylaws should include an obligation for ICANN to consider the impact of its policy actions on sentimental human rights.

And there are equally strong views on the other side that believe first of all there is an obligation to comply with sentimental of human rights that is imported through the involvement through the reference to ICANN's obligation to comply with international law.

And second that while this is an extremely important topic that deserves appropriate consideration, we should create - we should do that as part of Workstream 2.

So that issue remains open. There are no further changes in these provisions. These are provisions that we talked about. A couple of issues in this construct about while remaining rooted in the private sector, one, the Work Party 2 intended to clarify that the reference to private sector, which has been historically in this document, is inclusive of not only business stakeholders but civil society, the technical community and academia.

And the - there's language about the responsibility of recognizing that governments and public policy are responsible and public authority is responsible for public policy within their jurisdictions.

And then in response to the very strong concerns that we heard from members of the GAC in particular regarding ICANN's obligations with respect to the advice of governments and public policy, we have tried very hard to come up with a solution that addresses those concerns, first of all that we remove that language from these bylaws so that advice - the duty of ICANN to work cooperatively with the GAC-defined solution, a mutually acceptable solution, remains in place in all accounts.

Nothing diminishes that obligation. But we clarify in the Shapo, the General section of Article 11 that applies to all Advisory Committees, that ICANN has no authority to act or refrain from acting in response to a device that would - where such advice would require ICANN to exceed its mission or violate these bylaws or where the Advisory Committee has not provided a rationale for its advice, that additional - providing a rationale for its advice if the language from ATRT 2, which obligated ICANN and the GAC to work together but which asked - recommended that ICANN and the GAC work together to develop a mechanism for the GAC to provide a rationale for advice at the time it's published.

We've checked that and it doesn't seem to have progressed at least as far as the scorecard that I was able to find. Or - now let me just say again this has nothing - this has no impact on ICANN's obligation to work cooperatively with the GAC to find a mutually acceptable solution in the event that ICANN elects not to follow the GAC advice.

And that includes discussion and working together to provide a solution when ICANN feels that complying with the GAC advice would require it to exceed its mission or violate its bylaws.

So the goal and I think a goal that has been achieved is that it has absolutely no impact on the GAC's special status regarding the advice and the mutual - mutually acceptable solution.

It merely articulates what we all believe is a current state of affairs that ICANN has no authority to act or refrain from acting in response to advice that would cause it to violate its bylaws.

We have heard from some people that this should apply across the board, not just to Advisory Committees but to Supporting Organizations, which I think no one particularly objects to.

And so the two issues that remain then as I said are human rights, whether there be a specific reference to ICANN's obligation to consider its human right impact and whether that should be a Workstream 1 issue or a Workstream 2 issue.

And then the second is the proposed solution to address the concerns we heard in Paris regarding the language - the proposed changes to existing Bylaw Core Value Number 11.

Thomas Rickert: Thanks very much Becky. I guess that's very helpful. With respect to the first topic - and I would suggest that we discuss these points one after the other.

The first open topic is human rights and then I would suggest that we take note that - of the interim findings as well. So I think we should put explicit language into our report that the question of human rights has been part of this group's deliberation.

We should put into the report that our group is willing to work on this and will not put it on the back burner. We should as you did in this report but maybe we can little - be a little bit more explicit into the report that the reference that is the major international law is understood as being a reference to human rights as well so it has indirect reference in the bylaw.

I guess what the group has not decided or answered at this stage is whether explicit mentioning of human rights should be made in the bylaw. The mechanism for our deliberations is that we are working on changes to ICANN's current paperwork.

At the moment you do know that there is no explicit mentioning of human rights, which is why I think the appropriate way of finding a way forward is to check whether the request to put human rights explicitly into the bylaws is promising to get consensus.

So far I think Avri has been leading on that topic. I think two other individuals in this group have supported it. I think we have seen more or heard more in the group speak against it in terms of timing, making our work more complex at this stage and also expressing the wish to understand better what the implications of explicit mentioning of human rights are.

So I would really like to check with the group whether there are additional support for such language to be included beyond the ones that have already spoken up. Robin's hand is - where is Robin please by the way?

Robin Gross: Hi this is Robin. Can you hear me?

Thomas Rickert: Yes we can.

Robin Gross: Okay so I would like to propose that we not put human rights into Workstream 2 entirely. I mean, we have to sort out the details there but I think we - what we can do in Workstream 1 is just provide a simple commitment to fundamental human rights in ICANN's policies and operations - the whole stuff.

And that's what we should put in in the bylaws. I think that might be a compromise that could address some of the concerns about the need to explicitly call out fundamental human rights and the concerns about - that some of the other calls may go too far.

So I think that that might be a compromise that we could live with. Thank you.

Thomas Rickert: Thanks very much Robin. Before we move to David let me just note that Sabine has raised concerns with that potentially not being very simple and then supporting that. Next in line is David.

David McAuley: Thank you. Excuse me. Thank you Thomas and I think as you know from the discussions in WP2 this gets - this is going to take some time. I am one of those who believes that this should be put in Workstream 2.

And the reference that Robin suggests I think has got repercussions that we don't know about, and this takes time to sort this out. It is important. I agree with Avri and Robin.

It's extremely important. There's another Working - there is a Working Party in ICANN that's working on social responsibility and is - and human rights.

And I just think that ICANN is not currently a hotbed of human rights violations and that this takes time to consider the implications of this language.

It's absolutely appropriate but a simple statement like that could carry deep repercussions that we just simply need to think through. Thank you.

Thomas Rickert: Thanks David. Greg.

Gregory Shatan: I'll be brief. I agree with David and it's being said in the chat. This is not simple. This is complicated and this is something that I think requires due study and deliberation, and I think it's an appropriate subject for Workstream 2 or perhaps for a separate body but given that we have this body we might as well use it in Workstream 2.

I do not think it's an essential part of Workstream 1 and we have much to learn and to discuss about this issue. Thanks.

Thomas Rickert: Thanks Greg. Kavouss and I'm going to close the queue after Kavouss.

Kavouss Arasteh: I think what Robin proposed is acceptable. It will be a pity and disappointing that CCWG start to modify or amend bylaw, and in that new bylaw there are many, many things.

There is no sign or no reference to human rights so we have to mention that. The way she proposed is absolutely right - does not have any provisions. In fact it increase the image of ICANN, increase the image of community that this important element has been recognized by everybody.

However the detail of which it requires further analysis and discussion - that will be on Workstream 2. But we have to mention some minimum elements or reference to that very important - otherwise we will be criticized that we do many, many things but we forget to recognize one of the very important element that every organizations these days are talking about. Thank you.

Thomas Rickert: Thanks very much Kavouss. I mean, obviously we have different views in the group and that if something needs to be included in the bylaws in this - so what needs to be included?

Let me also say that I have heard no one speak against - of this group dealing with the question of human rights at all. So this is about whether language should be included - explicit language should be included in the bylaws in this very first phase.

Even at a later stage once the group has done more in depth assessment of the impact of fundamental human rights or human rights, there tends - to a bylaw change.

As I said at the outset of our discussion there is, you know, the way we would operate is take what we have and add to it or amend. So currently there is no mentioning of human rights explicitly in the bylaws, and I would really like to test the waters whether there is sufficient traction for continuing that debate right now.

Again we are clear and that's I think common ground. It needs to be worked on. I think nobody is against the inclusion in Workstream Number 2. Nobody - I've heard no one being against providing a rationale for this - highlighting the importance of the topic.

The question is do we put it in the bylaws at this stage? So I would really like to do a straw poll to test the atmosphere in the room. Can we please go to the Adobe section where you can agree or disagree?

And can you please indicate whether you agree to explicitly mentioning fundamental bylaws - fundamental human rights in the bylaws at this stage? If you do not want it included, i.e., maintain the status quo of not having it explicitly mentioned please use the Disagree button.

So we have 49 people in the room. Can I please ask that more of you use this polling mechanism? The audio is still working but I just want to give it a little more time for people to find the right button in the upper left section of their Adobe room to indicate their support for the inclusion of explicit language or their disagreement with that inclusion.

So at this stage we do see substantially more disagreement than agreement. All those that wanted to vote please do participate in this poll. I should not say vote.

This is just to indicate where we should add more valid discussions. So there is much more traction for not including it at this stage. Avri you had introduced the topic - had indicated that she considered whether to file a minority statement for the report, and certainly that is the perfectly legitimate request and we will honor that.

I will discuss with the Co-Chairs but I think there is not sufficient traction for us to make explicit reference to human rights at this stage. I would - nonetheless, you know, I will not repeat but I will make reference to the interim findings that I highlighted that indicate that this group will deal with the question of human rights.

And maybe Avri would be willing to assist with that so that we make sure that it's been done for us in a timely fashion. Kavouss I'm not sure whether that's an old hand or a new hand.

Kavouss Arasteh: And so temperature of the room perhaps might be a strategy different if you say that is there any objection to make the minimum reference that human rights is an important and fundamental issue to be addressed, and that will be addressed in the Workstream 2.

Is it at least something on the beginning of the bylaws or somewhere - introduction, forward or, you know, preface or something that - not totally forgetting and not put in the report.

Is it then raised at - as I said it's not in an explicit provision of bylaw in the beginning of the bylaw preface or introduction or something. There might be defined room for that. Thank you.

Thomas Rickert: Thanks Kavouss. You - if you go to the transcript you will find that I have summarized that we will include such rationale, and I think it's not appropriate for us to reintroduce a straw poll which will likely not to lead - not lead to any other result at this stage.

We have 15 minutes past the top of the hour so we're already in overtime. Nonetheless I think it's important for our group to have closed this part of our discussion.

I'm cognizant of the fact that we need to revisit the question of advice and whether we reflect it in the bylaws. Nonetheless I think we should end this

call now and continue the conversation on the other matters that remain to be on the agenda in next week's call.

I would like to turn to the Co-Chairs and give them the opportunity to make any last observations, but in the absence of those I would really like to end the call and not take more of your valuable time.

You've been very generous staying on with us today. Thanks so much. It's been a very productive call. Let's keep up the working spirit and talk to you at the next call. Bye-bye everyone.

END