

ICANN

Moderator: Brenda Brewer
July 22, 2015
2:00 pm CT

Jordan Carter: And we're going to work through the agenda that's presented there and make sure we save five minutes at the end to agree what we need to deal with on the next call on the 27th of July.

And if we haven't completed the (unintelligible) before then, we'll just cut off and sketch it into our next call. The reason that we're trying to get through as much, again in this call is that the draft report will go over the weekend for view by legal counsel. So the more text we've got in a recently (status state) to put through to that, the better.

So we'll just start off with Item Number 1, which is the community model, and that text is on the screen. That was drafted by Bernie and by Grace. And has had some comments from Alan as well.

I'd like to start just by asking Grace to do a brief introduction to the text there. I'd also like to know an error that happened in the circulation of these documents. The red line version of this paper that I circulated about 24 hours

ago included some text on the voting weights and the nature of the ICANN community assembly (the title were caused) by the staff.

But the PDF and clean versions didn't conclude that. So some of you may not have seen that content before I circulated it separately about seven or so hours ago. So I apologize for that, but we'll do them in three chunks.

We'll do this paper that (unintelligible) first and then we'll look at the other paper that's got the (unintelligible) community forum. So Grace, would you like to just briefly present this in summary?

Grace Abuhamad: Actually Jordan, I'm going to turn it over to Bernie. He's got the better summarizing skills here.

Jordan Carter: Okay, Bernie go ahead.

Bernie Turcotte: Thank you. Really we had a read that the version from the previous public consultation. And we thought that, you know, this is going to be one of the key elements that people are going to want to understand because this is where the powers are going to be exercised.

And so we felt it was worth the effort of trying to create something that would be easy for someone who may be hasn't been following this as much in depth as those of us who are in the middle of it to understand exactly what's going on.

So the first strategy was trying to adjust the version of the text that was fairly similar to what was presented in the last public consultation. And at the thinking behind that is that it makes the translation job a lot simpler.

After trying that for about half a day, basically we said no that's not work. So we'll give a try at taking another approach and just simplifying it with the notion of trying to make it understandable to the average person who comes at this a little bit colder or without a lot of experience about what we're doing.

And so we thought that we beat up on it and came up with these two parts which we hope make it more understandable to the average person. We've tried to keep all the key elements that were there originally and had to be put in because of the developments since Paris.

So that's my short intro to why we've ended up here. And we're suggesting this to the group.

Jordan Carter: Thanks Bernie. And Grace do you have anything you want to add to that summary? Any particular points to point out?

Grace Abuhamad: No. That's all from our side.

Jordan Carter: Okay. From my point of view, I asked you guys to send us through and send it actually send it on your behalf because I thought it was a great first draft. We will (unintelligible) our call when we get to (unintelligible). So (unintelligible) because he's written a few comments in the version that's in front of us.

So I'll get him to talk to those. But I thought it did do a good job of describing the paper - the model. And like all of the rest of content that's available at the end of the week, it will go to the lawyers for review over the weekend.

So the aim of this discussion on the call operates to agree that this text is ready for review by the whole CCWG tomorrow. It's not (taken) a final, final sign off.

So with that, Alan, would you like to take the floor and just note there the comments that you raised here and sort of explain them more? If you think they're self-explanatory, we can just have a general discussion. So go ahead.

Alan Greenberg: Okay thank you very much. This was done late last night and I, as some of you may know, I was somewhat preoccupied with something else that is still keeping me busy. So it wasn't done with as much care as I might have wanted it to be.

In any case, the - let's just scroll to the beginning and see what the changes are - comments. The first bullet on Page - there is no page numbers. The first bullet in the second section on Page 2 where it says talking about the community model.

Saying it provides legal enforceability when the empowered designator does not. My recollection is that's incorrect. The designator provided enforceability on everything except budget and strategic plan veto. So just for accuracy we should make sure that is - that's correct.

Jordan Carter: I suspect it's a wording winkle there because I think I expect what the staff meant by that is that it provides the extensive legal enforceability for the completeness and legal enforceability. Grace, Bernie, do you want to respond to that? Is that...

((Crosstalk))

Bernie Turcotte: I don't think we need to give and take on it. Yes, I'm sure it just was not worded carefully. But as it is right now, it's a little bit misleading. So we don't

want to be accused of pushing the argue - pushing the model in one direction or another based on something which is inaccurate so.

Jordan Carter: Great okay.

Alan Greenberg: The next one is just the - a mention of the unincorporated - that the community model will be - would use unincorporated association given this type. Just the lake which is not very clear, especially if you're not a native English speaker. So I'm suggesting some alternate words.

Jordan Carter: Okay Alan.

Alan Greenberg: Yes I'm trying to look. The beginning of the next page, yes, it often occurred to me that which members participated and which didn't is a bylaw, is something that has to be included in the bylaws. Maybe I just didn't think it through clearly, but that wasn't a given to me. But if it is, then the wording is fine. If it's not, then we may want to revise it just slightly.

Jordan Carter: That's an important point. My impression was that we would need to state it there. And that if there was a new SOAC joining in a voting manner, then doing that would be a bylaws change.

Or if not that the bylaws would still provide a kind of formula for people's participation.

((Crosstalk))

Alan Greenberg: I don't have any real objection. I was just thinking of it, you know, in a regular membership model, the list of members is not in the bylaws. You know, it's essentially, you know, pointed to in some ancillary document.

And I was just thinking of it in the same way. But it - the wording here may well be correct. I was just pointing out that it was a new concept to me when I read it.

Jordan Carter: Okay thanks.

((Crosstalk))

Jordan Carter: And Bernie is going to confirm and Holly said will set that, you know, legal on that. So carry on.

Alan Greenberg: The next couple of changes are not - I was just putting the text in there to show the language that is normally used in our current bylaws. It's always a greater than percentage.

And we - as Bernie had indicated in another message, we have some work to do to decide what the thresholds are. So this may not be the appropriate language. But I just wanted to do a level set of if we can, we should try to use language which is similar to that already used within the bylaws.

We don't want to be in a position where, you know, some things are two thirds, some things are greater than 60%, some things are at least, you know, are equal to 75%. So we should try to be consistent. That's all.

Jordan Carter: Yes. That's a point on that Alan that we have to be consistent on that across the whole draft.

Alan Greenberg: Yes. Now we may well find that if we use 75, we do not want to use greater than 75 because that would imply a single AC or SO could veto. So, you

know, depending on the numbers, it may have to be equal to, but it would just need to be clear. And if we can, we should use the standard language.

Comment that in the last paragraph of the main text is talking about that we may have to go to an IRP or legal proceedings. Again, we're talking about an organization that doesn't have any money of its own.

So if we think there is the potential for doing something like that, we're going to need provisions in the bylaws that ICANN funds these kind of things. And that most preferably the money is held in escrow, you know, so that there's no dispute at the time about whether the money can be freed so we can actually take action against the organization.

Not nearly as onerous as we were talking about before where there were a member - where there were many members, but still an issue.

Jordan Carter: I think that's a suggestion that we should leave flagged for the CCWG to discuss as a whole. Of course, it makes sense. But thank you for that suggestion.

Alan Greenberg: And the last point really is talking about thresholds and stuff. And we'll be talking about those into more exhaustion later on.

Jordan Carter: Yes. Okay, so I want to thank you there Alan for that. Aside from those comments and drafting improvements, so we've got a few things to improve and correct. Does anyone have any other sort of comments about this draft or just a general speaking list? Robin your hand is up, so please go ahead.

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

Jordan Carter: Yes.

Robin Gross: Okay so I have a question about the draft that had been circulated because it talks about the (I) community assembly and about SO's and AC's appointing people who would it then cast the votes on behalf of the SO's and AC's.

But I think that's different from what legal counsel presented to us in Paris, which was that the SO's and the AC's votes would be cast directly by the participants within those SO's and AC's.

So I'm wondering...

((Crosstalk))

Robin Gross: Did the draft go by legal counsel or?

Jordan Carter: No it hasn't. And the one that you're talking about, the one that you're referring to is the next paper that we're going to discuss. So if we can hold that topic until we get on that sheet of paper.

We did agree...

((Crosstalk))

Robin Gross: Okay.

Jordan Carter: A group of people doing the voting that the votes would be mechanically passed by the decisions of the SO's and AC's. And that the community forum is more a place where the powers are debated and tested before the SO's and AC's go and make their decision. So you're right.

Robin Gross: Okay. I will hold off. Thanks.

Jordan Carter: Yes. Thanks Robin. Alan your hand is up.

Alan Greenberg: Yes. It - what Robin said reminded me of something that I think we have to be very careful that when we say SO's and AC's we are talking to different constructs.

The ALAC for instance is roughly comparable to the GNSO Council. At Large is comparable to the GNSO itself. So we're to some extent mixing metaphors when we, you know, when we're using the term SO.

And we may want to consider using SO Council, which is the body that normally makes decisions or passes on decisions from the component parts, because saying the GNSO votes is really a message - is really a phrase that doesn't make a lot of sense in its own right.

So although we've been using SO's all the way along in this process, technically it may not be the correct term. So just something to think about. I'm quite sure what the right answer is, but I think we need to be aware of it. Thank you.

Jordan Carter: Yes Alan, when we're referring to a decision maker, we need to specify the right one. And we've said as a principle that each SO and AC should be able to sub-divide it so it's between them if it wants to.

So at this point we don't know exactly whether it will be for instance the GNSO Council making calls for all of the votes, or whether it will be sub-units within it.

Alan Greenberg: It's more than that if you look at the CCNSO. The CCNSO makes some decisions by a vote of the CCNSO Council and some decision by a vote of the CCNSO members.

And it's its choice which it uses at any given moment. But it's the Council's choice.

Jordan Carter: Yes, so we do need to get that specific specificity sorted out, right. James your hand is up.

James Gannon: Hi, James Gannon, very briefly, while I understand where Alan's come from, I think we need to leave decisions of that nature to the SO's or the AC's themselves as to what body they wish to use in order to convey the voting mechanisms.

And I don't believe that it's for us here. Neither the work party nor as the CCWG to decide. It must be the GNSO Council or if the GNSO as a body wishes to push that down into our, you know, greater membership, then that's I believe something that we should be fully within our rights to do.

And I don't believe that it's for even this work party or for the CCWG to dictate that.

Jordan Carter: I don't think anyone would suggest otherwise. I think it's just the point that we need to at least be clear that it is the (counts) of the SO's and AC's that will make the decision about the allocation of both (slides).

And once have done so, the decision making may lie with the council itself or it may lie with some other sub-units because it seems to be clear about explaining that. And Alan you've got another hand up?

Alan Greenberg: Yes, just a further on that. The point is well taken that we can't make the decision, but we need to make sure we are consistent with the bylaws as what is it that the decision-making part of that body.

And it may be clearer in the bylaws. It may be fuzzy. I'm not quite sure. But we just need to make sure that it's consistent. So there is a bit of research that has to be done. Thank you.

Jordan Carter: Yes. And that will happen as part of the diverse drafting process. Okay, so I'm not hearing any opposition. I think this is a good paper. I think the discussion we've had has helped clarify it.

So with your permission folks, I'd like for us to move on to the next bit of this text, which is the voting weights and community forum part of the paper. So I would bet that's up here on our screen.

This one they've had a little bit less reading if you haven't seen it yet. Is that going to appear on the screen for us staff?

Woman: Yes just one minute please.

Jordan Carter: Cool. So while (unintelligible) set up the basic allocation and votes between the SO's and AC's. So five votes per of the (first betting) groups. And then it goes on to talk about the community forum notion which staff has suggested could become the ICANN community assembly.

And as we've already discussed, I think that this draft text may represent that as a body to which (pointers) and make decisions. So I think the consensus that we came to in Paris was that that wasn't quite the case.

That in fact, it would be an assembly where the community does discuss the (civilian) of the community powers before the decision making bodies exercise their votes on them.

So (unintelligible) a discussion forum that pulls some kind of the SO and AC silos and makes them discuss. And also importantly that forum would include all of ICANN's SO's and AC's.

And so it would be a forum where the GAC advised the community on public policy implications (unintelligible) was considered where the SAC advise on (stability) issues where (unintelligible) the impact on that.

So this would be comprised of every SO and AC and presumably some board members as well. But for the start, again Bernie or Grace, do you want to just run us through quick and show us what's in this three-page text?

Grace Abuhamad: Jordan this is Grace. Bernie and I didn't have any writing onto this part of the text. So it may be someone else. Probably Alan?

Jordan Carter: Alan go ahead.

Alan Greenberg: I can't really speak to it because I haven't read it. I will note however that it starts off introducing the concept of five votes each. And that was already mentioned in the previous paper. So we want to make sure we are not introducing these at two different times with the potential for like two different slants to it.

But I haven't really looked at this in any great detail. So I can't speak to it unless you want me to review it very slowly.

Jordan Carter: Okay, well I have read it briefly. I'm a bit confused on that because I didn't write it, Alan didn't write it and it came in the document from you guys. So we've got a mystery writer on our hands.

Alan Greenberg: Hey Jordan, I did lie. I did read it because I believe somewhere it says - I remember reading, and maybe I even remarked that it says the ICO, there are votes within the ICO. And that very clearly was not something that we decided in wherever we were, Paris.

Jordan Carter: Yes. Yes, we need to definitely just clarify that language so that we're not (missing) anyone about. So that means that some of the bullet points on the second page of this document will need to change.

And so that it clearly refers to decisions being made by the SO and AC and their own decision making forums. So we'll take that (unintelligible). Bernie do you want to go ahead?

Bernie Turcotte: Yes. We were looking at this. I think that was some left over text that may have been in one of the versions we circulated. We didn't want to touch that until we finished cleaning up the voting.

And, you know, we've been working on that part. So we'll be taking a crack at that, trying to integrate it into the same style as the previous text. But we just needed the information to be a little clear on this stuff. So we can probably give it a try now. Thank you.

Jordan Carter: Okay so it's a remnant draft that wasn't intended for circulation. Is that what you're saying?

Bernie Turcotte: Correct.

Jordan Carter: Okay, well that makes considering it real easy. The answer is probably that we shouldn't. But we will - I'll just take Alan's hand at this point.

Alan Greenberg: Thank you. The document has disappeared, but when we're doing this, I think we need to be clear that the I the - I like the name, the ICANN community assembly, by the way.

We need to be - it's got to be really presented in a different section from the voting mechanism to make it really clear it's different. And it needs to be explicit that all AC's and SO's can participate in the ICA, not just those who are empowered to vote.

That was a really important thing that came out of the discussions in Paris. And that's all I have on that.

Jordan Carter: Thanks Alan. And for what it's worth, I completely agree with you. I honestly don't think that we should keep discussing the text if we've been advised that no one has taken it such worthy for it being a draft. And it's ready for us to discuss.

But I think that we probably should talk about the voting weights. Can someone remind me - Bernie have you circulated a paper on that? I'm a little bit behind on my email.

Bernie Turcotte: Well we've circulated a paper for discussion among certain people to see if it made sense relative to that. But I don't think we've circulated it at large. It was sort of a test to make sure people were in agreement.

Jordan Carter: All right. Well look, I think what we're going to have to do is hold that the voting weights and community forum discussion until our next call because we don't have consolidated text to look at.

And we haven't got information that members of the working parties have been able to consider. Is that a reasonable approach people? Does anyone have an alternative to suggest? Bernie is yours an old hand or a new one?

Bernie Turcotte: Old hand.

Jordan Carter: Okay. All right, yes I'm sorry about that. I thought that the text had been revised. But I think we now understand that that isn't the case. And we'll need to do - hopefully over the next 24 hours we can get out to the working party to look at an updated text on the assembly - ICANN community assembly.

And on the voting stuff for reading and considering of the weekend and for legal to review separately over the weekend as well. And for us to discuss at our meeting on the 27th.

While it is getting a tad late in the tooth, we don't have a choice about that process I think. So thank you for the work that went into that draft and people. And look out for some more reading to come.

We'll move on to the next item, which is the fundamental bylaws paper. And now I think I saw in my email that Grace, you made a couple of changes to this paper. So if that's correct, and assuming it is correct, the nature of that

change I think is that we've had these fundamental bylaws split over two section.

We've had a section that explained what they were, how they get established and so on. And then later we've had a section in the community power as part of the report that was really brief, so three or four paragraphs.

And simply set out that it was a community co-decision power to allow for any changes. But it doesn't seem all that sensible to have this discussion in two different places. It creates the risk of confusion.

So we're kind of considering putting them all in one place. And I think that Grace circulated that paper to that effect. So I think that I cannot scroll that that's what's on the screen in front of us now.

So Grace, did you want to speak to that first and just introduce what you've done with that? Or should we work through the text?

Grace Abuhamad: Yes thanks Jordan. This was something that I worked on. Basically you summarized it properly. We merged Sections 3.2 and 5.4 into one large Section 3.

And really all it meant was on Page 4, which I'll show you in a minute on Page 3, it meant adding the community power into the fundamental bylaws section. So that's an additional five paragraphs to what the current Section 3 looks like.

And I guess at some point we have to look at how to make reference to the fundamental bylaws in the community power section without having to rehash the whole, you know, that part of the text.

So is that how we want to proceed, you would have all your fundamental bylaws in Section 3, including the community power. And then reference the community power in Section 5 where you describe the four other powers.

So it's up for discussion with the group, but I thought it was worth the offering and idea.

Jordan Carter: Thanks Grace. To me, the way - so we'll write that sort of introductory paragraph, what you do to the community power section anyway because you'll remember in our previous report, we had the community mechanism flying on into the powers.

But this time it's a likely decision I think then on the structure basis that we're working on for drafting that we'll keep them separate. So it highlights the powers and the mechanisms are separate things.

And we can just refer to this and that. So the cross-referencing thing is in the problem. Grace, are there other changes to the substantive text here? Or are they - or not? Would that be the main shift that you've done?

Grace Abuhamad: No. That's the main shift. The rest of the - I made a few small proofreading changes, but no substantive changes other than moving the section in.

Jordan Carter: Okay. And the other thing that I should flag at this point is that I, as requested by the CCWG meeting, have approached the CWG for their comments on whether the separation process and the post-transition IANA governance should be included.

And their discussion has been that it should. And I think Grace, this is looking at the list at the top of Page 2. Is it at the top of Page 3 of our paper? And the (unintelligible) and the CWG have proposed some language on there.

And I Grace, if I might, you've already incorporated and summarized that in Bullet Points 5 and 6. Is that correct?

Grace Abuhamad: Yes that's correct. Yes. They were changes that you had removed and I had put them back in based on the comments from (Sharon Sibley).

Jordan Carter: Okay. So everyone, this text has been reasonably stable for a while. There is once again the, you know, you've seen changes, versions over the time. I'd ask for any kind of general comments on this. And Steve, I see your hand is up, so please go ahead.

Steve DelBianco: Thanks Jordan. On Page 3 where we discuss whether Article 18 goes into the fundamental bylaws. Apologies if I missed this earlier, but the discussion there may seem as if that this decision was reached because it there is no current intention to move ICANN's headquarters.

That's not what that whole section said. The analysis of bringing the affirmation into the bylaws on 8D looked at the articles of incorporation, and it looked at Article 18 and suggested that they already have the requirement.

So the reasoning, not to make it fundamental, is not going to do what we think ICANN's intentions are. It's not fundamental because the public comments didn't support it.

And I would definitely put in this section the very same text we used to describe what's in Article 18 and what's in the articles of incorporation. Thanks.

Jordan Carter: Thanks Steve. That's a good point. And would you mind if we created an action point of view to the (ASF) staff after this call just to make sure that that happens. And that appears as their tracks change in a refreshed version of this that gets circulated to the list. Thanks for getting back Grace.

Steve is referring to the two paragraphs after the list of things that will be fundamental, just above the heading for 3B.5 on Page 3 of the PDF. So he's arguing that in the second of those paragraphs that the rational isn't set up correctly.

So if you two could (behave) on that, that would be great. Thanks Steve. Is that a new hand Steve, or your previous one? Previous one, brilliant.

I'm just trying to remember what it was that I was suggesting we were going to try and get out of this discussion. With - aside from that change, are people happy for us to kind of consider this a stable text ready for CCWG?

That has already been discussed I think on the main call. But I think we'll treat it that way unless there's any other kind of hands raised. It's looking okay by me.

And that also seems that we're happy to have this in - the bulk of this text in the one text. So we'll have a reference to this as the sort of power and the summary part of the powers section of the report. But we don't have the four or five paragraphs that were already there.

So I should keep an eye out for a track change of that paragraph about the location. And otherwise we will carry right on. Thanks Steve and staff team on this one.

And the next item on our agenda is the standard bylaws. And Izumi is with us on the call. She is. And so Izumi circulated a revised copy of this paper around several questions on the email list a while ago. And I recirculated a PDF copy of that, and even a little while ago.

So Izumi, I'd ask you to take the floor and take us through this paper as briefly as you can.

Izumi Okutani: Well I haven't really made that many changes in terms of the criteria from the Version 2, the last version. I simply added some explanation about the reason why we want to - we're keeping these dates short.

And we can still receive the community feedback. So the explanation is that it's not - the review period is not the only time that the community is able to provide feedback, but rather they should be able to provide comments through the regular public comment period, which is usually 40 day.

So this may address some of the requests to extend the period for two weeks. I'd like to hear what people think about this, if this is like a sufficiently good enough reason to keep the period short? Or do we still feel that we should accommodate the public comments and extend the period much longer than two weeks? So that's one point.

And another point that I've added is more rational to address that this power will not actually destabilize ICANN or stop ICANN proceedings from its activities.

So just in addition to the rational that is already there, which is that we actually make sure the super majority of the community that actually wants to reject this power. But it also - the maximum impact that it gives is that it simply, given if this power keeps on getting rejected without any limits.

Unlike the case of the budget and operational plans where we pick the maximum limits. I think the only real impact here is the bylaws remain unchanged.

So it's more like I've added more rational to give more argument or the propose that we have. And those are the changes that I've made. And there are actually three points that I'd like to consult the group.

The one is whether we're happy to keep the review period short. So kind of options are 15 days or 30 days and we have to choose which one is comfortable, give that we have added some additional rational that the community has the chance to comment.

The second is whether we are actually giving enough explanation about the stability of this, ensuring that this doesn't stabilize ICANN. And it doesn't really stop ICANN from doing its job smoothly.

So those are the two points. And then I haven't really added - reflected this comment, which requested to explain about the membership structure and how this will not create any cost complexity or liability if I felt that it may be better explained in the comments section that explains about the single member model. So I'll stop here.

Jordan Carter: Thanks Izumi. I think this is a good (unintelligible) and I agree with the last point you've made that the cost complexity and issue for the model as a whole should be dealt with in the sections about the model.

I have got one suggestion, which is that in terms of the - I think the rational you've added about the time period and the calendar window is useful. We need to have a consistent way of dealing with time for a petition to trigger the use of any of these powers and then the time that's involved to make a decision after the petition.

And in doing that, we also need to give time for the community assembly to have a discussion. So there are three time limits we need, if you like. We need to set out a period from when the board advises us of its decision to pass a bylaws change to allow SO's or AC's to trigger a bylaw change veto.

And then we need to allow a period of time for a discussion in the community assembly of that. And then a timeframe from the SO's and AC's to make a decision.

And it seems to me that it would be reasonable for each of those to be two weeks or 15 days if we're sticking with the days. So aside from that point, do you want to seek anymore comments on what you've said so far? Or do you want to present your questions?

Izumi Okutani: I don't think I have anything else that - no.

Jordan Carter: Okay. Okay thanks Izumi. Any other points people? Any speaking list on this one? I don't see any - hello Izumi.

Izumi Okutani: Hi. Yes, well also I would have a chance to ask questions. And one of the questions that might not be relevant to just this on power is that how do we define how we are going to trigger bringing ICANN to court?

This is separate from each of the individual powers. That's my understanding. So is this going to be defined separately in the section on a single member model? If any community member wants to bring ICANN to court, should there be any criteria being set on like if ICANN is not - doesn't accept rejection despite meeting this threshold?

Then it's only what? That's when the community brings ICANN to court. Or do we need to define something like this or this is my question?

Jordan Carter: Thanks Izumi. I don't think that this is the place to deal with that question. Dealing with that is something that the community model as a whole will need to deal with somewhere in the bylaws.

I think though because it's the community mechanism as a single member, there doesn't need to be anything stated in the bylaws that asserts the right of it to take ICANN to court to enforce the bylaws. Grace do you want to offer a comment on this?

Grace Abuhamad: No Jordan, I don't think I have a comment on this.

Jordan Carter: Okay. Are there any other - well if anyone else has a comment on that question, do raise your hand. At the moment, Tijani your hand is up, so please go ahead.

Tijani Ben Jemaa: Thank you Jordan. As for when community member to bring ICANN to the court, I think this issue was discussed in Paris. And we asked the lawyers if it

is possible (unintelligible). We asked if it is possible to prevent it because we need the community as a whole to act on behalf of the community and not a single member to do that.

They said yes, we can do that. And they will give us the provision in the bylaw that will prevent that if that were to happen. So the process will be if there is a problem, the community as a whole, the single member, will first got to the IFP.

And if problems will continue, in this case perhaps the sole member would have the right to go to the court. Thank you.

Jordan Carter: Thanks Tijani. That is a helpful clarification. And you're right. One of the reasons the community mechanism over a single member model was preferred was that it is the mechanism as a whole, which would have the right to go to court to enforce the powers in the bylaws, not any individual SRAC.

And so it's really a question of how or if required, how the community mechanism and single member would make that decision. But that's definitely not something we need to deal with in this agenda item.

So I just have a request, which is that in the chat there's a lot of discussion going on about something that we are not discussing on this call, which is the voting weights thing as discussed at that point in the agenda because we didn't have text presented to do so.

We're not addressing that today. It is on the agenda for our Tuesday call. I will note that the sudden introduction of a proposal to change a set of voting rights that we have been discussing pretty stably for months in this point in our deliberations is quite problematic.

But that's something that needs to be addressed, not now and not on this call, not with this agenda item. So please, please, please, please, please in the interest in getting to the stuff that we do have to get to today, can we hold that one for the next call? That would be super helpful. Thank you.

So having met with the court action, are there any other kind of comments on this one? If there are not, my proposal would be that I work with Izumi over the next couple of days to just tweak and this will happen for all the papers, to make common (that) petition discussion and then decision phase for the exercise of all of the powers.

And it may even be possible that we can just define that in the kind of header section of that. So the text might not end up in the same place. But just getting that clear and right would be important.

If there are no hands going up to object to that process, then we will move on to the next agenda item. Having hopefully noted that action to send the bylaws to make sure that the petitioning threshold and period is included.

The next item is the AOC review into the ICANN bylaws. In terms of text there, I believe there was some staff revision of the content going on. And Steve, I'd like to hand over the call to you and Grace to just talk about where that's at and what we need to decide if anything.

Steve DelBianco: Certainly Jordan. This is Steve DelBianco. You can proceed pretty quickly through this document. There are only four or five items that we should look at.

So you each have a scroll control I believe, and the first place to stop is at the top of Page 2 where we describe the fact that we are not suggesting that review team recommendations must be recommended by the ICANN Board.

We acknowledge the fact that the board could decide not to implement based on feasibility time or cost. And then that decision is challengeable by us in the community.

It's challengeable through an IRP provided that we could suggest that it violated with some bylaws obligation such as the bottom up multi-stakeholder process. But we are not requiring them to implement everything. And at the AOC did not either.

Okay, so let me move there into the first (shapo). We updated it pursuant to the discussion in Paris to go with Option 2 on review team composition. This is the bottom of Page 2.

And then we added the idea that the board designates one director as a member of the review team. And that's exactly the way it is in today's affirmation of commitments reviews. The board does get a seat on there.

If you go to Page 3, and I'll watch for hands to pop up, but Jordan, if you see them please interrupt me. On Page 3 is the item for which we need some help. And I spotted at least a few names of participants on this call who said they knew a little something about how to faction strong non-disclosure provisions.

And it this is due to the fact that we are giving the review team's access to internal ICANN documents for the purpose of doing the reviews. It's particularly helpful for the ATRT. It might also be for the new gTLD program

review. They'll want to see the documents that may have revealed the way that the evaluation process ran.

We're likely to see that being important to the SSR team as well. So we have in yellow highlighting right there on Page 3 is something we need some help from, well I guess it would be attorneys who are used to writing non-disclosure requirements.

The non-disclosure part has to do with the review team members having visibility of confidential or proprietary information. And then they would have some obligations, perhaps people with sanctions to prevent them from disclosing the specifics.

I'm sure they would characterize what they learned in their review team report. But I don't think they would disclose.

The other aspect to it is who and how would you determine what is subject to non-disclosure? Like ICANN may have a policy in place today on the type of sensitive personnel based information, salary information, et cetera that's subject to non-disclosure.

But I confess to not having enough knowledge about that. And we're going to need some help. There's a hand up from James Gannon.

Jordan Carter: Go ahead James.

James Gannon: Hi this is James. So on this point I was one of the people in Paris who has some background in working with that confidential agreements and NDAs. I would make a suggestion however. In the interest of time, we have a law firm

- a large amount of experience across a number of areas, at least that is in the chat here.

And I would suggest that if we want expert and particular advice from a group of attorneys who have specific knowledge around our requirements and at the way that ICANN works that we may ask Sidley possibly to look into this given the breadth of their practice. I'm sure they have some excellent specialists who could help out.

Steve DelBianco: Thank you James. Holly is indicating in the chat that she can assist as well. Jordan, as rapporteur, let me ask you about the latest possible time we could turn to this since there is so much more work on our plate right now?

Jordan Carter: What - can you stretch that question out a little bit more Steve? Like what do you mean by the latest time we can turn to this?

((Crosstalk))

Jordan Carter: Something in the bylaws?

Steve DelBianco: That's right. So for instance, if legal does a review this weekend of all the other content, this it may require more time than that because it has to be flushed out as a requirement that would later turn into bylaws language.

So I guess I would turn to Holly. Do you have the capacity to address this before next week?

Jordan Carter: Before Holly replies, sorry, I think that we just need to be very clear in specifying what the issue is that we're trying to address. And the critical thing

that we need - we don't need to design NDAs. We don't need to write those. Everyone I think is familiar with the NDS concepts.

The critical thing there is that last part of the sentence before the highlighted yellow bit, right, although the designation is sensitive/confidential should not be in ICANN's sole discretion. That's the part that needs flushing out into something that's workable. Is that right Steve?

Steve DelBianco: I think that's the essential question.

Jordan Carter: Yes. So I think then that we - that's what you're asking for help in defining. And I think that you're kind of one option is during team review and (Sam) and Holly and whoever else being asked to do this.

I would remind you though that if we're going to ask legal to help with any of this, we need to take it to the co-chairs and get them to certify the legal work with council.

So, you know, I don't have a particular suggestion on how to go forward with that. But I'll take the speaking (unintelligible) there. So Alan and then Holly and then James. Alan go ahead.

Alan Greenberg: Thank you very much. I really don't think we need this - that restriction. If indeed ICANN were to release anything to the review team subject to non-disclosure, then it is conceivable the review team would see something that they had signed a non-disclosure agreement of.

And look at it and say, why is this being held private? And, you know, there are - one can escalate in the review team up through ICANN management to

question that kind of thing because they already know what the information as at this point.

And the only question is can they disclose it or not? And I think that's something that's manageable within the review team. The question - only question is is there a higher level of confidentiality of things that ICANN won't even tell you about because simply revealing them to 20 people, some of whom may be in competitive situations with whatever the information is subject to that the cannot release it at all.

And it's that information I think we need to address. And I would say we want to address that by saying that if information cannot be reviewed - released to the review team it general, it must be released under non-disclosure to the chair and/or co-chairs of the review team or something like that.

So, and at that point I don't think it's an issue of the judgment call anymore. The information is available to the review team. And if indeed they see something that really smells, they can take action of their own. We don't need to put it in the bylaws. Thank you.

Jordan Carter: Thanks Alan. Holly.

Holly Gregory: I just wanted to say that we of course see these kinds of things all the time. And we'd be happy to help if we can. I wasn't clear on how much detail you needed at this point other than to say that there would be an NDA.

Jordan Carter: The critical point is not whether there is an NDA or not. The critical point is whose discretion it is about what is designated sensitive or confidential.

Holly Gregory: Understood.

Jordan Carter: And believe me, I don't know the answer to this question, which - and I think Steve doesn't either, which is why he's asking the question.

Holly Gregory: But I mean typically, you know, typically the information that you're talking about, you know, we typically consider it as belonging to the corporation. So it's ultimately through the board and at their delegation to members of management to determine it.

But it sounds like what you're wanting is to make sure that that decision isn't unduly broad in a way that would harm the ability to, you know, use information that shouldn't be considered so highly confidential. And...

((Crosstalk))

Holly Gregory: You wanted to use that.

Jordan Carter: Well Holly that just triggered a thought for me. And maybe I can start a suggestion Steve is if the aim here is to prevent overly broad NDA rights. And so would it be possible to say that there were going to be some standards prepared that apply to information disclosure to review teams?

And that if ICANN doesn't behave consistent with those standards, it would become a matter that was subject to the IRP. Would that be a way through this?

Steve DelBianco: Jordan, since you asked me, I would suggest that's an awfully long process in IRP - in the middle of a one-year review team to have to take a seven month time out to run an IRP. And it's not at all clear that the bylaws would provide clarity on transparency to let an IRP come up with a binding ruling.

As I wrote in the text in front of you and as Alan explained, there are two levels of disclosure. The first is ICANN disclosing to the team. And then ICANN may claim that they have discretion. That there are things they will not disclose to the team at all.

And Alan suggested there ought to be an escalation process. I think that's a good idea, but I don't know how we need to describe that. That ombudsman, is that a document access?

And the second level that I wrote about was at once something is disclosed to the team, if ICANN has designated that it's confidential or sensitive or proprietary, then there's an NDA on the part of the team that they can't talk about it out of school. And they can't put it in writing in the review team recommendation.

Jordan Carter: So is there a problem that we need to solve in the writing of this bylaw proposal at this time?

Steve DelBianco: I believe we probably do. We probably ought to describe type the two step disclosure concern more broadly. And if we're going to describe escalation, we should do so.

And Sam in the chat is suggesting we have review team members signing up for liability for unauthorized disclosure. So we need to address that as well.

Jordan Carter: Okay. Let's take the (speaking) since it's there. And Holly, is that an old hand? Yes, thanks. James go ahead.

James Gannon: Hi, James Gannon. So I apologize. Earlier I was incorrect in my terminology as to what I believe we should be asking Sidley for assistance with. So there's two things at play here is the NDA, which is the physical document that a review team member would sign.

But there is also the disclosure framework or the confidential disclosure framework that that document would exist within. So that is more specifically what I was thinking we could have assistance with.

Basically what we are looking for out of what we need to put into this bylaw here is something along the line of the confidential disclosure framework that ICANN must abide to that will allow review teams to have access to a sufficient amount of documents in order to essentially complete their work.

And there needs to be some sort of short statement on the standards that we need to put in there. If the review team feels that they are having - they're being restricted to access to a document that they feel they require.

That we have some form of expedient, independent manner to have the confidentiality status of that document (there). So it's more of a confidential disclosure framework batch. I would think that we need to get some input on.

That be from ICANN or from their current staff or (unintelligible) (Diddy) on their experience in the area. So it's not necessarily the documents that I'd like input on. It would be the framework that an NDA would exist within.

So I think we should be looking at external input into. We could work this out ourselves if we have six months to eight months to do it. You know, lots of companies have confidential framework, but we don't have that time.

Jordan Carter: Thanks. And James, and I'm firmly with you that what we need to do in this part of (it) is describe the problem and how we're going to solve it and not come up with the answer. And Alan, go ahead.

Alan Greenberg: Yes. Thank you. On a small point when it says the review teams shall, it should be review teams or a subset thereof. There are cases where members of the review team choose not to want to have to be - have things disclosed to them. That's (unintelligible) already in the review teams that I've participated in.

I really think it's an issue of if the review team gets something under non-disclosure that they feel they must be able to report on and the non-disclosure is unreasonable, then they need to be able to escalate it. I agree with James, it's not - doesn't have to be in the bylaws but it must be in a framework documented somewhere.

And escalation to the Board for instance is a reasonable path. It's got to be somewhere outside of staff. And if there is something that ICANN is either refusing to disclose at all or for that matter you don't even know of there's - if there's a document to disclose, then again, escalation to the Board.

So I really don't think we have a major issue here in terms of the standard of the decision. It's really what do you do if a decision is made that you don't like. And I think that can be covered relatively easily.

Jordan Carter: Thanks Alan. And Greg.

Greg Shatan: Thanks. Greg Shatan. A couple of issues that I see here. I think one is kind of the level of disclosure or at least not over the redacting or over confident, over

holding things confidential. So I'm not sure. That is to some extent goes to what are the criteria for documents to be considered confidential or not.

And the more documents that are really without confidentiality restrictions, the easier everything else gets. Then for those things which are - still remain confidential, then the issue becomes not only drafting an appropriate NDA but also determining to some extent how the information that is contained in the confident document can be used by the review teams.

And clearly this is being - they're being reviewed for purposes ultimately of a report that's going to be put out. So it's not just a question of who gets to see what but also who gets to do what with what they've seen. So I think that needs to be kept in mind as we develop this. Thanks.

Jordan Carter: Thanks Greg. Guys we've had a good discussion on this. And Steve, do you have enough here to go on in terms of proposing an updated draft that briefly sort of sets out the kind of thing that we've been angling towards?

Steve DelBianco: Yes, I think so. All along it's a two-step disclosure question. We'll write it up as two steps but it's not going to be - it's not going to be good until legal gets their eyeballs on it this weekend.

Jordan Carter: Yes. I mean if you can just - even if you can't do any more than that, a couple of bullet points of what it is we're trying to achieve in the next 24 hours and then we can get legal to be looking at it over the weekend and for those that have been on this call now and understand the issue in more depth.

And so I think we're going to pass that one back to you to do that. Thank you very much. Hang on. Are there any other items in this paper Steve that need to be...

Steve DelBianco: There are. There are.

Jordan Carter: Okay.

Steve DelBianco: But they're very quick. Okay. They're very quick. So if you look at the very next one, the accountability and transparency review. This would be on top of Page 4 of the document that's in the chat.

One of the things we discussed on the Saturday in Paris is that at the top of two of these four reviews there was a commitment. In addition to the commitment to do the review, there's a commitment on the part of ICANN.

And so what I (endeavored to) do, which we promised on Saturday afternoon was to see if the commitment were already reflected in the bylaws and if it weren't, then the commitment is repeated here as part of the bylaws.

But it is not automatically imported to the core values of the bylaws. Instead it's just part of the commitments that are articulated in the review section of the bylaws.

So the first one is the ATRT, the top of Page 4. The second part of this sentence says that ICANN's commitment to maintain and approve robust mechanisms for public input accountability, transparency; decision-making will reflect the public interest and be accountable.

So I checked and it is a commitment that would also become part of the bylaws under what's under the mission statement and core values. So this one's covered.

If you go to the next one, and there are some hands up. Are they old hands or new?

Jordan Carter: Those are - Alan's is a new hand.

Alan Greenberg: Mine's new but I'll wait till you finish talking.

Steve DelBianco: Thank you Alan. And if you jump to the second review, it's the security, stability and resiliency review and this would be on Page 5. I checked and sure enough security, stability, resiliency and global inoperability are all part of the core values proposed by Work Party 2. So that one's covered.

Let me go to Number 3. Three is a review of the new gTLD program. So here instead of saying that this is being brought into the core values, it just stays here because it includes a commitment that becomes part of ICANN's bylaws regarding future expansions of the TLD space.

So a question for clarification is that when I - if the community pursued an IRP, does the standard review include all of ICANN's bylaws or does it just include the core values? Is there anyone who can give me an answer on that? More than likely Holly would know.

So while we're waiting for that answer, the implications are just to understand that if an IRP standard review is only the core values and mission statement, then it would be a surprise to many of us in the CCWG. We had the view that an IRP looks at all of the bylaws, not just the core values and mission statement.

And only one last point Jordan and it's on the fourth review, the directory services or Whois review. And it includes a commitment but it is not

becoming part of the core values. The commitment is just here in the Whois section.

And keep in mind that any text in the review section of all four reviews is text that can be proposed for modification by the ATRT. So the very next Accountability Transparency Review Team a year out, two years out, three years out, I don't know when it would convene.

But part of this - part of its work is to examine the text in these four reviews including the commitments and it can propose changes to those commitments as part of the ATRT recommendations. That's all I've got on that. Go ahead Jordan.

Jordan Carter: No, I was going to say go ahead speaking list.

Alan Greenberg: Okay. Thank you. It's Alan speaking. I see you've added the word directory services. Have you addressed any of the other issues that Steve Crocker had raised about wording that was just plain wrong in the original one? And we...

Steve DelBianco: Alan, the answer is no. This was discussed pretty extensively and we discussed that that change could be made by the ATRT as part of its first review, as I just described. They're allowed to change these words. So by keeping them here instead of the core values, they're not subject to a fundamental bylaw review. And the ATRT has an easy access to them.

If you recall, we wanted to be faithful to the promise of bringing the commitments over from the affirmation and not being accused of watering down those commitments just in the point of bringing them over.

Alan Greenberg: Okay. Thank you. I understand that discussion took place and I understand it completely. I have two comments though. First of all, the ATRT may not be staffed with people who are particularly competent on this issue. So that's Number 1.

Number 2. The next version of this report - of this thing may well happen under these bylaws before the next ATRT is certainly before it's acted on. And lastly, I personally would like to see what changes he wanted specifically and see if they are watering down or if indeed perhaps clarifying.

I can see some words in there, which I don't like and I'm not going to propose changes arbitrarily. But I'm not sure we should blindly refuse to look at them. And maybe he did send them and we looked at them and I forget that. But, you know, if we can...

Steve DelBianco: Steve Crocker did identify the two paragraphs that he didn't want to keep. And they're the second and third paragraphs on the table on Page 7. I don't know whether he proposes eliminating them or throttling back what the obligations are.

But please keep in mind at this lateness in the process we will end up with a significant pushback from...

Alan Greenberg: Right. I just thought it would be fair game...

Steve DelBianco: ...(a lot of)...

Alan Greenberg: ...to ask...

((Crosstalk))

Steve DelBianco: ...and IP interests.

Alan Greenberg: I'll be quiet now.

Steve DelBianco: By all means - by all means ask. Please do.

Alan Greenberg: All I was going to say is I would like to have seen on the table what he was proposing and then reject it as opposed to saying we don't want changes. But I will put my hand down now.

Jordan Carter: It's Jordan here. I agree with you in principle Alan. But this is just another example of - in my view, something that would be a nice to have improvements. And this text isn't around (unintelligible) the fact that Steve hasn't like it since '09 and has given him six years to propose improvements and he hasn't done. So this is the time to do it. (Agree).

Alan Greenberg: Well having done a review of the last Whois (unintelligible) and all the angst and heartburn that went along with it, I personally would have preferred to see something fixed if we could fix it now. But as I said, I will (desist).

Jordan Carter: And okay. Greg, your hand is up.

Greg Shatan: Thanks. Greg. Yes. I think this is definitely something that there's no longer - that there needs to be time to fix. And this is not the time. That's of course suggesting that it needs to be fixed. But even that (unintelligible) needs to take place in a thoughtful manner.

You know, the gist of the contribution from Steve was that it was inappropriate from the beginning and nonsense to quote - to use the words he

used. But I don't think we're - I don't think we're there yet in terms of thoughtful dialog.

And so I think we should take that as a Workstream 2 or not as a Workstream 2, as a - with the timing that we've got here. You know, we've been talking about Whois since the beginning of ICANN and we'll talk about it till the end of ICANN although it'll - going to get some next generation name so maybe you'll have to stop saying Whois but what is will be forever. (Bye).

Jordan Carter: Okay. Thanks. Thanks Greg. And Steve, thank you for wandering us through this - wandering us through, what does that mean? Taking us through this paper. And Steve has a reasonable amount of feedback and discussions. So do you have enough to be going on here?

Steve DelBianco: We're good.

Jordan Carter: Okay. And Greg, that's an old hand for you? Yes. Thanks. Okay. And thank you everyone. We're going to (chew) onto the next agenda item if we could, which is the removal of (unintelligible) Directors from the ICANN Board.

This paper has been through here a number of times. And the version I think that we're looking at now is the composite version of the changes that Alan made and then I thought some additions into - which were designs to make it more consistent with where I thought we'd got to on the model.

And specifically task that was (along) the second page where I tried to work in the petitioning process and tried to illustrate that the process is a quite common one whether Directors are nominated by SOs/ACs or by the Nominating Committee.

And where I've introduced the clear and discussion within the ICANN community assembly. And before any powers (should) any of the Directors exercise and included the agreement that we reached in Paris that there would be the development of standards that would apply to removal (para). So that's on the third page in Paragraph 11.

And then at the end of this is the table that Alan had prepared and included in an earlier version of this paper. So there is a key outstanding decision here. There's been some discussion in Paris on the list and so on and about whether we allow for removal not to be a decision of the appointing body where an SO/AC was the appointing but that it's only the community mechanism.

And so there's an open question there about that. And we should try and resolve that if we can today either eliminate it and leave it to the CCWG - recommend the CCWG that we present options. I'm definitely against the third one.

And Alan, you've also been working on this text. But you to - to take the floor and add some comments at this point?

Alan Greenberg: Yes. I'll make some comments. And thank you for putting in a lot of the stuff that was decided. But I didn't have access to my notes when I was doing this update and I forgot a lot of them, so thank you for that.

In terms of the decision that is the dark box in the middle of Page 1, unless this group feels it's empowered to eliminate the option right now, then I think the only option is Number 2.

We got a very clear message from the co-Chairs. They did not want to go out with questions and options to the community if we could avoid it. And

ultimately we have, you know, we've never had to take a vote of the members but we could. And I think this is one that we need to decide before going out to the larger community on - that's a personal opinion. Everyone may not agree.

I have personally some significant problems with some of the decisions that we made in Paris. And that is with regard to the working that we said we would do. And I think it's in this document but I'm not 100% sure. That we would do in Workstream 2 on rationales for - on what grounds could we remove Directors and things like that.

I see identifying specific grounds and - as something which will virtually ensure that we'll never be able to remove a Director, you know, short of them committing a legal offense or fraud or a conflict of interest or something like that.

That simply not acting according to the desire of the community by the judgment of the community as a whole is going to be very difficult to put as a specific rationale. And it's potentially something which they can appeal.

And I really have worries about that. So I'm just going on record that I feel very uncomfortable with that - the kind of commitment we made to go ahead and try to define rationales and causes. Thank you.

Jordan Carter: And Alan, the paragraph that refers to what you're discussing is Paragraph Number 11 at the top...

Alan Greenberg: Okay.

Jordan Carter: ...of Page 3. And I'd urge you just have a look at that while I keep (generally) meandering away. What I've tried to do there is to frame it that it's a development positive thing. And I've tasked to do up key standards that set out the expectation that the community has its Board members.

And not suddenly turning that into a - an objective standard that is the only way to remove a Board member through this power because it's quite clear that in the end in the legal framework we're working with the rights of the member to remove Board members cannot be legally constrained.

So the question is what are the procedures and norms and expectations that are developed. And so that's why I've tried to word it the way I have. Does that alleviate your concern? So to re-say it again. There would not be any sort of list of criteria and if the Board member didn't (fail them), they wouldn't be able to be removed.

Alan Greenberg: To be blunt...

Jordan Carter: It's about expressing the norms and standards that are expectations of the community.

Alan Greenberg: ...to be blunt, no. When you word - use words like breached, I don't know how, you know - I'll return to the expression I've used before. That is, in a marriage you have the term irreconcilable differences. I don't know how you make that a breach. It's just that you're going in a different direction. And it happens in marriages. And I think it can happen between the community and Directors.

If it couldn't, we wouldn't be talking about them - about removing them at all. And - but we are talking about it. And we're talking about it a lot. And I think

it's because there's just a general disconnect between what the community - where the community wants ICANN to go and where the Directors - specific directors or all of them are leading it.

And I'm not sure one can phrase that as expectations or things - or terms that go along with the word breached. I may be unique in this but I just don't see how we're going to do that. And if we're trying to ensure that we never remove Directors, I think it's a dandy way of doing it.

((Crosstalk))

Alan Greenberg: ...a bad result. But anyway, I've said my piece.

Jordan Carter: Thanks Alan. Let's do the speaking list. And James, you're next.

James Gannon: Hi. James Gannon. So on the question, I'm very strongly under the belief actually for GNSO, which is to remove a Director it's up to the GNSO to remove a Director. And I believe we should eliminate the option. Again, it comes down to we need to reflect the appointing organizations authority to either appoint or remove their own Director.

And as to the second point, which we've been discussing on standards, I'm somewhat mixed. I think I agree that we shouldn't have specific standards that if breached and we could - that could be expected to lead to a petition for removal. I believe that - I think the concept of having standards and community guidelines for Board members is a good idea.

But if we could remove the second half of that sentence and the expectations that breach could be - could lead to a petition I think a lot of us might be a lot happier with it.

Jordan Carter: Okay. Thanks James. And Greg next.

Greg Shatan: Thanks. Greg Shatan for the record. I think this is a rat hole of the first order. I first think - I also think it's a bad idea. And it'll be a bad idea badly executed or never executed if we turn to it.

I think this should be discretionary. I think we should keep in mind that we are by and large dealing with reasonably mature organizations. And people should also consider that certainly for the GNSO not always the easiest to find a Board member to nominate.

Our most recently nominated Board member from the non-Contracted Parties House was the result of a fairly extensive process. And I think that the need to remove a Director and clearly to replace him or her with another person found through that process is in itself enough to create the idea that this is something that's only going to be done in order to, you know, at the - an extremist.

You know, you don't have to put barbed wire around a fire alarm to make sure that people don't pull it except maybe if you're in a school for delinquents. And I don't think we're a school for delinquents. I think that people realize the gravity of this tool. And we don't have to create some sort of checklist, which is just as I said at the beginning, going to be a complete rat hole of a project. Thanks.

Jordan Carter: Thanks. Thanks Greg. And Tijani, you're next. Tijani, if you're speaking, we can't hear you. You're on mute.

Tijani Ben Jemaa: You hear me now?

Jordan Carter: Yes. Now we can hear you.

Tijani Ben Jemaa: Okay. You hear me. Okay. Thank you. Thank you. Tijani speaking. I have said that several times to Alan but I will report it - repeat it on the call. When you choose your wife, you choose it because you love her, because you had a feeling. It's your heart.

When you appoint a Director to the Board, you do it because you think he's the best one to (serve) the community on the Board. So it is absolutely ridiculous and the mechanisms will not be the same and they cannot be the same. This is the first point.

Second point. I don't say we need a checklist of the (causes) or (of reason). But when the community will discuss in the forum or in the assembly, as you want to call it, they will discuss according to what - according to what we set in Paris that you would define it in Workstream 2 as a - how to say the - I don't know how we call it.

But it is what our expectation from a Director. So the discussion will be - we have a reference. That's why we need it. It will not be a checklist. Perhaps we - something is not in those requirements or in those expectations. That we perhaps motivate (a recalling). But if you want to erase everything to put it as if you want to do it, you will do it and that's all. Nothing more. I'm afraid I would object. Thank you.

Jordan Carter: And thanks Tijani. I put myself on the speaking list. I think - so the development of kind of the community norms and expectations I think can only be helpful even if they have no binding relevance because as far as I'm aware aside from what's in the bylaws, which is pretty (sensed), there hasn't been a recent community articulation of what we expect from our (Directors).

And so having that developed whatever its standing, it may be a rat hole, it may not. But having the discussion about that as part of Workstream 2 it seems to me can do no harm.

And the procedure that's set out in Paragraph 6 on Page 2 and Sub Clause B does, you know, it has - it renders the arguments about why someone wants to remove a Director transparent and it gives the person the right of reply. So I think those are two significant improvements.

And I want to be really clear that there's - the way that I tried to word Paragraph 11 does not imply and should not be read to imply that there would be a decision role to these standards.

So no one is suggesting and the wording doesn't suggest or isn't intended to suggest that there would be an (imposition) of these standards on the decision. It would simply be another matter of the public standard, which people could refer to and take into account.

And okay, Alan, your hand is up.

Alan Greenberg: Yes. Thank you. Two points. First of all, to be clear, if we're going to remove a Director, there will be reasons. And certainly if it's a NomCom Director where we're going to have to convince - perhaps convince other ACs and SOs that they should agree, there's going to have to be a discussion, as Tijani said. And there will have to be reasons raised.

My worry is that they become a test. And, you know, and potentially a test that can be appealed. So if we go ahead with anything like this, I think there has to be a very clear and explicit statement that notwithstanding any rights

that anyone has to go to an ombudsman or to go to a court or whatever that they waive those rights and that this not be something that is subject to appeal.

Now that may be part of standard corporate, you know, law and regarding members I don't know. But I think we need to make sure that it's well understood. Thank you.

Jordan Carter: Thanks Alan. Tijani, your hand is up.

Tijani Ben Jemaa: Thank you. We can make a - and not put it in the bylaws if that's not (available). There's no appeal to this decision - the decision of recalling the Board member. So that - Alan will not have this fear. Thank you.

Jordan Carter: Yes. I think it will be clear in whatever processes but there won't be any appeal because there's definitely the right to do this. It's not (in the U.S). Look. I'd like to return us back to the first page here on Paragraph 4, which is that it's the back of the text.

And what we need to do is just get a sense of the room's view about whether we should either eliminate that option or leave it there in brackets for the CCWG to discuss. So let me restate that because in a minute I'm going to ask you do you see the tick and cross and boxes on your Adobe room.

So the tick will be if you want us to delete that bracketed text at the bottom of the first page. And the cross will be if you want us to keep the bracketed text and have the discussion at the CCWG meeting.

So remember and I'll do it a third time. If you could use a tick now to say you want to delete the bracketed text above the gray box at the bottom of Page 1, Paragraph 4; tick to delete it and just give the one option of SOs and ACs

being the people who can remove (directions I have quoted). Put a cross if you don't want - if you want to leave the bracketed for the CCWG to discuss.

So tick to remove, cross to leave it in for CCWG. Could you please apply your ticks or crosses now in the room? And we'll just get a sense of where the numbers are. So the trick is to delete the bracketed text. And the cross is to keep it in.

Tiani Ben Jemaa: Jordan.

Jordan Carter: Tijani, yes.

Tijani Ben Jemaa: Jordan.

Jordan Carter: Yes.

Tijani Ben Jemaa: Yes I will put my tick with the condition that we will not - anything - everything about the discussion, about the expectations of - for Directors (unintelligible). Thank you.

Jordan Carter: Thanks Tijani. There's a very clear majority of text there. So what we're going to do is remove that back in the text. And those who have got crosses, you're welcome to raise this issue on the CCWG call. And I will mention that in my report back that we've removed that option.

And we're going to move along. Thank you for those ticks. If you want to clear your hands, that would be good. And we need to move along to the next agenda item. So I'd like to do that. And - but I see a hand up from Greg. Greg, please go ahead.

Greg Shatan: Yes. Just briefly. I'm not sure where we left ourselves on Paragraph 11. And there's also a reference at the end of Paragraph 3 to future work to develop standards to guide the use of this power. So I don't believe there should be such standard. So where are we on that language?

Jordan Carter: Well I haven't got any proposals to change it in front of me. And...

Greg Shatan: I'll make a proposal.

Jordan Carter: So this is going to - this paper will be on the agenda for the CCWG on the 23rd. And I think that if we - there was a consensus at the Paris meeting that we should include the standards thing in Workstream 2.

But there was also a consensus that they - those standards should not be presented as - in any way binding. So meant to be advisory or guidance. So the language can be cleaned up to reflect that. And - but other than that, I would like - so I'd like to propose that I do that clean up to make that clearer.

And then we raise at the CCWG discussion of this - the prospects that some people don't support including that reference and we just take a vote or a consensus call now for it.

((Crosstalk))

Jordan Carter: ...happy to accept that proposal.

Greg Shatan: Well my proposal would be to take out 11 but we could do knots and crosses on that too.

Jordan Carter: My concern with that is that unlike the previous issue, there was an in the room view about it. So rather than deleting it, I'd rather flag it as an issue for the CCWG to discuss.

((Crosstalk))

Jordan Carter: And I would like to move on. Is that bearable to you Greg?

Greg Shatan: It'll come up again.

Jordan Carter: Yes. I don't doubt it. Can we just recap - yes. In the action of - let's - we're going to remove the bracketed text on Page 1. Another action is (for drafting here) that any standards developed in Workstream 2 would be advisory only.

And the third action is to CCWG to discuss Paragraph 11 and the reference in Paragraph 3. Thanks everyone. And we've got exactly 23 minutes left on our call. And we've got two substantive items left.

And recall of the entire ICANN Board and the ICANN budget. And I just seen a bazaar - oh yes, and Matthew Shear's point about the (notes) on Page - on Item 5 (something like probably isn't) and quite something we want to have in our notes Grace. Thanks.

So moving along to the recall of the entire ICANN Board. I don't know if we've got time to work through this one properly. And that's because there was quite a lot of (used) by the legal team to specify this in greater detail.

And there you've got the (unintelligible) text in front of you with scroll control available. And it seems to me that this does work out the model that we discussed in Paris, which was that the way to deal with a caretaker Board

issue was that if there was a petition and then a decision coming up to remove the Directors the appointing bodies would have to suggest and replace the Directors as part of the process.

And there's a sea of red ink there and comments. Holly, do you want to give the - I can see where the draft I think here - do you want to give us a two minute take on what's here?

Holly Gregory: Certainly. And it really is in response Jordan to your request to put some flesh on the bones of how this would work. What it does is it provides for a petition to be sponsored by at least one SO and one AC. And that was in the already existing language.

And then that a majority of the remaining - I think 2/3 of the - all the SOs and ACs who participate in the community mechanism would need to support the petition, not meaning that they're necessarily in favor of it but that they believe that it should be heard.

Upon that, that notification going to - and it's in brackets - the corporate secretary would be a typical person you would turn this kind of notice to then give time for there to be greater notice to the community at large so that you could start the process of having recall consideration.

The notion here is that the assembly would have to have an opportunity for a consultation and that there would be a vote called at some point. We suggested seven days after that consultation opportunity. And so there's some timing suggestions in here. They're just light suggestions as a means of showing you how that kind of process could work.

The notion would also be that the point of consultation each SO and AC that has the ability to select a Director would be bringing forward their candidate to be the replacement, the interim - I'm sorry, the interim Board so that if you did go to a vote and the vote was successful in reaching the threshold replacement, you'd automatically have an interim Board that would kick in to being at that moment or, you know, shortly thereafter.

You could have an electoral inspection kind of process to have somebody validate the vote. But that's essentially the notion that this would be fairly automatic.

We also included some language to remind everyone that currently your President serves on the Board ex officio meaning by reason of his or her title. And therefore, this kind of recall of the entire Board would not be a recall of your President. That the President is actually selected by the Board. And so we just wanted to point that out and that's why we had that language in there.

So it's really - it's pretty straightforward. I know it looks like there's a lot of red ink. But we wanted to give you a flavor for how it could work. You may determine that you don't need this much detail in the proposal. And we'll leave that decision to you.

Jordan Carter: Thanks Holly. We'll take a sticky list here - a brief one maybe. And my proposal is not that we sign this off because it's the longest paper I think we've looked at today. And it provides a workable model. But I think we can come back if people want to discuss it again in a future call unless you tell me otherwise; unless you think this is okay to go as the preliminary draft text. And James, your hand is up. Go ahead.

James Gannon: Hi. James. Sorry. And I'm kind of possibly jumping ahead in this document. But I have to run off in about two minutes and (leave call). And there was a discussion in Paris that as part of Workstream 2 we may look at putting in some - I won't call them criteria but some guiding principles for selection of the interim Board members in a crisis situation as we would need them to meet a certain level of knowledge of ICANN and the current situation that may be going on.

I don't see any reference to it there. Maybe it just hasn't made it in yet. But I would like to see that put in that as part of Workstream 2 we might look at some guiding principles for an interim Board's member selection.

Jordan Carter: And thanks. And that's well noted. It was discussed that we should have some specification of the sorts of requirements as guidance to the SOs and ACs if they choose. That's a fair point to note James.

And what do people think? It's a complicated looking text but the ideas that are set out in it are mainly procedural ones and rather than substantive changes to this Board power. And are there any other speakers on this?

And I don't have a sense from the room or from the speakers or from the chat as to whether people are quiet because they're pretty happy with this or because they want more time to read and think about it.

So could we do a poll on that really slightly exchange question? If you are being quiet because you're generally happy with the way this sets out, could you give us a green tick? And if what you want is more time to read and think about it, could you give us a red cross?

Just a sense of the room. Nothing more. Just want to see where we're at. I don't know what (running rabbit) means. Please speed up. Yes. Okay. More time to think is getting about as many crosses as ticks.

So what we'll do is we will - I'll do a cut of this over the weekend. And that maybe sort of makes for language a little bit more digestible. And we will discuss this on our call on Tuesday. And so we don't have another call until then. So Tuesday it is. And it'll take (it in) as a cleaned up doc. So Tuesday. Thank you. Right.

Next item on the agenda is the budget, ICANN budget. And just noting those ticks and crosses on the on recalling the entire Board were just about whether people wanted more time. They weren't about whether we were approving it or not. So just make sure that's reflected in the notes. And the action points for that last item is for me to slightly clean up the doc and (re-circ) for discussion on Tuesday.

And ICANN budget - Jonathan Zuck and I have had a cut at this. And we've got the version that doesn't have the gory red lines on it. And Jonathan, over to you to briefly outline this.

Jonathan Zuck: Hey folks. Thanks for making it to the end of the call here. So this is revisions based on what was discussed in Paris. And so, as you can see, I put here in the top of the document some of the issues that were raised.

One was the IANA budget and whether we treat it separately and if there should be different thresholds for voting, et cetera, for the IANA budget. The other had to do with round trips and there - appear to be a rough consensus that two should be the maximum before an escalation to other accountability mechanisms should occur.

And then that there should also be a time box for the veto. One of the points that Chris Disspain raised in Paris is that the budget process is already quite long and that there isn't a lot of room to lengthen it. And so we need to keep this process efficient as possible.

And then the other recommendation that came up is that the basis for the veto should be explicit. It should be consensus based (unintelligible) by the public comments.

So all those address - all those issues were address in this draft. And Jordan and I just sort of took some shots at what some time limits might be on some of these things.

The other issue that Jordan raised in Paris is, you know, separating the thresholds associated with the strategic plan versus the budget. So we didn't discuss that a lot in Paris but certainly the strategic plan is less time sensitive than the budget. And so we specified some different timeframes for the strategic plan than we have for the budget.

So then the question is, you know, for the group here is what we've done. Provided sufficient protection for the IANA budget because that was the number one issue was just making sure that IANA keeps going.

Is 15 days enough for a veto and a turnaround by the community given that the issues will have to be raised during the public comment period on the budget anyway?

And so let's see if it's - this is the - this is the alternative method of showing the documents where it's clean. And I wonder if I should have kept - I should open up my dirty version of this so I can find things as well.

But you can see here in Paragraph 3. This is a new paragraph that the IANA budget or PTI budget in particular requires protection as recommended by the CWG on IANA transitioning.

IANA functions budget must be managed carefully and not decrease without public input regardless of the status of the other portions of the budget. So that's sort of a whereas the sort of clause that was added specifically about IANA.

Down here in Paragraph 5 you can see that the ICANN general the PTI have been sort of split out to be approved or, you know, subject to veto by the community. And the rest of that language is fairly similar.

And then here in Paragraph 6 - I'm scrolling down to the bottom half of Page 1 here. Given the issues that constitute the basis for veto will have been raised during the community consultation that leads to a plan or budget being considered by the Board, a period of 15 days following successful petition by an SO or AC to raise the question is sufficient for the community to decide to veto a budget or operating plan.

Because time pressures are less acute in respect to strategic plans, a period of 30 days can be allowed for a strategic plan. So you can see that's a text that gets pretty specific about the turnaround time.

Paragraph 7 as well to allow the Board sufficient time to absorb and veto the process. Afforded a minimum should be added to the budget operating planning process.

So that's the overall planning process schedule that assumes a veto just for safety sake and minimizing the impact of a vetoed budget on the consequent year. And then again 60 days is added to the process for a strategic plan.

Let me see (what's in) - most of this language was changed in Paris. Paragraph 11 here at the top of Page 2; the Board will have a limited time, 40 days, to resolve the situation of not operating with an approved budget by considering the community's feedback in proposing a revised budget.

If the Board is unable or unwilling to do so, other community powers such as set out as part of the public comment report are available if the community wants us to take the matter further.

The community will be limited to two rejections of budgets or operating plans for (cycle) before resorting to other accountability mechanisms in order to avoid ongoing use of the previous year's budget. Because of the longer (unintelligible) strategic plan, there'll be no limit on the number of rejections allowed.

Jordan Carter: And Jonathan, we don't have time to be reading that proposal at this point.

Jonathan Zuck: Yes. Okay.

Jordan Carter: So...

Jonathan Zuck: Sorry about that. Go ahead...

Jordan Carter: So I think...

((Crosstalk))

Jonathan Zuck: ...difference.

Jordan Carter: So those were new - those were both new contents. So it's the change to the facts that the limit on the number of returns and there's the clarification around the petitioning process and the timeframes involved and so on. The marked up version of this was circulated so people hopefully have had a chance to read that.

And so really I'd ask for any comments here. And sorry to cut you off Jonathan.

Jonathan Zuck: Yes.

Jordan Carter: We seem (to be) running out of time.

Jonathan Zuck: That's okay. We also made different voting thresholds between the IANA budget and the regular budget that's worth drawing attention to in Paragraph 18.

Jordan Carter: It is. And on that, we're seeking feedback from the CWG on that. And we haven't got it quite back yet. So that may be something we need to offset - finalize next Tuesday. Steve, your hand is up.

Steve DelBianco: Thank you. Yes. The first is on Paragraph 18 on Page 3. The 3/4 level of support would allow one of the four AC/SOs if we have four to - well, it

would take more than one if you're right at 3/4. That worst thing it takes at least two ACs and SOs to do that.

But I'm wondering whether this language needs to reflect the fact that it's a percentage as well as saying that it is at least two since some of the fractional voting could get you to 75% without two.

So is there an intent to try to standardize and make it consistent all the community powers when it comes to the 3/4 level of support requiring at least two ACs and SOs?

Jordan Carter: That's a good question that I don't have a good answer to off the top of my head. And but I think we will get a table I think that Bernie is doing that does put based on latest drafts the thresholds (well) beside each other.

And that will help us see the relativities between them and along with the modeling where it keeps (dealing) with the numbers. Will let us have an informed discussion about the thresholds. And I think though I might be wrong that that's scheduled for discussion either at the meeting tomorrow at the CCWG or next week.

Steve DelBianco: Thank you. I have one other comment, which is the placing of...

Jordan Carter: Go ahead.

Steve DelBianco: ...a two time - a two time limit on rejecting the budget. As I recall, most of our debate was whether or not we had this 10% penalty built in. And I believe the CCWG is not in support of that (unintelligible) draft reflects that.

But why did we retain this notion of you only get two rejections and what happens after the second rejection? I realize we can pursue other actions like IRP or spill the Board. But does the Board get its budget after the second rejection or do they only get last year's budget? Thank you.

Jordan Carter: Jonathan, do you want to respond to that?

Jonathan Zuck: Sure. I mean we did discuss this to some extent in Paris and I think the expectation is that they get last year's budget but that in fact there seemed to be a real pressure in Paris not to simply allow that to be the outcome.

And so the - and this is a change that Jordan made that I didn't even notice. But should the community want to pursue other mechanisms I guess makes this more conditional.

I - my intention of the draft was to make it the case that after two that the - there would be - there would be an escalation to other accountability mechanisms, not to just - everyone just being relaxed with the previous year's budget.

So I mean I think that that maybe became less clear with some language that said, you know, should the community wish to do so or something like that. But I think the bottom line is if the community and the Board disagree, then it's up to the community to escalate at that point and not simply to let it sit with last year's budget.

Steve DelBianco: But in no case...

Jordan Carter: Yes.

Steve DelBianco: ...do they get their proposed budget after the second rejection.

Jonathan Zuck: That's exactly right.

Steve DelBianco: Thank you. Great. Thank you.

Jordan Carter: So that I think that the way that the report is worded at the moment...

Jonathan Zuck: I mean you (try to) clarify to make...

Jordan Carter: ...I think the way the report is worded at the moment doesn't quite reflect that. So if what we're - if the answer is that after two rejections they get last year's budget minus 10%, we don't - that isn't here in this report.

Jonathan Zuck: No. We all universally seemed to agree in Paris that we didn't want to do any budget reductions. So the only...

Steve DelBianco: That's right.

Jonathan Zuck: ...way to force the issue is through escalation and not through an alternative budget. (We) consensus...

Jordan Carter: So that...

Jonathan Zuck: ...in Paris that we didn't want the Board to just rest on the previous year's budget. That that was by definition a temporary fix.

Steve DelBianco: Yes.

Jonathan Zuck: So I think this (will) need to be more strongly worded than that.

Steve DelBianco: Jonathan...

Jordan Carter: So...

Steve DelBianco: ...not strongly as much as clear - to make it clear that after the second rejection it's last year's budget that they're living with while we are pursuing other means.

Jonathan Zuck: I'll clarify that in the next draft.

Jordan Carter: Except that introduces a problem because what if those other means don't lead to anything? The supported times propose that there (is go) at the budget and then what happens? People aren't clear. So my assumption is then that if on the second rejection, it is the newly proposed budget but there is draft that does take effect.

And remember this will already be 120 days into the financial year by this point and that the community is using other means to change the Board and change the budget if required.

Steve DelBianco: (Unintelligible) that at all because that lets the Board outlast us and get the budget they want. But I don't believe that's the reflection of what the group wanted. They have to live with last year's budget. They don't get their...

Jonathan Zuck: I don't either.

Steve DelBianco: ...proposal.

Jordan Carter: Right. Well we're not going to have time to resolve that in the...

Jonathan Zuck: Alan, do you...

Jordan Carter: ...two minutes. So I don't quite know what we do with that one folks. And I think the action is for me to have a discussion with staff and Steve and Jonathan and just highlight any options for ways to deal with this and get a clear statement out on the email list as quickly as we can and to encourage people to discuss it on the email list and see if we can come to a quick agreement about what it should look like over the next couple of days and to finalize that at our meeting on Tuesday.

And quick calls Alan and Greg and then we'll close the call.

Alan Greenberg: Thank you very much. Just a quick comment that actually applies to a lot of the sections. When we say a petition is made by two SOs - two ACs and SOs, I'm assuming that all it takes is a majority of the AC/SO to decide to do that. But we need to...

Jordan Carter: Correct.

Alan Greenberg: ...we need to be clear about that because I don't think we mention that anywhere. Even though the ultimate threshold maybe 60 - 66 or 75, decisions to petition I believe are just majority ones. So we need to put...

Jordan Carter: Yes.

Alan Greenberg: ...that somewhere.

Jordan Carter: Yes. That is the - that's the number that we've been thinking about and yes, it does need to be clear either individually within each power or in the header

and sort of comment on all the community powers. So Grace, could you note that in the notes as well? Priority around the petition and majority of the SO or AC either here or in the header material for the community powers.

And thank you. Thank you everyone. This has been an intense call and a good one. And we're managed to get through more of the substantive content than I hoped we would, which is really good and it gives a good basis for going forward on.

And on the last two agenda items we are a little bit ahead of the game because we got through so much today. And I will circulate a first draft agenda for the meeting on Tuesday on Saturday after the CCWG call. It'll be my Saturday. It'll be you Friday in North America.

And switching back to Item Number 8. If you've got any other things you think we need to sort out, any other bits of work that need to be done, please send your suggestions ASAP if you notice any gaps either to the email list or to me directly. And that'd be very help. And then we can work out how to deal with any gaps that you've noticed.

And thank you for a long intense and successful call. And I'll speak to you all soon. Thanks everyone.

Jonathan Zuck: Thanks guys.

Man: Bye all.

END