

**ICANN**

**Moderator: Brenda Brewer  
September 24, 2015  
12:00 pm CT**

Grace Abuhamad: Everyone welcome to the CWG Meeting Number 66 on 24 September. It's now 1703 UTC. And I will turn it over to the chairs to provide opening remarks.

Jonathan Robinson: Thanks Grace it's Jonathan Robinson speaking, welcome everyone. I'll work through this meeting with you together with Lise.

I - we hope to deal with the meeting within an hour. In any event I will leave just before the top of the hour as I have to go on to chair the GNSO Council call at that point.

We currently have calls scheduled every two weeks with an option to cancel. Given what appears to be happening with a little bit of renewed intensity potentially on the work in response to the ICG which we'll clearly come to in the next item it may be that we need to have more frequent interaction and we have provided for that by a series of tentative meetings.

We'll confirm with you tomorrow what the schedule is like likely to be. And if you have any feedback on that feel free to provide it but obviously we'll struggle to accommodate everyone's requirements but we'll bear in mind any feedback we do receive.

So really the primary purpose of this call is to look at two key areas that is to get an update on the recent work of the ICG which you will have seen has been supplemented by written questions which we received from Alissa overnight my time, so early this morning UTC time.

And also to get an update on any coordination that's gone on with the CCWG. And many of you will be aware that the CCWG is heading into a couple of days of intensive meetings to try and we think where they go in the light of public comment and other interaction so we'll come to that in Item 2 including some input from Sidley in relation to that.

So those are the primary points. We are unaware that there is still work to be done on other aspects of the implementation and so a schedule of work needs to be worked on that but become somewhat affected by this more urgent response that's required with respect to the ICG.

So I think our view is that we must deal with the urgent matters first and then start to pick up on the implementation work. So that's really it in a nutshell at this stage.

Any comments or questions before we move on to the update on - from the ICG - recent ICG meeting?

All right, well we have the liaisons in position. I think Martin Boyle had offered to do that. I see there is at least one other ICG liaison available to us with - in the form of Milton.

So if Milton or anyone else would like to come in on the back of any update who received from Martin by all means do so.

And of course since we've prepared the agenda events have overtaken us slightly and that we've received written questions which you see up in front of you now.

The one issue there will be how exactly we deal with these. And thank you Milton. I see your point in the chat that you'll deal with points on the (RZ) then.

So let's I think - and I've know that Alissa is on as well. So Alissa if you would like to make any comments or remarks please let us know and by all means we'll receive those of course as well.

But really I think what would be useful is just to give the group a brief update as to how the ICG worked and the sort of the background to why we have these questions.

And then perhaps we can look at the questions a little although Lise I don't propose to deal with these specifically in detail now but really more to say how are we going to deal with it. And then deal with it in relatively short order since the request is to deal with them by the 7 October.

Okay so let me hand over to you Martin for a brief update and then we'll take it from there. And no sound Martin if you are trying to speak.

Martin Boyle: Oh I'm sorry. I have two ways of muting and I normally managed to press the wrong one.

I think it'll probably be more appropriate for Alissa to do the introduction bearing in mind she chaired the meeting of the ICG.

Milton was leading on the root zone management issues the first part of the questions. And I was heavily involved in the ccTLD issues.

So I suggest we work through in that order rather than me giving my probably biased views on the way that the ICG worked as I suggest that we turn it over to Alissa. Thank you.

Jonathan Robinson: Yes that's fine Martin. Thank you that's a helpful suggestion. So Alissa if you are so willing it would be great to get your take on the meetings and how you ended up where you are so we've got the context and then we can go into the detail from Milton and Martin as suggested.

Alissa Cooper: Sure that's fine. This is Alissa can you hear me?

Jonathan Robinson: Yes we hear you fine. Thank you.

Alissa Cooper: Okay great. I just joined in case people had questions. So I'm, you know, happy for Martin to provide the overview but if Martin if you want me to do it that's fine too.

So the ICG received 157 comments in our public comment period. And they're all available on the ICG Web site. And we're working through

narratives that will provide kind of a general overview of the comments received.

But I think the important points for this group are that we in very short order went through the exercise of reading all the comments, categorizing them based on the topics that they brought up and also how they answered some of the questions that we had put out to the public at the beginning of the public comment period.

And we had a face to face meeting last week where us as a group we went through all of this. And essentially what we were looking at as we grouped the comments together and investigated the points that were brought up was whether there was any action for the ICG to take.

In some cases the action that was decided for a particular topic was that the ICG needs to clarify something or add text to the section of the proposal that we wrote which was just part zero or if you need to clarify in our FAQ or elsewhere since I'm set with the action.

But in other cases the action was that we had questions that we came up with based on our reading of the public comments.

Some of these are clarification questions where commenters raised issues relating to parts of the proposal that seem unclear or issues relating to the fact that as we look at the three proposals from the three operational communities coming together that there's need for further detail or explanation of how the components work together.

And so we work through the comments in detail and came up with a set of questions where we think clarification is needed, or where we just don't

understand something in the CWG proposal or even where we suggest potentially an amendment here or there as was suggested by a commenter.

So what we've done thus far is because we just, you know, finished meeting only a few days ago and are still working through some of the analysis we have sent the first batch of questions which is what I sent overnight.

And there I think there's five questions there. We have another batch that we are working on. The ICG needs to come to agreement on the wording of the questions and we hope to get those to you before the week is out. And I think there are about eight more potentially so this is just the first half or so.

It's important to note a few things. Jonathan already spoke to the timing. The ICG decided at our meeting in Los Angeles to continue prepping for it on our existing timeline which is very aggressive and would have us making as much progress as we can by the time we get to Dublin and in Dublin itself.

And because of that we are asking for responses from the operational communities by 7 October which is the day before the last conference call that the ICG has before Dublin.

Now we realize that's not a lot of time from now. And so, you know, if the CWG needs more time getting responses back at the latest by 14 October will allow us to incorporate them into our agenda planning for Dublin.

So ideally by the seventh exceptionally by the 14th if you all run into trouble and have or, you know, not able to make either of those then, you know, definitely please let us know since we will need to kind of plan out how we try to wrap up the various details in the text of the proposal itself based on your responses.

The only other thing that I'll call out is that we - is that I also said in the email is we want to be very clear that we're asking the questions for clarification and minor potentially minor amendments to the CWG proposal.

We do not expect that, you know, any of the questions open issues in a proposal such that it would have to be significantly amended to the point where we would want to put it back out for public comment again and, you know, potentially be delay it further.

Of course it's the ICG's prerogative to decide in the end whether we need to do that are not. But we wanted to be very clear with all of the operational communities that, you know, we feel that we need clarification and we need to fix - make some minor fixes but we don't expect any of them to rise to the level of meeting for the public comment unless the communities think they do in which case we'll have to take that into consideration.

So that's the brief overview. And I'll turn it back to you all for the details from Martin and Milton.

Jonathan Robinson: Thanks Alissa that was brief and clear so that's very useful. Can I just ask one additional question just to be sure that batch two is the second and final batch that we should expect to receive?

Alissa Cooper: If all goes well yes. I kind of equivocated in the email a little bit just because if we get to the end of today and we and, you know, we have finalized five more I would like to send five more. And if we don't finalize the last three until tomorrow then I would like to send the three tomorrow.

I expect that we will finalize them all today. And it's, you know, it's something on the order of eight more.

But I need to give the ICG a little bit more time to review and concur that they're ready to go so can't commit precisely.

But I expect that there will be, you know, you will have them all by the end of this week unless an ICG member raises a flag about any of them.

Jonathan Robinson: Okay well that's equally clear. And that's fine. It's useful to know that so thank you.

And I will expect that you in the meeting will raise your hand if you have any other comments or issues but I'm very mindful of the time we're trying to work to and so I'm going to hand straight over then to Milton to deal with the points specifically raised in the recent letter in the recent email or today's email of the root zone management function. Go ahead Milton.

Milton Mueller: Okay can you all hear me?

Jonathan Robinson: Yes.

Milton Mueller: Okay. So there were a lot of public comments about the relationship between our process the ICG CWG process and the what the NDIA called the separate and parallel process of the modification of VeriSign cooperative agreements.

And it's easy to see how people would for example say that your proposal was not complete because it didn't tell us really a complete story about how root zone management is being modified.



But on the other hand we as ICG know that part of that is outside of your authority and our authority. But there were enough questions raised by these comments that we wanted to clarify certain things.

So the first question we asked is basically whether - now that you have or now that we all have the VeriSign ICANN proposal for revising root zone management in front of us we want to know whether it meets the requirements that your proposal expressed in Paragraph 1150 Sections 2 and three and various annexes of part one?

So essentially we're saying do you see anything in the VeriSign ICANN proposal that isn't consistent with your idea of how that relationship should be revised with respect to the IANA side of it?

And then the second question looking through the materials you prepared we found some discrepancies about an issue that seems to be very important to some of the commenters. Mainly it was the relationship between the root zone maintainer and the IANA functions operator.

So if you look at Paragraph 1158 in the domain name part of the transition proposal they talk about those two things as separate roles different functions but it doesn't say they're provided out of different entities.

And it says should there be proposals to change the roles those proposals should be subject to wide community consultation.

On the other hand if you look at your Annex S the draft proposed term sheet you see a very clear statement that those roles are performed by different entities.

And then the requirements for amending those roles and responsibilities are much higher. It involves some kind of approval of the ICANN Board and possibly approval by the members who are some kind of special IFR.

And because again some of the public comments expressed real concern about this issue of whether the root zone maintainer and the IANA functions operator would be merged or could be merged we thought it best for you to clarify exactly what we meant by separate roles and functions and what it would take to change them. So that's what question two is about.

Jonathan Robinson: Thanks Milton. So I think what Lise and I talked about in preparing for this call was that this is brand new this is hot off the press. It hasn't even been properly digested on the list yet.

So I think we were concerned to make sure that the group was aware of this, understood what the questions were, and had a little bit of time to talk about how we might deal with this rather than necessarily actually getting on and dealing with.

Now some of these might be very simple points to deal with and it may be that we can deal with them almost on list and just agree that relatively easily. Some may be more complicated.

So let's let Martin say a little on the substance of the points being raised on ccTLDs. And then I think I'd like to just turn a little bit too how we deal with these and get some help from the group on that any thoughts on the process by which we source this out.

Do we go back to the original design team leads? Do we just try to thrash it out quickly on the email list to make - or do we need to do something more substantial than that?

And then bring them back to the main list bearing in mind the very tight timeframe that ICG would ideally like us to work to.

So Martin perhaps you'd like to make a couple of remarks on the substance and then any thoughts from the group as to how we sort of process to deal with these would be helpful in addition. Thanks.

Martin Boyle: Thank you Jonathan. Yes I think I can be quite quick on this. There were three questions on the final sheets two of them number three and number four were essentially what I would categorize as being friendly amendments.

Number three is the correction or rather brings in line with essentially a moving target because the ICANN Board adopted the recommendations from the framework of interpretation working group in June.

And therefore we suggest that the last sentence of that particular of a particular paragraph be modified from saying that this was still under consideration to reflecting the fact that it has now been adopted.

The second point under four again is a factual correction and this comes from the ccNS Council.

And it figures around the reference to ICP-1 which has never been a community accepted policy and therefore it needs some correction not only on ICP-1 and News Memo 1 but also the GAC principles 2000 have been out of date since 2005 when the GAC wrote a new set of principles.

So as I say I think both of those are friendly amendments and probably fairly easy for the whether the design team or whether the whole group to accept.

The last point I think is a little bit more difficult because in fact it came from only one comment. But again it is probably quite a significant point.

This is about the requirement in the creation of review teams or subsequently a separation working group. And the document refers to there being two ccNSO members and one non-ccNSO member on the IFRT.

The proposal suggested though that, that actually might be difficult to ensure that you've got a non-ccNSO, ccTLD.

Yes I know that both Lise and (Paul) are very active in this group but I struggle then to try and identify who else? There are very few active people that can be drawn on.

And the commenter made the significant point that they thought that it might actually be difficult to meet the criterion on of a non-ccNSO ccTLD and at the same time ensure that we got geographical balance. And they were more concerned about the geographical balance.

So that's why that one is there in front of you for a consideration in the group as to whether that is a valid or not suggestion.

There were a couple of other points that were made but in both cases it was considered that these were not necessary to refer back to you because either it was a very much a minority position or that the process because the last point was on service level expectations the process for getting to the final

contractual service level expectations has now been agreed so that one got a little bit overtaken by events.

That's all I need to say on it I think unless there are questions. Thank you.

Jonathan Robinson: Great. So thanks Martin and thanks everyone for being functional and brief on this. So, you know, we had a brief view of the substance which is useful.

Having seen that and got a sense of the substance in many cases my feeling is that the substance is not that substantial and we should be able to deal with this relatively easy.

No clearly I don't know I haven't got proper insight into what the other eight might be. And there may be some of you that feel that these items are efficiently substantial and we need to do other work on them.

How do we go about dealing with these? Is it - do we make a first attempt at simply proposing remedies or clarifications on list and start to work with it like that or do we need to break out into smaller groups?

I'm reluctant to kick off a series of small group assets unless it's necessary. Perhaps we look for volunteers to deal with one item at a time and just grab them and try to deal with them and providing there's not dissension to those solutions that may be a way of doing it. Go ahead Chuck.

Chuck Gomes: Thanks Jonathan. And I was thinking about this a little bit before the meeting since I saw those questions.

First of all I'm not volunteering right now so let me be clear about that. But my first reaction was, you know, we had some design teams and maybe those would fit. But I don't think we have time or need to take that much time to do this in groups.

I think it's very insightful that some meetings have been set up for the working group and tentative meetings. And so I think we can take advantage of those.

Now I think for example our meeting this - the tentative meeting set up for Tuesday would be a good one to bring the whole workgroup together and try and finalize some responses to these questions.

But I think you're onto something that's very helpful. If we got some volunteers for each of the questions to maybe draft a possible response soon and then circulate it on the list so that people have a chance to comment that would probably greatly facilitate our ability to possibly finalize the responses if not in the meeting Tuesday hopefully by the meeting next Thursday so anyway my thoughts. Certainly welcome to your from other people as well.

Jonathan Robinson: So we - thanks Chuck. We seem to be thinking similarly in that I don't want to over complicate this unless it's necessary to going to any more detail than that. So it seems that reconvening design teams is possibly a bridge too far and we should try and do it.

The other option is whether we need to seek any staff help since we sought staff help in the drafting of the original document.

And that could also be an option given the sort of stress that we're all under I guess that includes the staff to be fair.

But - so and I note that Alissa has given us a link to where the other categories coming down the pike are and that there are currently the two more categories PTI and scope.

So my suggestion is we break them down into individual areas. Ideally put a single name almost a shepherd or someone who is prepared to assist with the drafting whether that's staff or one of the CWG members and we try and push ahead with dealing with each of these.

And I'd love to seek some volunteers. So maybe a little table gets produced. That might be the way to do it. List these out in a table of questions category sub-question, look for volunteers to assist with answering them and then process them through the group at the main meeting as we've been so discussing over the last few minutes.

Yes and I see Paul Kane is (support) of that with use of the ccTLD, CWG reps as well.

So let's ask staff to assist us with preparing a table including the tentative one I would think so that we actually really anticipate what's coming. And we can always update those; we can shave those differently or indicate in some way that those are tentative. We've got the finalized ones on questions on ccTLDs and the odds and ends.

And we can get the other categories out there, formulate the questions as currently formulated in the last two categories and start to seek volunteers to do that.

So I think that probably deals with this for now in addition to using the scheduled of prepared calls. And in the interest of time I'm going to move us on I think to Item 3 unless anyone else raises their hands or provides other input.

Before Item 3 which is the update from the CCWG and the related issues I'm going to have that over to Lise.

So come in Lise and I noticed Sidley are on the line and have agreed to assist with this item as well. So go ahead Lise and then let's start with that.

Lise Fuhr: Thank you Jonathan. Well Jonathan and I had a call last week with the accountability chairs. We almost have had weekly calls with the chairs since we started.

We discussed the public comment period. And they have received a lot of submission where especially the submission from the ICANN Board is very substantial.

There was a concern among the accountability chairs that the amount of input might create a minor delay in the time schedules for their work. And that's actually also why they have agreed to meet on a two day face to face meeting in LA. They're meeting tomorrow and Saturday this week.

So Jonathan and I looked at the board submission and we decided to ask Sidley to be on this call and to give their preliminary input to the board's submission.

And if its input has any effect on that the CW - CCWG proposal is actually meeting the requirements from this group.



Earlier today Jonathan has sent you an email with Sidley and Adler that I've created a memo where one of the documents is an actual comparison of the board proposal to the CCWG's second draft proposal.

And this memo also mentions issues related to the CWG requirements. But as I asked Sharon Jonathan and I asked Sharon to be on the call. I'll hand it over to Sharon to comment on both the memo and the board comment in relation to our requirement so Sharon?

Jonathan Robinson: Yes so we go...

Lise Fuhr: Yes.

Jonathan Robinson: ...to Sharon just...

Lise Fuhr: Yes.

Jonathan Robinson: ...to be clear this memo was prepared as you can see from the heading on the instructions of the Cross Community Working Group on accountability. This was not prepared under our instructions but of course it links very closely to what we're doing.

And the question we really wanted to at least provisionally ask and we took the liberty as chairs of doing this because the time constraints involved with this forthcoming meeting and so it was to try and get an initial assessment not necessarily a fully formed legal opinion but an initial assessment from Sharon and/or her colleagues as to the impact of the board proposals on the CCWG work and therefore on whether or not that might, you know, our conditionality requirements would remain to be met remain met by potential modification.

So it's a little speculative but we felt given the timing it was useful for this group to know and understand what the impact of those proposals might be on a CCWG meeting our commission RT.

So Lise I hope I didn't cut you off there. Just let me pause a moment...

Lise Fuhr: No.

Jonathan Robinson: ...you had more to say?

Lise Fuhr: No you actually clarified it very well. So that's absolutely perfect. Thank you very much Jonathan. I agree it is not our memos it's just memos that's been created on behalf of the accountability group but they touch upon our issues to.

Okay. Thank you and Sharon?

Sharon Flanagan: Okay great. Thanks Lise. There - as Jonathan and Lise both mentioned there are a number of memos that we've circulated Sidley and the Adler firm have circulated for CCWG. So there's a lot - if people are interested in detail there's a lot of detail out there.

What I thought might be helpful I know some of you are on CCWG and are very close to these issues.

But I thought maybe for those who are primarily focused on CWG it might be helpful to just very, very briefly describe what the key differences in the approach and then I'll talk about whether at a kind of high level whether the ICANN Board proposal meets the CWG dependencies.

So let me just start with, you know, kind of the very high level what exactly is the ICANN Board proposal about?

In short it's an alternative to the community mechanism a sole member structure that's been proposed by CCWG.

So that in that structure the CCWG structure the community would have exercise its rights through a sole member structure.

Under the ICANN Board proposal what they're suggesting is instead a new enforcement mechanism to stand in place of membership.

And they're calling this the Multi-stakeholder Enforcement Mechanism or MEM because we always need an acronym for anything in ICANN.

And so the basic concept is that ICANN and the Board would be held accountable through this MEM this enforcement mechanism and that the SOs and the ACs would have the power to challenge decisions or actions of the board if those actions violated the fundamental bylaws.

And that they could bring a binding arbitration decision to a court in California and have that decision enforced.

It's a little unclear whether it could be enforced outside of California but at least would be enforceable in California.

And then just really quickly what the MEM kind of the way the MEM would work is that you would have an SO or an AC would petition the other SOs and ACs to initiate a MEM proceeding.

And then some to be determined number of SOs and ACs would need to agree to proceed with the MEM proceeding.

And those that wanted to would be constituted as a MEM Issue Group. And then there would be a standing panel. And that panel would review the complaint brought by this MEM Issue Group to determine whether the Board had violated the fundamental bylaws.

Just as an aside this would be in addition to and separate from the IRP process. This is a new process altogether.

And I should also note that the only conduct that would be reviewed by the MEM would be Board conduct. And it would only be against the standard of did the Board violate its fundamental bylaws? So that's the scope we're talking about.

So that's this new enforcement mechanism. Obviously there was pages and pages of detail on the ICANN Board proposal out there both put forward by ICANN but also in the memos and charts that have been provided by Sidley and Adler to analyze those.

Again if you are interested in detail it's out there. But I'm going to focus really on, you know, how does this work in connection with CWG's dependencies.

So if you think about the CWG dependencies there are a number of them. But there are really four that tie most directly to this new approach being proposed by the ICANN Board.

The first is the ability to veto a budget. The second is the ability to veto decisions related to a separation process.

The third is the ability to remove an ICANN Director or to recall the entire ICANN Board. And the fourth is requiring some community support in order to amend whatever the fundamental bylaws are.

Now again these aren't all the CWG dependencies but these are the ones that are most relevant to looking at this ICANN Board proposal.

And, you know, the question then is does this ICANN Board proposal meet these requirements? And the very short answer is not as directly or as clearly as the current CCWG proposal would do. And that is the proposal that contemplates a single member to exercise the community powers.

And many of you know the reason but let me just explain for those who are not as close to the CCWG process the reason that I say not as directly and as clearly is because that under California law the board of a nonprofit corporation has fiduciary duties.

And it can't be required to act in breach of those duties with respect to particular rights unless and this is an important caveat unless that right is reserved for the members of the corporation.

And that is one of the key reasons that CCWG landed on a membership model. And that's because that model provides the greatest certainty on the ability to enforce the rights granted to the community because those rights and powers would be reserved for the community as the member of ICANN.

So under the sole member model the Board essentially is relieved of his fiduciary duties with respect to any rights that are reserved for the members.

And that's how you can reconcile the Board has fiduciary duties with the ability of the community to weigh in on certain matters because a community is a member and has, you know, has its own rights to guide and govern the corporation.

So without a membership model there is a risk that the right to veto budgets, and the right to veto a separation process decision are not enforceable because those can't be reserved to a third party such as a community not - at least not as a matter of California corporate law.

So, you know, without a membership model if you try to reserve certain rights to the community let's, you know, say budget and separation process if the Board determined that to follow the communities view on that matter would violate its fiduciary duties we would expect that the Board would instead act in a manner consistent with its fiduciary duties.

So if forced to choose between following the community and following its fiduciary duties we think the board would feel compelled to follow its usury duties.

And then what's left for the community at that point? Now theoretically the community could go to court and challenge that action and say look the Board was supposed to follow our guidance and the Board has ignored our guidance.

But it's unclear what a court would do with that. And we think it's very possible and maybe even likely that the Board would agree with - that the court would agree with the Board and say the Board was right to follow its

fiduciary duties. And that a bylaw that purported to require the directors to act in a manner inconsistent with their fiduciary duties was just invalid okay?

So basically the upshot of all that is what that means is that of the four dependencies that I articulated the first two budget and veto on separation process under the proposed ICANN Board model which does not contemplate a membership structure there would be uncertainty on whether those rights could be enforced in all cases. Jonathan?

Jonathan Robinson: I don't want to cut you short Sharon. I can come in when you've finished it's just if this is an appropriate pause I'll make a quick comment...

Sharon Flanagan: Yes. Please go ahead. I was going to talk about the other two dependents. So this would be a good moment to jump in.

Jonathan Robinson: Okay. So the thought I have is that we've got a really delicate situation here because the CCWG hasn't done its work. It hasn't, you know, fully processed the Board comments and decided what it might do.

But this is an opportunity for us to be aware of what the - if they were to take on board fully the Board's proposals what the impact might be. So I just wanted to set that - make sure we understood that context.

This is very interesting and very valuable information. But we need to - we can't preempt I guess what the CCWG is going to do and nor should we seek to do that but - so that was the remark I want to make. Thanks Sharon.

Sharon Flanagan: Thank you Jonathan. Yes that's a very good point. And there's still a lot of work to be done on analyzing and discussing this proposal. And in some ways

we are kind of getting ahead of ourselves by talking about it now and I do again refer people to the detailed memos and discussion that's out there.

This is really just meant to kind of, you know, sort of at a high level if you try to look at just the proposal as it is and obviously it may change but kind of how does it sync up with the ICG's dependencies but that's a very good point Jonathan.

So let me just then just continue on and kind of finish up with the other two dependencies which are the ability to remove a director and recall all directors and the ability to have the community have a say on whether the fundamental bylaws can be amended without committee support.

The ICANN Board proposal supports the idea that the community would have the right to remove individual directors. And there's a process that they've outlined where each director would sign a pre-service letter that would indicate cause for removal under certain circumstances.

And those would include things like violating governance standards, not following the community empowerments mechanism, not, you know, following a MEM outcome things like that.

And then the ICANN Board proposal also contemplates that two SOs or ACs could petition for a director's removal with a removal taking place by a super majority of all of the SOs and ACs.

And that process would be kind of a singular process regardless of who appointed the director. And that's a little kind of deeper in the weeds on CCWG, you know, the CWG dependency is simply the ability to remove and recall.



It doesn't really get into who within the community has that power so that's probably more of a detail than anything else.

But certainly the ICANN Board proposal does recognize that removal power. It's open as to kind of how that would be enforced and what the mechanism would be.

There is - it is a more limited right. They would like to see that right exercised only in the event of certain cause circumstances but clearly there's a recognition of the need for the community to have that ability to remove directors.

So, you know, is it enforceable? Under a membership model we know it's - we know members can have the power to appoint and remove directors. So a membership model is clearest on that.

It is also possible under California law to do that through a designator model. And that would allow the community through whatever mechanism to appoint and remove directors.

That is different. I just want to remind people that is different from budget and separation which can't be reserved to a designator under California law.

So this is the piece the director piece is something that could work through a designator model. So that's just one thing to note.

So again so the removal is there. And then if you think back to the first two dependencies budget and separation I mentioned that in the ICANN Board

proposal those aren't directly can't directly be met meaning you can't directly go give the community the detail rights without being a member.

But there is still a mechanism to indirectly enforce the community's voice on budget and separation through removal of the Board right?

If the Board isn't doing what the community wants the community would potentially have the right to remove the director or the Board and put in a Board that is willing to follow the community's voice on budget and separation.

So on that I would just note that if you've got the removal right you can indirectly have a say on those - the budget and separation dependencies, it's just not a direct say.

And then the last thing the last dependency I wanted to mention is just the fundamental bylaw amendments.

So on that one again the ICANN Board proposal does agree and contemplate that fundamental bylaw changes would require community approval.

That view in that proposal is that, that could be achieved without moving to a sole member model. And they talk about, you know, different ways that might be achieved.

Again as with the power to appoint and remove directors under California law the power to amend fundamental bylaws could be given to members or it could be given to designators. So that's where a designator or member model both could work.

So, you know, in summary again Jonathan mentioned this is all still quite preliminary. And we are very, very actively on the CCWG side analyzing and discussing all of these things.

But I will say just, you know, in summary that the CCWG proposal provides still the clearest path towards meeting the CWG dependencies.

And that, you know, a designator model instead could accomplish some of these goals albeit in an indirect manner with respect to budget and separation. So I will stop there.

Lise Fuhr: Thank you Sharon. And that was a very helpful preliminary walk through of the ICANN Board's mission and their relation to our requirements.

And as Jonathan said it seems that it's a bit premature to go deeper into this but it's very helpful to have this in mind and be aware of that things might change during the next couple of days so it's good to know where to have the focus.

Is there anyone else who has a question or a remark to Sharon? Doesn't seem so, thank you Sharon.

And then we'll move on to legal work. I don't know if Jonathan has to leave the call now or he has two more minutes?

Jonathan Robinson: Thanks Lise. I do have to step away very shortly. So let me leave. I think really from the legal point of view this - I don't think we're in a position - my sense is that we're not about to instruct any new work.

It may be useful to get a couple of comments on where we are with the bylaw drafting. I'm not sure if Sharon's in a position to do that. It would be perhaps useful to get at least get a sense of where that works kicked off and how that's going to work.

In particular the group to remind this group that we have asked Sidley to lead on drafting the bylaws in relation to our specific requirements so that could be helpful. And I think I'll hand over to you Lise for hearing that and the rest of the call. Thanks.

Lise Fuhr: Okay, thank you Jonathan. And I see Sharon has her hand up. Sharon go ahead.

Sharon Flanagan: Thanks Lise. Let me just respond to the yes the update on bylaws. We are hard at work on drafting the CWG bylaws.

It is well underway. It's a complex project. So it is going to take some time. And - but we're - the work is underway. And we will as soon as we have drafts that are ready to be shared with you all we will certainly do that. Thanks.

Lise Fuhr: Thank you Sharon. Well are there any questions to Sharon regarding this update on the bylaws? If not we will move on to any other business.

And as Jonathan started the call explaining that we need to have some more meetings going on and we have meetings coming up on Tuesday and maybe we'll move the Tuesday call to Thursday next week.

But we need to have weekly meetings instead of having every second week because we have a lot of issues that we need to deal with. We have the ICG questions. We will also have to follow the work of the accountability group.

And as Jonathan also said we are going to look into implementation. It's not a forgotten topic. We will deal with it.

And we just found that this meeting had issues enough to deal with and we have a lot of work that's still going on before we can actually start thinking about the implementation.

Chuck your hand is up. Chuck, go ahead.

Chuck Gomes: Thanks Lise. And maybe Alissa can help us on this but my understanding in some conversations with people on the ICG is that they're going to want and probably need a little more implementation detail fairly soon.

And so I just want to follow-up what you and Jonathan have said about implementation. And it seems to me that we would - it would be helpful if we started if we haven't already to list make a list of implementation items even at a high level at first. We can always break them down finer later.

And it may be helpful to the ICG -- and I'll let Alissa respond to this -- if we started that process right away.

And if there's agreement on that and we don't have anything already started on that I'm willing to take a first crack at least a high level on that.

Lise Fuhr: Thank you Chuck. And Alissa you have...

Alissa Cooper: Sure. Thanks for the question Chuck. So currently in the combined proposal in part zero which is the part that the ICG wrote there is a section that talks about implementation items to be completed.

And one of the ICG members at the face to face took an action to try to update that section and essentially provide an inventory of implementation items to be conceded since while, you know, the details of all the implementations are not going to be part of the proposal I think we do collectively feel that it's important to, you know, have the consolidated list from across the communities as to what the expectation is for which items need to be completed during the implementation phase.

So if this group is able to provide that list from the CWG side and if you're able to do that on very short order I think the action for us (Lynn Syndamore) had agreed to try to consolidate all of these by, you know, going back through the proposal and reaching out to various stakeholders in different communities.

She was trying to get that done by this Sunday just as a first draft. But if that's a list that you can compile and make available, you know, by middle of next week I think that will definitely help us cross reference and make sure that the lists that we're putting together is complete and reflects everything that, you know, to make sure that we didn't miss anything.

So we would certainly welcome that. And agree Chuck it doesn't - it's unclear, you know, what level of detail this part of the proposal will go into. I doubt that it will be at a very, very granular level.

But even at a high level if you have a list and we can compare our list with your list and make sure we didn't miss anything that will be useful for us to do.

Lise Fuhr: Thank you Alissa. Chuck before you answer Alissa I think it's a very good idea to make a list of items and issues that needs to be taken care of in an implementation.

But what Jonathan and I have been talking about is more the role of this group in the actual implementation phase if any and the actual scope of an implementation of the - or of the group in an implementation phase.

So it's I think a list could be done right away. And if you are happy to do it, it would be a great help but we need to have those two issues separated.

Chuck, go ahead. Chuck?

Chuck Gomes: I'm sorry on mute. Thanks Lise and thanks Alissa. What you said was consistent with what I understood. And I'm willing to take a first crack.

What I would want to do though is first of all not duplicate things that are already done. So if there's - if anybody can point me to any places where we've listed implementation action items that need to be done I could capitalize on that. I looked around on the site and didn't see anything real quickly but maybe it's not on the site.

So anyway I'll go ahead and do that like I said at least at a high level. And my intent then would be to send it to the chairs and to the list and people can add to it and so forth so that it's not just me doing it and hopefully that will be helpful.

Lise Fuhr: That would be very helpful Chuck. Thank you. And I see Grace has in the chat noted what about Section 4 of the report?

But if any work has been done within the ICG it would be great to know where it is and to help Chuck not duplicate any work.

Any other questions or remarks on this? If not I just have to mention that we are looking at the prospect of a meeting in Dublin if required. It's not been decided yet.

But if there's a time and the need we will try and find a timeslot for it but it's not decided. Any other business from any in the group?

Okay. Then I'll thank you all for keeping this call. We're at two minutes past the hour. It's been good. We have quite a lot of work in front of us.

We thought it was all over but we have the questions from the ICG coming, we have the bylaws drafting that we need to do and of course we need to follow the work from the accountability group still as they're looking at the public comments and need to find out what needs to be revised and if it's still meeting the requirements if their proposal is still meeting the requirement from our group.

But thank you so much for a very constructive meeting. Thank you for Sharon for joining and giving us a very good overview of the Board comments and we'll talk together next week.



We will have staff send out a table with the news memo one questions. And it would be great if you could say if you want to do the writing on some of the questions we need your help on doing this.

Thank you all and enjoy your evening, or a day or whatever time it is wherever you are. Thank you for joining. It's been a good call. Thank you, bye.

Woman: Bye-bye.

Woman: Bye all.

Man: Bye.

END