
CCWG Meeting
Saturday, 26 September 2015
Los Angeles, California

THOMAS RICKERT: Good morning, everybody. This is our two-minute warning. We are going to start in two minutes, please.

LEON SANCHEZ: Hello, everyone. Would you please take your seats. We are about to begin. This is the 30-second warning.

Do we have the recording running? Can we please confirm that we the recording started? Okay. We're ready to go.

Good morning, everyone. Good afternoon, good evening, wherever in the world you are. Thank you for joining us today again in the CCWG face-to-face meeting day 2 in Los Angeles or wherever you might be. As usual, the roll-call will be based on the attendance in the Adobe Connect room. And if there is anyone at this point that is not in the Adobe Connect room but is on the phone bridge, we would like to listen to your name so we can add you to the roll-call.

Okay. Listening to no one on the bridge, I think we can continue. And I will now hand it to my co-chair Thomas Rickert.

THOMAS RICKERT: Good morning, everyone. I hope you had a good night's sleep. For those in other time zones, I hope you had a good day so far.

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

Now, what does traveling across many time zones and the CCWG have in common? It keeps you awake at night.

[Laughter]

It happens day in and day out.

And I woke up very early this morning, and I just jotted down some thoughts that I'd like to share with you. To start with, I have good news and bad news for you. I think if we continue our discussion as we did yesterday, the transition will not happen. And now for the bad news.

[Laughter]

We would likely demonstrate to the outside world that the multistakeholder model has failed and that has far more implications than the transition only. So why do you think I'm making these strong statements? Which admittedly are a little bit tongue in cheek, as you would have noted.

Everybody came to this table saying they were open minded, but wasn't it rather like being open minded for the group to join you in your own concept? You say this is not board versus community or community versus board, but there's a lot of evidence that I could dig out of the transcripts that exactly this is not the case.

You say we must have a simple solution; there must be simplicity in how we explain it. But at the same time, if you look at what people said yesterday they add detail and they add complexity to it. You heard a lot of people say, "I support what has been

established" and "I agree to what has been said," but they say, "I agree but."

And my friend Thomas Schneider made it clear to me yesterday again that in diplomatic language "I agree but" is nothing else than "I disagree, I say no." So let's be honest about where we agree and where we don't.

You say that you are willing to compromise, but I haven't heard a lot about middle ground suggestions yesterday. Rather, we heard repeatedly the arguments that are on the table for months and months. So we don't see much move in actually finding compromise in this group.

Instead, there are a lot of observations, general observations, explanations, reiterations of existing positions that we know. And this meeting, before we came together, was -- you know, there was a lot of press around that. And Phil Corwin whom I respect a lot, he wrote about this, "The empire strikes back." That was his tagline for the board's comments. Who blinks first will lose, he called this.

And I'm asking myself, is this really the way we want to look at what we're doing. I guess not. I hope not.

So, again, I guess there was some confusion about how we tried to work yesterday. And let me explain again what we tried to do.

We built on what we have done so far. This group, I think, has an excellent history in following a process which is to establish requirements, transform these requirements into an implementation model that addresses the requirements or that the group at the time thinks meets these requirements. And

then we publish those ideas, recommendations for comment. We analyzed the comments, and then we improve.

When analyzing the comments, we looked at -- and we tried to do that yesterday at the areas of support -- the areas of concern. We tried to remove concerns, i.e., we tried to fix the recommendations that we've made. And where fixing is not possible, i.e., where a compatible solution to the existing model can't be found, we abandon ideas and create something new. And it appears to me, like, at this stage what's been called the end game by some, we are losing sight of this approach. We're rather standing firmly by the positions that we've -- you've established.

So we try to take the approach that we've previously taken very successfully, but it didn't really work. Remember, when we tried to establish the list of concerns -- just to give you one example, this is not to do any finger pointing, the board through its chairman said -- when asked is this a finite list of the board's concerns, he responded -- Steve responded, "Look at our documents. It's all in there. Our position stands."

When we were asked to explain what we're doing, we said, "It's all in our report." Both parties are right as well as others that have different positions that are right. So this is just to illustrate where I think we are at the moment. The question is: Does it help to do that way? Does it help the process to advance? Probably not.

So I think I would still beg you to follow us with this approach that we have used so successfully so far, but let's try to change things a little bit.

And I see two, if not three, fundamental issues in the way we're discussing at the moment. We don't really have acknowledgments of underlying concerns. We need to get that straight. We need to understand the root cause for why people like certain ideas and why they don't like other ideas. So we need to be very crisp on that.

So trying to use an analogy knowing that analogies never work, particularly when they come from somebody not speaking his mother tongue, let me still try.

We are trying to build this house of accountability. You know, we've called the four building blocks the bricks out of this which this house can be built. And we think that if we built this house and fix all the issues there are that we would be good to go. But I get to believe that at this stage, even if we built this house that fully works -- we have air con in there. There are windows. There are doors and stuff like that is correct -- still the board wouldn't want to move into that house and live there. And maybe it is the surveillance cameras in the toilets and in the bedrooms.

So I think we need to acknowledge that we might have issues with -- or we haven't fully understood or appreciated the concerns that parts of the community have. And, again, the board's concern is just illustrative of what we heard from many other commenters. There's a lot of questions, a lot of uncertainty with the suggestions that we've made. So let's be very honest with concerns and get clarity on concerns so that we can address the concerns.

Second point is on requirements. There is a constant request for simplicity. Tijani has asked for it over and over again. So did Fiona yesterday. But if you remember last Tuesday's call, when I asked this group to acknowledge that simplicity should be a requirement for our work, it was turned out. I think we need to acknowledge that simplicity is a requirement for our work.

Now you might say we need to understand everything fully to then have a simplistic model, and I don't disagree. But I think what we have at the moment is like we are trying to compose a piece for a 100-piece orchestra. And others say, well, I prefer a rock piece, three chords, let's go. And I think the truth is somewhere in the middle. The most successful tunes, both in classical music as well as in pop or rock music, are tunes that you can easily hum. ABBA is a perfect example for that. But that doesn't mean that a lot of thought has to go into that, that a lot of detail needs to be fleshed out before it turns out to be simple. So we need to -- we need to continue to be very diligent; but let's try for something very, very simple. Let's go for the easiest model. Let's make that one of our requirements.

Another point is enforceability, requirement of enforceability. There's been a lot of talk about that. But if you take a look at it -- and this is just, again, to illustrate that we need to not only focus on removing concerns but we also need to be clear on our requirements. NTIA never made enforceability a requirement. The CWG when it said they want enforceable powers did so months ago when they did not know what model we would come up with.

I'm not saying that we should abandon enforceability, but I'm begging you to put the request that we have under scrutiny in

terms of what was meant by it and do we have wiggle room and maybe taking some things out and helping our little project to advance.

So in all that, I guess the main question is that we need to sit back and think about why are we doing all this. Whom are we serving with all this? What is the main intention behind this? What is our mission in all this? And I think you will get a lot of different answers. There are some that have a clear agenda. They want their favorite topic to be addressed in this historic opportunity. But actually we are tasked to help ICANN enhance its accountability to prevent bad things from going on.

We want to protect this organization, to make it sufficiently robust so it can exist in a post-IANA -- or a post-NTIA, post-U.S. government era.

My friend Mathieu who is on the call now -- and as a matter of precaution, I have made sure his audio line is muted so he can't contradict. He wrote a blog post a few months back, and he said that what we are doing is drafting the prenup for ICANN, which I think -- which I thought at the time was a very nice analogy to be used.

Today I think that this analogy is probably wrong. You write a prenup for the time after a separation, after a split. That's not what we're trying to do. We are trying to establish a safety net so we can work successfully together. And I guess in that spirit, I guess we should conduct our discussions.

So let's look for something that is simple. Let's look for something that's quite basic, that is the safety net to replace the U.S. government backstop.

So I think we are in good shape. I think all the information, basically, that we need to come up with that is there. It was a little bit unfortunate that we came together before having diligently analyzed the public comments.

I guess this is what caused so much frustration in the room yesterday because analyzing the public comments is not a fun thing to do, right? But I think yesterday's conversation still helped us understand what the concerns are. And let's take that to heart and try to take that to the next level.

So for today, which might not be a surprise to some, we have taken to heart the comments that we heard from some. We said, well, you are not making enough use of the brains in this room. And we thought that we would just -- you know, we would have an easier time reconciling the differences and just confirming support on various areas. But there seem to be two areas that are of particular importance, one of which is the decision-making in the community, voting versus consensus, how to chime in, how to be inclusive. That is unresolved. In either model, it is unresolved so far.

The second question or the second area is how to reconcile the differences between board decisions and community decisions. We call the implementation of that a model. This is what we have so far. I just wanted to bring that up because I found the illustration so funny.

We don't want to talk about implementation models today. Actually, I would beg you to make MEM and CMS or single membership model the banned words for today. Let's not discuss them. Consider them dead, both of them.

Let's try to come up with something new that is truly consensus in this community that builds on the best of both, of all worlds. And let's not tack this an implementation or a legal model, but let's discuss what mechanism -- what process can be found to reconcile differences between board decisions and the community's views. And then after we've come up with some ideas on that, let the lawyers come up with suggestions on how to operationalize that.

We did that before. We said we have to establish requirements and then we let the lawyers work out how to operationalize that. In order to facilitate that discussion, we plan to have two breakout sessions during the day.

So, first, we are going to have as planned the discussion on human rights. So that's unaltered.

Then we're going to have a breakout session which we are going to introduce again to discuss voting versus -- or the decision-making in the community. And we want to make sure that in the breakout groups we have board members, we have stakeholders -- representatives of the different SOs and ACs working together so we have micro-multistakeholder models coming up with ideas and reporting the ideas back to the group so we can take stock of the best ideas. And in the afternoon, we are going to do exactly the same exercise for a measure, a means, not to say

model, to reconcile differences between board and community views. All right?

And that is the plan for today. I hope that you agree that there will hopefully provide us with an opportunity for a breakthrough.

At the beginning of this first session, we will try to discuss the main concerns. We've discussed with Ira, that Ira would briefly speak to us, Ira Magaziner, who is one of the experts for this group. He can't stay with us for the whole day. But before he leaves, we want to give him the opportunity to share some of his observations with us.

That's it from me. This may have sounded a little bit negative. Actually, I think Ira was perfectly correct in saying we have 90% completion. But let's take make sure we get the remaining 10% working.

Over to you, Leon.

LEON SANCHEZ:

Thank you very much, Thomas. So I think I could add little to what Thomas has just said. And, you know, I'm an optimistic. I do believe in our community. I do believe we have a great group of people here. I do believe that we are all in a mindset that will let us push this forward, and we will be able to find the way out for this. It's not as complicated as it seems. Simplicity is the last sophistication, some would say. So we need to work towards simplicity. We need to work towards having this solution ready. And we have very little time. So let's begin working.

At this point, I would like to invite Nigel Roberts. We have some updates on the track of human rights. And I think this can be something that can set the positive tone for the rest of the day.

I think that we all have an agreement or we have heard from the community from various stakeholders that human rights is, of course, something that we need to address. That is something very important for our community, and that is something worth giving not only a thought but a very serious weight into what we're putting together. I'm sorry.

Before I go to Nigel, I see -- I'm being told that we have two hands raised in the Adobe Connect room. The first one is Kavouss. So, Kavouss, I would like to hand the floor over to you.

KAVOUSS ARASTEH:

Good morning, everybody. Thank you very much, Thomas, for your vision and for your reflection. Highly appreciated. I don't want to discuss the model nor the decision-making now. But I would like to mention, once again, this is the unique opportunity that the full board member meeting with the CCWG. And we need to agree on some overview, broad line of a compromise. And I have submitted a compromise, simple, seven or eight-line overview to Leon. And I request him possibly to distribute it to the people, to have a look at that between now and the afternoon when we will discuss it. It is not too much detail, but it is just avoiding some of those things.

One more issue I have to add to what you said, Thomas. We need to be able to sell our proposals. The first buyer is ICANN. If

they don't buy that, we will have a problem. The second buyer is the NTIA. And the third buyer is Senate.

If you are not able to sell that, therefore, we have to return back into the safeguard. Thank you. And we can use it.

LEON SANCHEZ: Thank you very much, Kavouss. And I will be circulating your alternative proposal.

KAVOUSS ARASTEH: Please correct the last word. It goes back to the inventory.

THOMAS RICKERT: Next in the queue I have Erika Mann.

ERIKA MANN: Thank you so much, Thomas. I liked what you described and the way forward the idea to find a common understanding between these two scenarios. And I'm a strong believer that this is possible. So I think it's the right focus.

I would just urge you and everybody involved in it that when we -- when you made a recommendation that maybe lawyers then afterward should sit together and come back with a workable compromise. I like this idea as well. I think it will help us all. Doesn't mean we as the community will have to accept us; but, anyhow, we will have something we can work with. But to make this workable, I think we will have then to have an understanding that we will give them clear guidance that we would love to see such kind of compromise or two scenarios of a

compromise, whatever we think is the right way forward to come up with. Because otherwise it might not work. So a clear guidance will be needed for these -- for these lawyers then to work together.

THOMAS RICKERT:

Thank you very much, Erika.

So now I will continue with the agenda item, which is human rights. I believe that many people that are joining us remotely have been waiting for this since yesterday. We had to postpone it for today. And, as you know, this was one of the emerging issues that was identified by our community and by our group. And we had set up a group to -- a subgroup to take care of trying to address this concern by the community. We received different comments, as I said, supporting the idea that ICANN should be committed to respect and to -- yes, to respect and to adopt human rights respecting all its actions and on their day-to-day activities. So most of the comments were supportive of this idea. We also received some comments telling us that this could be something premature that we might be looking at this in a later moment. But I think this is the example that I said that can set the positive tone for the rest of the day. I think we have here something that everybody agrees on.

The only difference that we have is timing. Should we take care of that at this moment? Should we take care of that at a later stage? And I feel from reading the community input that the timing is now. And I would call for those who have told us that this might seem premature to embrace the idea of taking care of it now.

That will lead us to middle grounds. And we'll, as I said, begin the positive tone for the rest of the meeting.

So, Nigel, would you please work us through what we've been working on in the group.

NIGEL ROBERTS:

Thank you. I'll be as brief as I can, because I think it's important that the room gives the thoughts. So you can actually run the timer, but I don't promise not to overrun.

Why? Why human rights? As many of you know, human rights is an aspect of the relationship between individuals and the state, that is, between the private sector and governments, not between individual private sector organizations or people. Human rights includes things like the right to life and the freedom from slavery and torture. Now, those things are not things I suspect ICANN will be concerned with, despite what Mr. McCarthy wrote yesterday. What's important is the fact that currently there is a backstop. That's a word we've used a lot. The NTIA is a backstop. And that is a public authority. That is a government -- part of the U.S. government.

ICANN has a unique mission which undoubtedly affects human rights matters. And, if ICANN was to go off on the wrong path, that ultimate backstop is there right now.

When ICANN is an entirely private sector organization, free of any connection whatsoever to a public authority, it will be legally free to do whatever it wants to do. As someone has often said, ICANN occasionally says one thing and then does what it wants anyway. I think it's very important that we examine this

right now. It would have no duty to respect human rights whatsoever.

Post transition, what would the position be?

Well, the champion for defender of internationally defender of human rights prints will be the GAC. And that's no bad thing. The GAC is, obviously, made up of public authorities. But it's complex. Different countries have different approaches. And often it's a microcosm of other international organizations. So we need something a little bit more and in addition.

So there seems to be very much consensus within the working group that there must be a binding commitment to human rights principles by ICANN before transition.

And, as Leon has pointed out, the feedback from the Board has been this is premature. But they haven't said why.

And I think it's very important that we learn what the thinking of this is. Because we're not talking about making a grand plan here that we deal with every implementation plan. That is definitely something for workstream 2. We're talking about embedding a high-level core principle to respect this as a unique organization with a unique mission internationally. I think it's a no brainer. I can't see why anybody would think any different. And, if anybody does think different, I'm willing to try and understand now. Thank you.

LEON SANCHEZ:

Thank you very much, Nigel. And I think that, since Nigel has asked for direct board members' input, I think this is a good

point in which we can start trying to bridge gaps. Is there anyone on the Board that would want to address this concern that we have? Steve?

STEVE CROCKER:

Thank you.

You know, we're part of the entire world human community. We support human rights as strongly as anybody.

We're always mindful that -- and we get told over and over again that we should stay within our remit. So where the intersection is between a broad statement of supporting human rights and the nuts and bolts of translating that into what we do and don't do, we are, at the end of the day, a very, very, very tiny organization in a very big world.

And we'll be effective doing the things that we're supposed to do. In our day-to-day life, in our underlying principles, and in every single action, human rights are very important. And it would be an anathema, it would be a terrible thing if we were violating human rights in the course of carrying out our activities.

So at that level not a problem whatsoever. If it were then turned into, well, but then ICANN should take a proactive stand and go solve these terrible big problems in the world, of the many ways for us to fail, that would be the fastest, I think.

LEON SANCHEZ:

Thank you very much, Steve. Any other board member that would like to voice their thoughts on this? Yes, Wolfgang.

WOLFGANG KLEINWACHTER: I just want to give my full support to what Steve has just said. We have discussed this also in the constituency where I come from, the noncom user constituency, human rights for a long time. And, as Steve has said, ICANN has no right to violate human rights. It has a duty to respect human rights. And, if this is done within ICANN's mission, I think there should be 100% support and consensus. Probably we have to be careful with the language, but it's not a big deal.

LEON SANCHEZ: Thank you very much, Steve. Thank you very much, Wolfgang. Fadi, you want to add something.

FADI CHEHADE: Simply to echo what my colleagues said. We should make a commitment that we will abide by human rights within our mission clear. And we have an alignment on that.

LEON SANCHEZ: Thank you very much, Fadi.

I think this is very positive. We have moved forward, from my point of view. Yesterday we had thought of prematurity from the Board. We now have commitment that we need to address this. So let's keep the work going. Let's define how we're going to put this into the bylaws. And I would like to thank for the openness.

I see Eberhard Lisse's hand is up. Eberhard.

EBERHARD LISSE: Yesterday I had a discussion with somebody. And one point I was referred to is that individual one that when we talk about anything, do we have a business plan? What I think about this is it's good that we have agreement and that ICANN within its mission will abide by human law.

Now, what now? This needs to go into workstream 1. We need to have a timeline for writing the language and get it done. As I said yesterday, I want the topic that we address here to be finalized. I don't want any further waffling and then changes here and changes there. Repeat of all the positions. How can we make sure that this thing is done, sewed up, tied up nicely and doesn't need to be addressed any more? It has to go in workstream 1, as far as I'm concerned.

LEON SANCHEZ: Thank you very much, Eberhard. I think we agree that this is a workstream 1 issue. I have people in the queue. Want to double-check.

Erika Mann's hand is up. I would go to Anne Aikman.

ANNE AIKMAN-SCALESE: Thank you. I was busy chatting. Certainly, I would support the notion that ICANN should have in its mission a general description of human rights and support for human rights.

I don't believe, of course, that human rights are limited. I think the best definition is probably the U.N. declaration. And I'm not sure why we would limit discussions of human rights. I come from a background that believes that authors also have free

speech rights and that authors have rights to their intellectual property and that those are human rights that are listed as well in the U.N. convention. Separately, regarding the process described earlier -- and I won't take a lot of time on this -- but I don't think it will actually be helpful at this point to come up with other ideas that might result in different legal models. I think that will open the Pandora box. I think the true answer, based on the public comments, is to go with the sole member model and to restrict the rights of the member to alleviate the Board so that these horrors, these Stephen King novels that we've been dreaming of that there should be cause of removal of directors, that there should be a different way to develop consensus other than the voting process, that the GAC should provide advice to the sole member in the same way it provides voice to the Board. There are middle grounds with respect to these matters, and I ask that we not try to reinvent the wheel at this stage. Thank you.

LEON SANCHEZ:

Thank you very much, Anne. We will be, of course, addressing the points through our work today.

Next in the queue I have Avri Doria.

AVRI DORIA:

Thank you. Avri speaking.

So I think -- if I'm hearing correctly, we're no longer -- people are no longer saying I support human rights but not as a bylaw. So that's good because we were already taught this morning what

"I support, but" means. So I'm glad we've gotten beyond that one for the morning.

One of the things that I think is important for us to remember is that indeed we do need to put this within the context of ICANN's mission. And we do need to talk about every time someone says, "But, you know, we don't want somebody to --- human rights, therefore ICANN must do something about that." That becomes sort of a straw man in the nature of a "but." So I think we have to be careful that, yes, we are talking within the mission.

We are talking -- and very important -- when we're putting it in, to put it in, in the minimal respect within the mission and respecting and understanding.

So to remember that one of the things it needs to do is it needs to answer that question that NTIA asked of how do we maintain the openness of the Internet? Because, when we're talking about the openness of the Internet, we're talking about things like expression, flow of information, privacy, rights that we need to make sure that the policies that we create respect. That is really the context. It is to make sure that we do no harm. Thank you.

Thank you, Avri. Next in the queue I have Tijani Ben Jemaa.

TIJANI BEN JEMAA:

Tijani Ben Jemaa speaking. I am a strong believer in human rights. I do believe that human rights should be in the bylaws of ICANN, but I insist that it should be inside the mission of ICANN. ICANN is not about content. ICANN is about names and numbers.

So we have to restrict this to the mission of ICANN means to names and numbers. I see, for example, one of the applications of the human rights for example, the privacy, protection of data, WHOIS, et cetera. But we cannot restrict to delegate a TLD because we say, oh, this applicant will use it. And these human rights. Thank you.

LEON SANCHEZ:

Thank you very much, Tijani. One of the things that the subgroup or working group on human rights is trying to do is not only to wordsmith the proposal that we would be putting forward as an amendment to the bylaws, but we are also working on having an explanatory note. And the rationale can help interpret whatever we come up to from -- or, of course, to actions.

So that is something that we do have in mind. Don't think this is the right time to openly discuss any wordsmithing. We are far from having an initial agreed wording for this. So I think that would be the best use of our -- of everyone's time at this point. But meetings are, as usual, open and recorded for anyone to join. So that would be absolutely amazing if you could join us in these meetings.

Yes, Nigel, did you want to add something?

NIGEL ROBERTS:

Yes, I think I could usefully add something at this point. I referred earlier to various human rights that are commonly understood, particularly in the European convention and the universal declaration and so on.

It strikes me -- and I'm willing to have this list added to, if anybody can think of anything to add. There are three particular rights that affect ICANN's mission. So taking on board very strongly -- and we did this at an early stage. Thanks, I believe, to an intervention by Paul Twomey that this must be entirely within ICANN's mission. The three rights are protection of property, the right to private and family life, and the right to free expression.

Now anybody who knows the jurisprudence on this knows that there's an interaction and a creative tension between, in fact, all of these three.

So what we must be doing is put in place an overriding objective within ICANN's mission not to say this means that we have to completely abolish WHOIS or make any changes or so on.

We must judge what we are going forward based on respect for human rights. I don't hear any objection to that. I heard several "buts," and I get the sense that there is a little bit of reluctance to go down this road because we feel that we might open Pandora's box. But, on the other hand, if we don't do that, I think the consequences could be much greater down the road when ICANN decides it's just going to do things and suddenly we find there's absolutely no backstop whatsoever. So I think the objective needs to one. And there's absolutely strong consensus in the working group on this.

LEON SANCHEZ:

Thank you very much, Nigel.

Next in the queue, I have Greg Shatan.

GREG SHATAN:

Thanks. Greg Shatan for the record. I, too, support human rights and having a human rights bylaw, but I think what's critical is what Avri referred to as context what Leon referred to as rationale.

Just putting a statement in the bylaws and letting various aspects of the community kind of do with it what they wish, I think, is a recipe for disaster. I think it may be a recipe for success for some sectors of the community but not for others, which is not a success for the community as a whole. I think we need to -- it's important to analyze, for instance, are we referring to the Universal Declaration of Human Rights. Are we not? Are we referring to that plus other things? I think the analysis that Nigel began with is an analysis, but I don't necessarily agree with everything that was said about what the backstop of the U.S. government currently does and whether ICANN is free to abuse human rights as soon as the IANA contract, which does not mention human rights, is gone.

What does it mean in the articles of incorporation that we will operate consistent with all applicable laws?

These are issues that need to be solved in workstream 1 along with the bylaw. I think we can't just let the bylaw kind of run wild and then try to tame it later on. This doesn't need to be encyclopedic, but it does need to be constructive and instructive and bring out the same kind of analysis that we have for all the rest of our proposal, including stress tests to be able to deal with consequences and real-world concerns -- thank you.

LEON SANCHEZ: Thank you very much, Greg. And you addressed very important points.

I think one way forward -- and this is what we've been doing in the working group -- is to try to find some kind of wording that is broad enough not to leave anyone's rights out of the definition but also narrow enough to refer this to ICANN's mission and remit. So this is something that we have been tasked to do. And we've also heard that we need stress testing.

So I think what we're hearing in the course of the work of the working group is that we need to do at least two stress tests. And these two stress tests refer to what happens if we do include a bylaw that addresses human rights into ICANN bylaws? And what happens if we don't? So these are two stress tests that we will be tasking the stress test team to undertake. What happens if we do? What happens if we don't? I think this is important for us to better understand the scope and the remit of our work.

Next in the queue I have Brett Schaefer.

BRETT SCHAEFER: Thank you. I support human rights. Everybody in this room supports human rights. If you go by the statements that are made by China, Iran, North Korea, other countries in the United Nations, they like human rights and they support human rights as well.

The question is: What do we mean by human rights? Do we mean the Universal Declaration? Do we mean the rights in the ICCPR? Do we mean the rights in the ICESCR? Do we mean the core human rights identified by the Office of the High

Commissioner? Do we mean the third generation of human rights: The right to development, the right to the Internet? The other rights that are out there that are being promulgated and sometimes supported by governments and others by human rights organizations.

The fact of the matter is, not every government even abides by the rights of the treaties that they've ratified and claim to observe and to honor. And when you are talking about the various categories of human rights, I think that you're going down a very slippery slope with a broad commitment to human rights internationally because that doesn't really mean anything.

There's no clear delineation of where internationally recognized human rights start and end. It's a fundamental tenet in the United Nations system and among a lot of human rights organizations and advocates around the world that human rights are indivisible, interdependent, and also interrelated.

So when you say a broad commitment to human rights, you're not talking about just the things in ICANN's remit outside of ICANN. You are talking about the entire universe of human rights from those.

And I think if the CCWG endorses a broad commitment to human rights, it is very likely that the human rights community will interpret this as a commitment of ICANN to the entire universe of human rights.

And when you talk about a broad commitment to human rights embedded into the bylaws, it is easy to articulate an argument

that ICANN has an obligation under various human rights conventions and in the service of the public interest, which we've heard about today which is also poorly defined --

[Timer sounds]

-- that it will have an obligation to support a number of human rights that are currently probably not envisioned to be within ICANN's remit currently or envisioned by this community in this group to be likely to be endorsed or to be pressured on ICANN by the various communities out there.

So just let me conclude by saying I think it's very, very unwise to have a broad commitment to human rights embedded into the bylaws. I think you need to enumerate them very tightly to make sure that they are within ICANN's remit and its mission. Thank you very much.

LEON SANCHEZ:

Thank you very much for this intervention.

We are closing the queue with Erika Mann at this point. So the queue is now closed. Next in the queue I have Marilia Maciel.

MARILIA MACIEL:

Thank you very much, Leon. This is Marilia Maciel speaking. Warm regards to all of you coming from Brazil.

Well, it is very reassuring and inspiring to hear the comments from the floor, from board members, from the CEO, from the community supporting human rights. And the discussion is really not new. This is a cross-community working party

discussing human rights with participation in every item meeting from different sectors of community, from SAC, from ALAC, from a TSG, from registries, from IPC.

And I believe that one point that has been recurrently made is that policies that ICANN are adopting today, they have an interplay with human rights and they are impacting human rights. So I think that the point is well-established with regards to why we should tackle this now. From the public comment period, it seems that there is support for a general language. And I would publicly like to thank Leon from managing and reaching out to the discussion of the working party. And the support for a general language is something that makes very clear that we are discussing human rights that would fall under ICANN's remit.

What part of human rights that are relevant, some of them have been well-mapped in reports that have been published before, in work that has been developed by the GAC. For sure there is the interplay with the rights privacy, with the rights of the freedom of expression, with due process.

But the process of mapping what are the relevant rights is still underway, and there is a working group created by the GAC. There is a cross-community working party working on it right now. And I think that this is something that would be very relevant for workstream 2 to deal with. What are the specific treaties and international law that would be relevant in this case?

So I think by making a general commitment, we are opening the door to more discussion in workstream 2. And if we just say

what is already said in Article 4 of the articles of incorporation, that ICANN must respect international law. And international law encompasses human rights. We are just making it more clear. And I think that it's a general concern of the community, and I think that it's very well-accepted and understood that ICANN as an organization in its separations should respect and follow human rights laws. Thank you.

LEON SANCHEZ:

Thank you very much, Marilia.

So I think we still need to answer a couple of questions that are very important for defining the discussion and trying to achieve the goal for this working group on human rights.

I think one of the concerns that I'm hearing is how do we define or we determine the language or the remit of the human rights that we are trying to refer to in the bylaws. So are we going to refer to the Universal Declaration of Human Rights? Are we going to refer to any other document? Are we going to list the different human rights that we believe that can be in the bylaws? Are we going to have a broad definition of human rights? So I think that is one of the questions we need to answer.

This will, of course -- could be the task of the working group on human rights. So far we have been having, as I said, very fruitful discussions on this. We are far from over, of course. But I think one of the agreements or the suggestions that the working group has made is to not limit the human rights in a list because that would, of course, categorize human rights into which are

worth being on the list, which are not worth being on the list. And we don't want to do that, of course.

So the other discussion we've had is whether we do refer to one certain document or whether we refer to different documents. And I think that's also a point of discussion.

Now, we have very little time to carry this out. So I would suggest that we task our working group for, let's say, a two weeks' time, three weeks' time at the most to have a proposal for the larger group to review and, of course, hopefully approve.

[Timer sounds.]

I would like to define now a time line for us to discuss in Dublin, by Dublin the definition or how we would wordsmith this.

So next in the queue I have Robin Gross.

ROBIN GROSS:

Thanks, Leon. This is Robin Gross for the record. I will be brief. I just want to remind folks that ICANN is a public interest organization, that ICANN claims it operates in the global public interest. And so I think that really absolutely confers a responsibility and obligation on ICANN to make sure -- to take measures to make sure that its policies and operations are respectful of human rights.

I don't think -- I share concerns that we could be expanding rights, we could be expanding ICANN's mission, we could be defining rights in such a way that actually mitigates others. So I do share those concerns.

However, I still think it's extremely important that we go on the record in the bylaws with an obligation to simply respect human rights in ICANN's mission, in its operation and policies.

All I'm talking about here are things like freedom of expression, privacy rights, due process. I think Avri said earlier, these other claims about water rights are really just a straw man. I think that's absolutely right. We really are talking about a narrow set of rights that interplay with ICANN's policies and ICANN's operations.

So I think we can focus in on that and have a commitment in the bylaws to respect those within ICANN's policies and operations within its mission. Thank you.

LEON SANCHEZ:

Thank you very much, Robin.

Next I have Qusai al-Shatti.

QUSAI al-SHATTI:

Thank you, chairman. We are all believers and supporters of human rights, human rights as it is in the Universal Declaration of Human Rights. The issues about the general commitment from ICANN for human rights, I think that's fine and also support that.

For your reference, the NETmundial conference, I think the Internet principles are completely consistent and committed to human rights. And there is a mention or a reference for that in that document to human rights, which reflects the commitment again of the technical community under ICANN to this concept.

And I guess the biggest assurance of the commitment of the ICANN to human rights is the ICANN community itself and the belief of the ICANN community and the principles of the human rights. And that's their biggest assurance really for the commitment of the organization.

However, if we want to incorporate in the bylaws something related to human rights, ICANN as a technical organization, we need to know in what aspect its role or its mandate is linked to that and how. And based on that, we would know what is the proper mean or format that human rights would be referenced in their bylaws. ICANN is a technical organization and is purely technical. So we need to know that specifically.

In that respect, really, the comment by my dear colleague Avri and my dear colleague Tijani, I would find it as a good way to start with. Thank you.

LEON SANCHEZ: Thank you very much, Qusai.

Next in the queue I have Mark Carvell.

MARK CARVELL: Thank you, Leon. Good morning, everybody. Mark Carvell, United Kingdom, representative on the GAC. I very much welcome this discussion today. U.K. government is a member of Council of Europe. And Council of Europe, as some of you may know, made a declaration on the 3rd of June on ICANN human rights and the rule of law. So this is very much a core issue for us with respect to ICANN's mission and operations and ensuring

that ICANN fulfills its commitment. We very much welcome the statements today by board members, including the CEO, president on that commitment.

And as I understand it, the decision today to proceed with workstream 1 to formulate a text in the bylaws, that's all very welcomed.

And I mention the Council of Europe because the declaration I think is quite a useful text. It does refer to a number of conventions at the European and the U.N. level. And the benefit for those contributing to the work in the working group, I draw particular attention to paragraph 5 of the Council of Europe declaration which refers to Resolution 17/4 on human rights and transnational corporations and other business enterprises. This resolution was adopted by the United Nations in June 2011. I think that's highly relevant to ICANN's mission and the commitment that we've heard today on adhering to conformity with principles of international law as they relate to human rights.

[Timer sounds.]

So I draw that declaration to the attention of colleagues, in particular the working group. And the GAC, as was mentioned in a previous intervention, has a working group. And we set it up fairly recently. We're still finalizing the terms of reference. But the GAC will look forward to contributing to discussion and interaction with members of the community on this important topic. Thank you.

LEON SANCHEZ: Thank you very much, Mark.
Next is James Bladel.

JAMES BLADEL: Thanks, Leon. Like everybody in the room, I personally agree with the concepts of human rights and think that we could probably could put some high-level acknowledgment of that into the bylaws. But I think as many of the folks have already indicated, we need to be careful to construct that angle in a clear manner to limit ICANN to an appropriate role.

I take Steve's words to heart. There is a quick path to failure here that we need to be very mindful of.

So I come from the commercial sector in ICANN, which is where all of these lofty ideals have to be put into practice. We do so via commercial agreements, contracts, terms of service. And I'm very, very leery about introducing human rights in a broad way into what are today exclusively commercial agreements.

For example, free expression, you know, I think that's a laudable goal and objective. But we need to recognize that today we put in our terms of service, for example, that we don't tolerate spam abuse, hate speech. And would hate to see that kind of provider level discretion removed under the guise of ICANN championing and advocating human rights.

So we need to be very careful here. We don't want to create chaos in our industry. And I think I would urge caution on the part of the working group. Thanks.

LEON SANCHEZ: Thank you very much, James. Next in the queue I have Chris Disspain.

CHRIS DISSPAIN: Thank you, Leon. Good morning, everyone. So, once again, I find myself talking into the microphone about something that I agree with in principle but asking some perhaps difficult questions.

If you put a high-level reference to human rights in the bylaws, I can't see how you can do it without at least explaining what you are going to define human rights as. You refer to some sort of declaration or whatever. And then it becomes a choice and a fight over whose declaration you use.

Let's assume you make that decision, and you decide to use the Chris Disspain Declaration of Human Rights as the reference point for the bylaw.

Having put it into the bylaws, then I assume that the actions taken by the community and the board then become subject to that and, therefore, it's subject to some kind of appeals mechanism or IRP. And then the question becomes who is going to be the judge.

Who are you going to go to and claim that your human rights have been breached by something that ICANN has done? Are you going to say it's going to be the European Court of Human Rights? Are you going to say it is going to be the Californian arbitration panel? You can't just put a clause into the bylaws. There are consequences that flow from that, and those consequences need to be clear and answered.

And whilst it's laudable to suggest that you can push some of this -- do some of it now to workstream 1 and push some of it through to workstream 2, I would argue that unless you are clear what you are going to do in the event that someone makes a claim that their human rights have been breached, you can't put that work off to workstream 2. You have to do it in workstream 1.

And so this community, if it decides to do all of that stuff, needs to get very clear whose definition they are going to use and who is going to be the judge or the arbiter of whether that definition has been breached. Thanks.

LEON SANCHEZ: Nigel?

NIGEL ROBERTS: I'm going to make a very brief rejoinder to that, Chris. You'll concede that ICANN's mission includes acting in the global public interest. I've heard that mentioned several times in the last 5 or 10 minutes. Who do you appeal to if you think ICANN is not acting in the global public interest?

LEON SANCHEZ: Thanks, Nigel. Next I have Niels ten Oever. Niels, might you be on mute?

NIELS TEN OEVER: Can you hear me now?

LEON SANCHEZ: Yes. We can hear you now.

NIELS TEN OEVER: Thank you very much, and greetings from quite far away. I'd like to thank everyone for discussing this very important topic. I'm really happy that we have the opportunity to discuss this here. I'd really like to discuss an issue that was brought up, namely, the perceived risk that ICANN would now need to protect human rights outside of its mission. I would like to say that that is definitely not the case. Because only states have the obligations to protect human rights. Whereas, when we're talking about within ICANN is respecting human rights within its mission or remit. So I don't think we need to be afraid about mission creep.

And I think we also don't need to be afraid about creating crisis and havoc in the industry because we practically already have a commitment in Article 4 of ICANN's Articles of Incorporation. And I don't think we're currently experiencing crisis or havoc or definitely not related to human rights within ICANN.

But what we haven't done yet is really give a body or implementation to the commitment we already have. So I think it would be great if we come up with a very balanced and proper approach to this. And we can learn a lot from the industry on this. Because a lot of companies have already worked on these. So we need to look at the lessons learned already as done by Cisco or also as a company as Google did. So I think we can learn a lot from the business constituency. And then there are also stress tests to be done. And there is a lot of work being done currently in the cross-community working part on ICANN's corporate and social responsibility to respect human rights that

will present a model in Dublin to do this. But this is quite a large body of work. And we'll definitely not do that. We'll definitely probably not be able to finish before workstream 1 ends. And then it would be a real pity to not make use of this opportunity while it seems, if we look at the comments, there is very broad agreement on the commitment of high-level commitment to human rights. I would say we go with the current commitments, which do not expand ICANN's obligation in Article 4 of the Articles of Incorporation, but it will give us the support to work on a proper human rights policy and come up with a proper balanced way to implement that. And I'm very much looking forward to work with you on that. Thank you.

LEON SANCHEZ: Thank you very much, Niels.

Next I have Stephen Deerhake. Stephen.

STEPHEN DEERHAKE: For the record, Stephen Deerhake. With all due respect to the chair's opening remarks, it appears to me that what I'm seeing here today is starting off pretty much on the same foot with a similar tone as yesterday's meeting. We stated earlier in this discussion that there was consensus on HR, yet I'm hearing nothing but, wow, we can't do it because of this or we can't do it because of that type remarks with few exceptions.

I do second Robin's comments regarding ICANN's obligations as a public interest corporation.

Further, I would like to remind this group that a failure to deal with this in workstream 1 and have an HR component in the proposal that is transmitted to the NTIA will cause further consternation with some members of the U.S. Congress who have concerns about Internet censorship, free speech issues, et cetera. These members are already skeptical of the entire NTIA proposal with respect to the transition. I see no reason why we need to further antagonize the Congress by failing to include an HR section in the proposal that is transmitted to the NTIA.

LEON SANCHEZ:

Thank you very much for that.

Next I have Erika Mann, with whom I had closed the queue. And we are -- yes, I'm sorry. It's Eric Brunner-Williams which we have before Erika Mann. And after Erika I had closed the queue. And I would like for the comprehension of the rest of the people that have their hand up in the queue, to continue this online. Eric Brunner-Williams.

ERIC BRUNNER-WILLIAMS: Thank you, Chair. This is Eric Brunner-Williams for the transcript record.

A decade ago we met in Rome, and a former Board member approached me and asked me to lend my name as CTO to an application, a sponsored application for a Catalan language and cultural name space.

In the intervening 10 years the amount of Catalan language accessible online has exploded. No one had any idea this would

happen. Tomorrow the Catalan regional government is holding a referendum on the relationship of Catalonia and Spain. Access to a name space and the policy of facilitating linguistic and cultural comments is within our direct control and should not be overlooked. Thank you.

LEON SANCHEZ: Thank you very much, Eric. Next is Erika Mann.

ERIKA MANN: Thank you. Let me add one point just for the working group to consider.

Nigel, you made a comment which has triggered some thinking. If this is maybe -- I would recommend maybe to approach a topic in a little bit different way.

You said that you -- that you would recommend that these -- human rights related principles shall have a kind of overriding objective. And in the context, you know, I mentioned in particular WHOIS.

Now, I think we have to be -- we have to be very cautious that we don't give the impression in the way we will write these principles that we somehow can escape -- our companies registrars or registries or ICANN as a whole somehow can escape legal obligations by national -- from national countries or even from international treaties.

So I'm very concerned that we get this really -- I notice from the Internet world maybe you have to -- maybe we work with these clashes all the time. And I would not want to see ICANN drafting

recommendations and objectives in such a way that we give wrong impressions. Because registrars and registries and everybody else and even ICANN, we will have to respond to requests which come from either law enforcement agencies or from whomever if they object and if they have the right legal paths taken. So I just want to be clear that we don't give an impression that these kind of principles can override obligations.

NIGEL ROBERTS:

I think that's absolutely correct. I think we're in violent agreement. The fact I mentioned WHOIS was a throwaway reaction to something that Tijani said.

The laws that you refer to are all produced by the European Commission and by many different countries in the context of the Council of Europe in the context of human rights obligations by states. So absolutely not can we ever override, for example, data protection law in Europe, even though ICANN has tried its best for the last 15 years to do exactly that.

LEON SANCHEZ:

Thank you very much. So what I'm hearing now is we all agree this is a workstream 1 issue that we must deliver so we can approve by Dublin. And, since this is something that will go into the bylaws, I would suggest that we task the lawyers with helping us wordsmithing this bylaw language. It will be, of course, the task of the working party on human rights to direct the work of the lawyers. But it will be the lawyers' work to

provide us with the suggestion on how we can include this into the bylaws.

So I would like to close this item now with these action items. And I think, Thomas, do you want to -- I'm sorry, what? Yes. And, of course, thank you, Nigel, for joining us and for all the work you put into trying to get this to shore. Thank you.

NIGEL ROBERTS: Thank you. I must say I'm more encouraged after this session than I was when I read the Board comment which struck me initially at least as an out and out rejection. So thank you all. And thank you to the Board members for what you've done here today.

LEON SANCHEZ: Thank you very much, Nigel. I will hand over to Thomas.

THOMAS RICKERT: Thanks, Leon. As I indicated earlier, we'd very much like to invite Ira Magaziner to the table to address this group for a few minutes before he has to leave. I think Ira doesn't need any further introduction. You know Ira. He's been instrumental in setting up ICANN, so he really knows ICANN from the very beginning and even the times before ICANN was established.

Ira is one of the advisors picked by the public expert group. And, since we only have Ira in the room today present as one of our advisors, that's an ideal opportunity for hearing him. We know that we have had other advisors participating remotely. But we would like to give Ira the floor now. Ira, please

IRA MAGAZINER:

Thank you very much. I won't take too much of your time. I feel a bit responsible for having gotten you all into this 17 years ago when we advocated for this transition.

Let me, first of all, thank you all and congratulate you all on all the hard work you've done now for -- I don't know -- a year, year and a half to try to get us to this point.

I do believe that you're 90% or more the way there to completing a successful set of recommendations that, if they're done in a timely fashion, can be accepted and that this will be something truly historic in taking this multistakeholder model and global model and taking it through to its natural conclusion of independence and community-driven and a bottoms-up set of processes for taking this global medium of the Internet and really making it a global responsibility.

Having said that, I think that last 5 or 10% is not going to be easy. And you have a limited amount of time to get there.

I want to say that I believe, having observed yesterday and this morning and followed this the past couple of weeks, that I think, in substance, you can get there. I don't think any of the issues that I've seen brought up either in the report of the committee or in the Board response or in other responses are show stoppers or things that can't be solved.

I think what I worry about is two things.

I think you can fail. And I think you're right on a knife's edge now as to whether you'll succeed or fail. And the two things I worry about, one is that time is running out. For those of you who

have observed the U.S. political scene, it is in a state of instability that we haven't seen for a long time.

The Speaker of the House resigning and resigning from Congress and the campaigns that have been developing for President have been developing in a very unorthodox way, and there are strains of points of view being put forward that are somewhat nationalistic and so on that I think mean that, as the political season develops next year, something like this, no matter how meritorious and how well constructed, could irrationally be caught up in the political process here and, therefore, defeated or put off. So I think you have a limited amount of time to get this done and for the U.S. government to consider it and pass it.

In my view, I think you need to get this pretty well wrapped up in terms of agreement on these various issues by the end of Dublin.

I think if it drifts on too much beyond that -- I mean, you can be putting dots on I's and crossing T's after that and just finalizing the document.

But you can't be disagreeing with yourselves the way you are now and you can't be showing distrust for each other like you are now or you're going to run out of time.

My second concern is that a process be created. This has been a very bottoms up process. You consulted widely. You've taken opinions. And a process where everyone gets to agree on everything at every point at some point is not scalable. It does not mean that it's not bottoms up if there's some delegation to a smaller set of groups that are properly designated to bring some to conclusion. And you will not be able to, I think, succeed on

the negotiations that have to take place to bring the compromises if you don't do delegation. I know a lot less about all this than you do currently.

But it seems to me that the committee and the chairs have been designated in a proper way by the community through the seven operating groups.

So they have a designation to represent. I mean, as somebody who's been involved with politicians, every politician always speaks for the people. But somehow they're speaking for different people because they always disagree all the time. But they're all for the people, the people, the people. You're all for the community, the community, the community.

There's some official representations based upon the way ICANN has existed for all its existence. One is that this committee was formed and it has chairs. And they or whoever they pick ought to be able to represent that responsibility.

The Board didn't come down from God. It didn't come through some coup by a general. It had a process that appointed the Board, and there it is. You may like them. You may not like them. Doesn't matter. They're the Board. They have a responsibility and a kind of designation from the community. And the heads of the seven groups have a designation and their constituencies.

My suggestion would be that coming out of today, you know, you have the discussions. I think the Chair made an excellent statement in his opening statement on behalf of the chairs, which represented both good sense and flexibility.

And so I would echo that statement and suggest that you have the discussions you're planning to have today.

But, coming out of that over the next couple weeks, you ought to designate -- the Board ought to designate a couple of people. And the chairs, if they want to participate, they want to designate and try to get the heads of the seven groups involved or if they want to delegate. And that group try to facilitate a set of discussions which will probably have to be conference calls to resolve the remaining issues in the next couple weeks and then bring it back to Dublin. And these meetings I'm not talking about some smoke-filled private room where deals are cut. There should be notes of the calls. There should be transparency.

But you're not going to resolve some of these issues with hundreds of people sitting around in a room and another how many online. So you need to get people with official designation by the community who have been tasked to do these things together to do it in an unpressured environment. And then they need to act in good faith to work on compromising and to let emotions get out of it. There's something else the Chair said this morning that could inform these discussions. The place where people get into trouble and groups get into trouble is when they try to overreach, right?

And the task of accountability that was assigned to this group was, as the Chair said this morning, to replace the ultimate backstop of the U.S. government with a community-based backstop. The committee was not charged to completely rewrite the way ICANN works.

Now I'm sure ICANN can be improved, and there ought to be an ongoing process to improve the way it works. But this particular committee and NTIA didn't ask you to completely redo ICANN. In fact, if you feel you have to completely redo ICANN, I'm sitting as a member of Congress, I'm going to say, wait a second. I thought this multistakeholder model was so great that they want us to turn everything over to it. Now the community is telling us they don't like it and want to change it all. I'm not going to turn this over to some unknown thing. I thought I was turning it over to something that was working.

And, in fact, ICANN, for all its problems, has worked. It's got a lot of problems. It's made mistakes. It's human. It's got human beings sitting there. It makes mistakes. There are arguments. But we wouldn't be here today if ICANN were failing. So the key thing here is to get to the accountability mission you have. And I think your document does that. It just needs to be reframed and there need to be some compromises struck around the room. So I would urge you to do this.

Having listened to this and read it all, I think the substantive agreements are there. By the way, I don't think there is any one right way to do this. I think there are half a dozen different solutions you could come up with that have been proposed that would work well enough. It's not like if you don't get your way, the whole thing is going down the tubes. You may not get your particular favorite, but it will work. It will work.

Let me end by a personal statement. I've had a multi-faceted career now. And I've had successes and failures during my career. And, as I look back on my life, there have been cases

where I was involved in something big and something potentially historic.

And I thought that the ideas that I and my colleagues had were absolutely brilliant. And I fought for those too long and didn't realize when it was time to effect a compromise and the thing went down completely. And those are the biggest regrets I have in my life. The biggest regrets I have in my life.

I've also been part of things that have succeeded where I had to make compromises and where I really didn't think the compromises I was making were in the best interests of what I was trying to do. Things got passed. They moved forward. And then they self-corrected. They corrected themselves over time, and they worked. And they're successes in my life. Don't make that mistake. You have a tremendous responsibility here. And you've been given the opportunity to do something historic. I can assure you, if this thing takes you too long and it fails for that reason or if you can't get consensus and you're letting your dislikes or your fears or distrust get in the way and this thing goes down, you'll regret it for the rest of your lives because you will have missed an historic opportunity to do something. This is a community. One of the things I love about this community and about the technology is that it is inherently rebellious and antiauthority. I mean, the whole Internet, right, is against hierarchy, against control, giving everybody freedom.

And this community and its people are inherently suspicious of anybody who exercises authority, right? That's just the nature of who we are as a community. And that's a nice thing, to a point.

In order to make it work at some point, you got to be willing to designate people and compromise on things and actually make decisions and coordinate. Don't do it in an authoritarian way, but you have to do it.

And so I think the time has come now -- and I told the chairs -- that if you think I can be useful, any help I can give in the next couple of weeks, I'm happy to do. But you really have to do this. You have to get focused now, be willing to delegate some authority here, set up a process in the next couple of weeks to get this done. You are running out of time.

And it will be terrible for the Internet, terrible for everything all of you have worked for if you let this go down. So I thank you very much. And I wish you the best success. I'm sorry that I have to leave early.

[Applause]

THOMAS RICKERT:

Thank you very much, Ira. That's been truly inspiring, and I hope we will continue to work in that spirit.

Talk about work, now it's time for all of you to become more active than you've been for the last couple of hours. So we're now going to have breakout sessions. And the first breakout session is on how the community comes to its decisions. You will remember that we had a discussion yesterday about voting versus consensus, how these things can be operationalized.

And the idea is now to do exactly what some of you have suggested. I think this idea came from Kieren so he can give

himself credit in his next article for having inspired some changes to our methods.

So we're going to have the first of our breakout sessions for today now. And that is on the topic of community decision-making processes.

So you don't have to worry that much about what the subject of that decision would be, but we want you to think about how the community can come together to make decisions.

So elements for you to consider are how can such process be triggered. You know, what's the starting point for the community to come together and make a decision? Then who has standing to be part of that decision-making process? We want you to think about quorum and threshold, about veto rights and objections, and the outcome. So you will see that in here you don't find the term "voting," nor do you find the term "consensus." You might find something completely different.

But what we think we need is some fresh ideas that can help bridge the gap and be the basis for an implementable solution on how the community comes together and in an inclusive manner and expresses its wish.

Again, this is one of the topics that needs to be fixed regardless of the implementation model we're going to deploy. So this is going to be very important. So we thought that an idea for you to go about with is use maybe the easiest community power, i.e., the community power to stand up against a change of a standard bylaw. But it can be anything else. The idea is just to get some thoughts on how the community comes to decisions.

So we are now going to break into breakout sessions. Cheryl will share with you some thoughts on how this can be made to work. The co-chairs and rapporteurs will be walking around to see what you are discussing and try to understand what you are doing.

So we are going to give you 30 minutes to create a vision, five minutes after that when we would reconvene for rapporteurs of these groups to present their views and then we are going to have another hour of discussion. So now, Cheryl, are you going to share with us now how we are going to do this?

CHERYL LANGDON-ORR: Yes, there is logistics, of course. My name is Cheryl Langdon-Orr for the record, by the way.

The logistics mean we can't move tables. We've got all the cabling on the floor, and this is hardly ideal for a breakout room of some 80-plus people into four groups. So we're working with what we have got in the best way we can.

We're going to encourage you to self-organize. Let me declare it. This is not the way I would have done it. I would have had you all very much more organized into your goldfish bowls and making sure everyone's voice is heard. Apparently that's all too controlling so I shan't do that. Self-organize, people. No, no really.

Into four areas, we have -- I see three flip charts. We will position those in places where you can at least gather chairs around. It would be nice if you weren't all constrained by tables. So we are going to encourage people to balance, to make sure that we

have not just like-minded people in the one group. No, it's very annoying. You won't all necessarily have to agree with each other. That's terrible.

It is an opportunity to do what Keith just said in the chat, which is double-down and start looking towards some consensus in this room on some issues. For those that are wondering about what our topic is going to be for the second breakout session after lunch, that one is going to be reconciling differences between board decisions and communities. And so you don't need to cover any of that type of material in this first session. It will be dedicated. And we think if you just work on the simple bylaw, not a fundamental bylaw, a simple bylaw process, it will get your thinking going.

We are going to need a leader and a reporter for each of the groups. So how many spaces are we setting up here? Three? Three in the room and the remote. Is that what we are setting up?

Okay, so we've actually got two outside, excellent. Good on you, gentlemen. These people know how to get us organized. Two outside, two in here, and we will run the Adobe Connect room as a remote one for our remote participants.

And I think, Steve DelBianco, you are going to be helping manage that with staff.

So I'm going to ask you now to find a place where a whiteboard exists, take a chair so you are comfortable unless you want to stand for 30 minutes. You are welcomed to do that as well. Gather around the whiteboards. Self-select someone who is

going to jot down your sage-like wisdom on that whiteboard. We will capture all of that.

If we come around that we think it's really a too large, too small, or funny balanced group because it's all board members agreeing with each other -- I got to pick on someone, it might as well be the board -- then we might suggest and encourage a different change and some balance. Please don't take this as an opportunity to go and do your banking and your shopping or check what's going on down stairs. This is important work.

And with that, we will mention that you can get up and take your coffee and take it back. This is now going to go through a working coffee break. So be careful what you wish for, people, because you are about to get it. Show us how it should be -- show us how it should be done. Thank you.

THOMAS RICKERT:

Well said, Cheryl. And good luck, everyone.

Somebody please allow Chris Disspain into their group. Nobody wants to meet with him.

(Breakout sessions.)

CHERYL LANGDON-ORR:

Ladies and gentlemen, if you are not seated, that's fine. But if you would do us the courtesy to pay attention from wherever you are standing, that would be greatly appreciated.

The next group which is going to be giving us their outcomes and successes, I'm sure, is starting now. So if you would be so kind

as to either take your conversations outside or put a pin in them and come back to them later, that would be great.

Here you go, Mike. All yours.

MIKE SILBER:

Our group had a look. We recognized there's been various work that's been that needs to be documented, clarified, codified relating to the process leading up to the board votes, simple rules of fundamental fairness like not voting while the comment period is open and things like that. So we are talking about board considering a change, board votes. So this is a scenario after the board vote rather than pre the board vote. Potentially it could be taken back earlier, but we didn't think that was really a useful distinction to make.

So board votes. Anyone can lodge an objection. That could be an individual, that could be a grouping of individuals. That could be a SO, an AC as a whole, a stakeholder group. Anybody can raise an objection.

Then there is a period of time for the party lodging an objection to call for consensus. So they would try and generate a consensus view on their objection. And that would be some form of consensus petition to all of the SOs and ACs.

All of the SOs and ACs need to take a stand, even if it is an abstention. Our view in terms of consensus is not to get into a vote taking, but we looked at the GAC way of operating. And that is where there is broad support and no objections. Then there was a question of, well, could that lead to a situation of one AC potentially stopping the process? And the view was,

okay, why don't we compromise and why don't we say not more than one objection.

So one would be acceptable. But if it's more than one objection, then it can't go through. The reason for that is because, if it's a consensus objection, then it goes into a fast-track process. The decision that's being taken gets suspended. It cannot be implemented while the process then goes forward. And that would go forward through to a suspension, as I said, to reconciliation attempt, if possible. And, if it's not possible, then it will fast track into some sort of conciliation, arbitration mechanism, IRP. Call it as you will.

If consensus is not achieved, either at the call or there's no call, then it follows through an ordinary objection process, through an IRP top process with whatever enhancements we may need.

What we discussed and we didn't come to say final decision on is whether it's possible to move between tracks at any time. So let's say somebody starts with an objection. They don't manage to gather enough consensus. But, as the process is going, some of those people who weren't buying in initially look at it and say, no, no, actually, there's a lot more merit than we initially thought. They could potentially move it out of the slow track into the fast track. And we didn't come to an absolute clear definition as to determination as to whether it's possible to move between the two and what the rules are. But our view, really -- and we felt this could potentially be used for things other than just the standard bylaws, but in a standard bylaws process, to us, the split between fast track with suspension and ordinary process seemed to be a useful distinction to make.

CHERYL LANGDON-ORR: Any questions on that? Yep, Kavouss. Microphone.

KAVOUSS ARASTEH: My question is that one objection into the seven missed 14% is too high. So I suggest that you consider not more than two objection advice, which is about –

MIKE SILBER: You're welcome to make that suggestion. Our group in discussion came to the view that, in order to look at consensus, we're talking about not more than one objection. If there's more than one objection, then it's not consensus. Other people may have different definitions of consensus. I can't say that they're right or wrong. It's just where we reached agreement.

KAVOUSS ARASTEH: I'm happy you have not considered the voting. That is very good. Thank you.

[Speaker off microphone]

CHERYL LANGDON-ORR: Microphone.

MIKE SILBER: I think what Jonathan was saying -- and let me channel him for a second -- is there may very well be voting inside the SOs and ACs. They're welcome to run their own process. If there's a

consensus petition that comes from one entity within the GNSO, the GNSO may feel the need to actually vote at GNSO Council level to support it. You may have a situation where one stakeholder group within the GNSO launches a petition. It doesn't get the support from the GNSO, but it just gets a non-objection. But the rest of the community agrees with it. That's perfectly acceptable. So our view is it doesn't have to be an SO or an AC that lodges the objection. It can be an individual as long as they get the community to buy in.

And that will be through a community of SOs and ACs. No formal structure, no standing panel, no formal committee that needs to meet or get travel funded to attend any meetings. But just a call to the chairs of the various SOs and ACs. And they need to respond. And that could be on a conference call. That could be on a mailing list. That could be, you know, in various mechanisms. But keeping it really lightweight. Because, if we can insist that there is broad support, then the fast track opportunities and benefits, obviously, are very significant. Otherwise, it runs the normal course. And we've started looking -- and the CCWGs made some suggestions in terms of improvements around the standard IRP process, for lack of a better term.

And then it just needs to follow the course there.

CHERYL LANGDON-ORR: Tijani and then Jonathan.

TIJANI BEN JEMAA: Thank you. Have you considered the case of the GNSO when the GNSO constituted by two houses? Suppose they don't fall in a consensus about the position. How you will count it? Shall you say GNSO will be opposing, so you will count –

MIKE SILBER: No. An abstention would not be a blocking abstention. So, if they can't reach consensus and they make no decision, then it doesn't count as an no objection. So there are three options. Support, object, or no interaction. They don't interact, then it doesn't block.

Sorry. We had -- Jonathan and then Steve.

JONATHAN ZUCK: Sorry. It's just a minor point. And I don't mean to raise any specters of the next conversation. One small correction is that I think that the model that we outlined in our group doesn't presuppose one way or the other whether or not there's a prestanding group or not. That may get dictated by the model in terms of empowering or giving standing to that group. That's a separate question. So I just wanted to make that correction.

MIKE SILBER: Point taken, Jonathan. Steve?

STEVE CROCKER: I apologize if I missed this. Is there a deadline for the groups to respond or else they're considered non-responsive?

MIKE SILBER: I think we'd need to make some additional process. We didn't go into detail as to exactly what it was, but we had a feeling there was a deadline. At the same time, we felt that we could potentially move objections into the fast track. So there could be multiple bites at the cherry. Put it that way.

But, once somebody has raised a consensus petition calling for consensus, the group needs to respond. And it can't be an open-ended situation.

STEVE CROCKER: Otherwise, the group could be non-responsive and block the whole process.

MIKE SILBER: Non-responsive would not be blocking. Abstentions don't count as objections.

CHERYL LANGDON-ORR: You've got one more, Thomas.

THOMAS RICKERT: Mike, I may have missed that. But what did you say in terms of quorum or -- you know --

MIKE SILBER: None.

THOMAS RICKERT: Nothing?

MIKE SILBER: No.

THOMAS RICKERT: No quorum?

MIKE SILBER: No.

THOMAS RICKERT: And if, let's say, six out of seven organizations do choose not to react, what happens?

MIKE SILBER: Then it goes through. So, Thomas, you raise an objection. You --

THOMAS RICKERT: Don't.

MIKE SILBER: No, no. I'm saying you as an individual raise an objection to a bylaw change. You put out -- you lodge your objection. And you believe that you can get community consensus on this. So you launch a consensus call, and you have seven SOs and ACs who don't block it.

Then it's regarded as a consensus decision. There's a suspension. And it goes through to reconciliation and arbitration, if needed.

So you get the benefit because nobody has objected to that and I believe -- obviously, I believe there's merit. Because, in not objecting, I believe that you should continue this fast track mechanism. So you get the added benefit of suspension and a speedier move towards resolution. That would be, in our view, perfectly acceptable even if it was you and not an SO or an AC that was actually lodging the objection. Greg.

GREG SHATAN: It seems as though there's a danger in interpreting those abstentions as almost positive votes and, rather than conflicted organizations or apathetic organizations. So in the end there is a danger, it appears to me, to have one highly committed organization and the rest either conflicted or apathetic. And that becomes the action of the community. It's kind of a -- that's kind of a capture problem, in my mind.

MIKE SILBER: Greg, I don't think it's a capture problem. Because the benefit the consensus gets is suspension and a move to reconciliation. It moves to the same position ultimately. It's not a blocking. It's not a veto. All that's happened is they managed to fast track.

GREG SHATAN: Who participates in the reconciliation? All of the groups or only the one that --

MIKE SILBER: We didn't get into that detail.

CHERYL LANGDON-ORR: We will have time. No, sorry. We're coming to the next presentation now. Thank you very much, team A or team B or whatever. We have 60 minutes of conversation to come, and more questions and discussions can happen then. This is just the pitch from each group. Over to you two. Thank you.

CHRIS DISSPAIN: Hello. In a demonstration of the multistakeholder model at work, Mr. Shatan and I will present this together. However, I have the microphone.

[Laughter]

I'll start. I'll start and pass it on to Greg. We started with, obviously, a change to the standard bylaws. Some people in our group, which was a very multistakeholder group, said that they would find it easier if they had an example of what that might be. So we came up with change to change the number of people on the Nominating Committee. That would be a standard bylaw change. Changing the number of people on the Nominating Committee. So that's what we were thinking.

The first thing that has to happen is the change needs to be on the table. It needs to be suggested, et cetera. It doesn't matter where it comes from. It could come from the Board. It could come from anywhere. The change comes along. And suggestion goes to public comment. And then public comments get considered. Board moves. Board decides to move forward or not, obviously. Let's assume it does. And resolves to make the change.

GREG SHATAN:

At that point, assuming the Board then successfully resolves to amend the bylaw, the SOs and ACs could start a petition process. And the petition to oppose could be triggered by a single SO or a single AC. That's just to begin this process.

At that point, all of the SOs and ACs would presumably go back and have discussions each among themselves at that point and would come back. And we would look for a threshold of support at that point of three SOs or ACs to continue the process. If the three -- we get that support of three out of seven, then we move to the community forum with similar discussion SOs, ACs, other community members, general public, the -- basically, the scrum of the community.

The next thing that happens after that at this point would be whether there's a decision to actually mount an objection. And in this case, we had -- we needed four of the seven to agree. And we're considering at that point whether two objections -- two advice against would be enough to stop that.

So at that point there's -- was not complete. We didn't work through the issue of whether that essentially makes it five out of seven if the two against are ACs as opposed to SOs.

Assuming we now do have this objection, it's, essentially, four -- certainly four in support. The Board would get the objection. And the Board could decide to override that objection by a supermajority vote. Assume the standard bylaw initially passed by simple majority, the Board could override by a 75% vote.

If the Board chose to do that, we'd move to a dispute resolution process, which we discussed briefly, which would start with

some form of mediation, collaborative attempt to bridge the gap. And, if that failed, into more of an IRP or arbitration process. Perhaps a lightweight IRP as opposed to the full mess. Then, if an IRP comes in favor of the community and the Board still decides to move forward, at that point the IRP decision would be binding and enforceable in court. Or by mortal combat.

[Laughter]

CHRIS DISSPAIN:

Or possibly both. Just before we take questions, couple more things we talked about. We talked about the four agreeing to proceed, that, in effect, it was a matter for each SO and AC to work out the basis by which they came to that agreement. We discussed the fact that we thought, generally speaking, that the ccNSO, the ASO, and the ALAC and the SSAC and the RSSAC and the GAC would just naturally fall into a consensus-based approach to that in their own way. They'd just say, look, normally we do these things by 66% or whatever. That's what we do in the case of the GAC. We do it by no objection. And the biggest issue in the detail of this -- and it doesn't matter which model you choose. It's an issue -- is how you deal with the GNSO and whether you allow the GNSO to come with half agree, half disagree. And that really is a matter for the GNSO to sort out.

But one thing we got clear about was that, if you take it as being four have to agree, then, if the GNSO does have the ability to split its agree to half and half or even quarter, quarter, quarter, quarter, it can never tip it into a petition to happen using that. Because, if the four votes -- you know, if it's the fourth vote, it

can't tip it over. So it's either over with everybody else, or it's over with the GNSO as one. But it's never over with the GNSO split. And that we think is probably a realistic price to pay for being able to split your vote in the first place. So there's that. And we also briefly discussed -- oh, yes. Abstentions are not blocking. Are blocking.

GREG SHATAN: I think we came out that, if you did not -- because we needed four in favor, the other three could be abstentions or votes against. If four were --

CHRIS DISSPAIN: What we said was that, if you had four in favor and you've got three left, then you -- it only -- it's only relevant if you allow for objections, physical objections to stop you. So the question becomes if you physically -- if you actually object, then your objection is counted in the objection pile. If you abstain, it's not counted. But your abstentions -- if the threshold is four, it's four. And that means four of them have to actively say yes. Now questions?

CHERYL LANGDON-ORR: You've actually got a queue starting in the room. You've got Eric followed by Alan. And, if you can use the Adobe Connect room, that will make life easier. I was going to manage the queue after the ones I just named.

CHRIS DISSPAIN: Who is first? Eric. Sorry.

ERIC BRUNNER-WILLIAMS: Thank you, Cheryl. Does your four of seven change any if you presume that SSAC and RSSAC will never take a position on something as out of their ambit as a standard bylaws change?

CHRIS DISSPAIN: Well, I think, if that standard bylaw change is a security issue, the SSAC might take a position. But it's an interesting question.

ERIC BRUNNER-WILLIAMS: In your example it was changing one member of the NomCom.

GREG SHATAN: I think the short answer is we didn't consider that, but we assumed that they would have a power and choose to use it or not.

CHRIS DISSPAIN: I think that's right. Really, it is very hard to -- it's very hard to start to parse up the community and say, you know, you're this, you're that. That makes me personally uncomfortable. I understand there might be reasons to think about doing it.

But I think on this basis, if you work on the specific threshold that we've put in place, which is four, then you've got enough activity in the community to allow that to happen. In other words, I would argue that if the SSAC and the RSSAC actually blocked something that would be a fairly significant thing to happen only because they're only going to do it if they have got real serious issues in respect to security. So I think they should

be counted as anyone else in that capacity. But I take your point. It's a good question.

Who was next? Alan.

ALAN GREENBERG:

Two questions. I just walked in when you were talking about split votes. So I apologize if I missed part of it. The GNSO is not the only group that may want very, very strongly split votes. The ALAC almost surely will, and I wouldn't be surprised if maybe even the ccNSO wanted to divide it by regions or by different classes of things.

It sounded like what you were saying, that since the three votes in the GNSO, or four, could not throw something into -- pass the threshold, you are essentially disenfranchising their votes or saying they are not being really counted. So I have a problem with that.

And if other ACs/SOs decided to fracture their single voting block, you know, we may have a real problem. So I really think that may not --

[Multiple speakers]

GREG SHATAN:

I would say that's actually not a problem. It shows a lack of support in the community for the objection. I think the fracturing in a sense allows different voices within each different stakeholder group to note that they have an objection.

The alternative is to vote only -- is that each party can only vote a whole vote, and they have to decide within that group to vote yay or nay or to end up in an abstention.

ALAN GREENBERG: My question is if all seven ACs and SOs vote 80% of their votes in favor of something --

CHRIS DISSPAIN: That's not what we started. We started by saying each SO and AC works out their vote, their agreement -- we haven't said a vote, it's agree -- their agreement by whatever process they choose.

I said I suspected the GNSO were the ones who would be keen to be able to split their votes.

I didn't realize the -- the ccNSO I'm fairly sure would not -- would not be uncomfortable with not splitting theirs. Anyway, it doesn't matter.

In effect, the ccNSO splits them because if the ccNSO follows its existing process, it would say in order to agree to this, we need a 66% majority of votes in the room and that would be how it would work. So, in effect, the difference would be they would agree to be generally bound by that 66%. So what we said is as a starting point -- if I get this wrong, stop me -- each of SO and AC would sort it out for themselves.

ALAN GREENBERG: I can certainly live with that. If you are allowing the vision, then I think the threshold rules may have to consider it.

CHRIS DISSPAIN: Look, my personal view is that these powers are so important and they are so supposedly based on consensus that you are really ought to be able to do it simply in your SO and AC and you simply ought to be able to say, We've come to consensus. This is our position. If you can't come to consensus, tough.

ALAN GREENBERG: I can personally support that. I'm not sure whether all of my colleagues would.

The other question is the SSAC specifically has made some very strong statements saying that they really only want to be in an advisory committee and would like to stay out of the fray of decisions which are not in a security and stability area. So you made the statement saying if the RSSAC or the SSAC did not support a bylaw change, they were making a real statement.

My reading of what they have said -- and they have said it vociferously -- is that that is not the case, that they are really weighing out of the game because they do not want to have an opinion on it and do not want to be considered a negative vote by the nature of their not voting.

So I think that has to be factored in.

GREG SHATAN: I think if they are structurally absenting themselves from this entire structure, then it is no longer a group of seven and they are out of the game at that point.

CHERYL LANGDON-ORR: You do have a bit of a queue. I think actually you're probably next. Asha, you're next.

CHRIS DISSPAIN: Asha and then Steve, and then I will come back to you.

ASHA HEMRAJANI: Thank you, Cheryl. Asha Hemrajani for the record. I have two questions.

Would you allow for a petition to oppose to come up from a person or persons outside of an SO or AC? And if so, how?

CHRIS DISSPAIN: We didn't discuss that because we assumed that the way that people generally represented in what is our community is through one of the community bodies. So it didn't -- I mean, didn't really think about it in any other way.

ASHA HEMRAJANI: Okay, all right. The second question I had was on the dispute resolution. This is something I didn't quite catch because you were really fast, Greg.

You mentioned -- you know, if the board overrides -- 75% of the board overrides, then you go into dispute resolution. And you start off on mediation. Can you elaborate on that again? Thank you.

GREG SHATAN:

The idea if the community continues to object -- and perhaps we might look at whether -- we did not discuss whether the community needed to refresh its vote and perhaps even have a higher threshold to overcome the higher threshold the board had, which is conceivable. We just didn't get to that in part because we were in overtime ourselves as we discussed this part of it.

With the idea if the community continues to object at that point, there would be essentially a mediation, a cooperative, collaborative attempt to resolve the community's differences.

And if the community still objected after that point in time, the board did not meet the community's needs at that point, then the community could commence an IRP to oppose that what is now a standing -- yeah, standing board -- a standing bylaw.

STEVE CROCKER:

Thank you. Three aspects quickly. One just to follow up on what we just talked about.

The ability to move forward past -- to override the 75% threshold has to be higher or else the earlier steps are meaningless because everybody will just go directly to that. So if you -- if you can meet -- if you can meet the second stage

threshold easier or equivalently to meeting the first stage threshold, then the first stage doesn't buy you anything. It's just a piece of trade craft.

Second comment along these lines that I would offer is that it's very hard to know exactly what the right formula is here. And from my point of view, just speaking personally, you fix these numbers as best you can and you set these up and then you have issues that come up over a period of time. This all has to be subjected in a regular fashion to the -- probably through the ATRT process to look at.

A different question, all of this is presented as this is future proofing or this is intending to replace the implied powers that NTIA has provided. Are there any worked examples that are informing opinions here of how -- of things that in the past might have been done differently if this system had been in place?

CHRIS DISSPAIN:

I think that depends on who you ask. But I can give you one example. I know that Becky would say that the change to the IRP bylaw in 2013, had it been more closely examined and subject to a process like this, would likely have ended up at the end of this with the community having enough concerns about it to object. Now, that's her opinion. And others in this room may agree. And I don't profess to know enough of the detail to be able to express my own opinion. But that is an example.

STEVE CROCKER: I wasn't trying to imply that the answer was "oh, no, everything would have been the same." But I think it's helpful to have perspective of some things.

Although I will say, as you know and everybody else, I think, knows, we do take bylaw changes quite seriously. There is only a little bit of delta between what has been practiced over our entire history versus what we are talking about here.

CHRIS DISSPAIN: And if nobody minds, let's just engage in that for just 30 seconds. Let's take the one that recently with the GAC change.

STEVE CROCKER: Exactly.

CHRIS DISSPAIN: That one. Now, that one received a significant amount of disquiet in the public comment. Now, I can't remember, but it's not entirely impossible that there were a number of people on the board and possibly even a number of people on the staff saying, "We should still proceed." We didn't. We said, "We feel the public comment is strong enough that we're not going to proceed."

But had we proceeded, the truth is there is nothing anyone could have done about it.

STEVE CROCKER: Yes. Another little loose end about all that is since it rarely happens but it happened in that case where the public

comments were strong enough to stop it, we turned out not to have a formal process for acknowledging that we were pulling back from that process.

CHRIS DISSPAIN: Precisely.

STEVE CROCKER: This would do that.

CHRIS DISSPAIN: That's exactly correct.
Cheryl, who is next on the list?

CHERYL LANGDON-ORR: Thank you. And the list will be closed when I finish reading these names. We have got Jorge followed by -- that's GAC Switzerland in case there are too many Georges in the room -- Rinalia, Mike Silber, and Steve and I'm assuming it's not Steve Crocker but another Steve, Sebastien. And we'll close off with Kavouss.

CHRIS DISSPAIN: Kavouss as usual gets the last word.
Who was first?

JORGE CANCIO: Hello. Jorge.

CHRIS DISSPAIN: Exactly, George.

[Laughter]

JORGE CANCIO: For the record. I was a bit puzzled with the end of your procedure where you start this arbitration or dispute resolution because it seems to me that a political dispute, you try to embed it into a sort of legal dispute because what would be the standard of review by the IRP if the community and the board don't agree with each other because in the MEM, as I understood it, the standard review would be that the board didn't follow up with a fundamental bylaw which would oblige the board to abide by the community decision.

But here it seemed to be more of a dialogue, mediation, dispute resolution. And suddenly the conflict turned into a legal conflict where the standard of review wasn't clear.

And the second comment or question is I don't see in your proposal -- I guess, it's also a question of time because we didn't have a lot of time. But I miss a bit of the face of the community forum because in my view, that's really, really key, to have a process to involve every and each SO and AC and also people from outside the SOs and ACs. And that's really key in order to try to strive for consensus and avoid all these implications of voting, et cetera. Thank you.

GREG SHATAN: I think to take the first point, as we looked at it, we felt that if there was a continuing objection by the community after the

override, that it would first make sense to try to have a dialogue. And that's the mediation discussion or mediated dialogue was the next step. If that failed to resolve the issue, then the community could decide and we did say by probably a higher threshold to initiate an IRP. The standard of review that we discussed was consistent with the mission, the core values, and not merely a process standard but an substantive standard as well. So it could be examined there.

There may be some differences if we're talking about a member versus a non-member, but, by and large, the same thing.

On the second point, the community forum, we did specifically say it would involve SOs and ACs and other community members. But essentially you end up with maybe a sense of the room. And then the SOs and ACs would go back and decide amongst themselves whether to support the objection or not.

CHRIS DISSPAIN:

Exactly. A couple other points. One is that the community forum discussion about how that's made up is a separate, bigger discussion than trying to write this -- where did he go? Oh, there he is. It's like magic -- trying to write this process. So, yes, obviously there needs to be detail in the community forum. But the community forum detail is relevant for any process that involves the community forum rather than this one specifically.

And, secondly, yes, Greg is right looking at whether the -- if there is an argument, if the board is required to say at 75% -- we are going ahead with our 75% majority because we believe this in

the global public interest, blah, blah, blah, blah, that's what you test.

There are two things you could test. One is that, that type of test in your arbitration. And the second one is if this process is, in effect, a fundamental bylaw, then you test that as well. You can do both. It is a matter for discussion, but you can do either of those two or both.

But the key point would be -- the key point is that -- he is talking about, what is the basis upon which the board is saying no to the community. And that's how you test it.

Who was next?

CHERYL LANGDON-ORR: Rinalia.

CHRIS DISSPAIN: Rinalia.

RINALIA ABDUL RAHIM: Thank you. Rinalia Abdul Rahim for the record. A request that you outline the steps involving mortal combat.

[Laughter]

CHRIS DISSPAIN: Would you like a demonstration?

RINALIA ABDUL RAHIM: That would be very nice as well.

Just a point of clarification about the threshold of four. It is an absolute number based on total number of SO/ACs. I would imagine that would change if the total number of SO/ACs would change, yes?

CHRIS DISSPAIN: We worked on the basis of seven. On the basis. We had a seven, what would be a sensible number for a standard bylaw objection. Now, no one is saying it would be a sensible number for everything. And that's just a suggestion. Next?

CHERYL LANGDON-ORR: Next we have Mike.

MIKE SILBER: Thanks. Chris, Greg, I don't -- I'm not trying to favor our pitch in avor of yours.

CHRIS DISSPAIN: But it just happens to be the result of what you are going to say.

MIKE SILBER: Maybe just to explain, the reason why we went where we were going, because this current process of trying to allocate votes to people when you have ACs who don't work that way, when you have potential changes in the community and you are creating numbers around it, that's why we tried to move away from it.

But what I'm not hearing is what is the result if you manage through the convoluted number counting process to get above the get above the threshold that you want? So then what?

CHRIS DISSPAIN:

That's the whole point. So I want to take that into two pieces, and then Greg will no doubt have something to say, too.

So just on the "what is the result," if four ACs and SOs agree to proceed with the objection, then the objection is -- the decision is then communicated to the board and that under this process a requisite number of SOs and ACs object to the bylaw change. And the board is then put into a position where in order to proceed with that bylaw change, it has to go to a 75% vote. And then there is a subsequent process whereby that can be challenged by the community and end up being enforced -- the objection can end up being enforced.

MIKE SILBER:

If they don't get over the threshold?

CHRIS DISSPAIN:

Then there is no consensus to object. Isn't the reverse -- isn't exactly the same true in your case?

MIKE SILBER:

No. We just did a fast track and a slow track.

CHRIS DISSPAIN: No. So if I wish to object to a bylaw change in your proposal, how can that be stopped?

MIKE SILBER: It can't.

CHRIS DISSPAIN: You said it could be.

MIKE SILBER: No. There are two routes. There's a standard process. So you have an objection. You don't get community consensus. You go through the IRP --

CHRIS DISSPAIN: That still applies to ours as well, yes.

[Multiple speakers]

MIKE SILBER: If you get consensus, then it goes --

CHRIS DISSPAIN: How do you demonstrate that consensus?

MIKE SILBER: In our view, very simple, which is supporting not more than one objection.

CHRIS DISSPAIN: How do you demonstrate support?

MIKE SILBER: Anybody saying they can object.

CHRIS DISSPAIN: If you want to put a bylaw change up and I object to it, then what happens?

MIKE SILBER: You look for consensus. There's a consensus petition that goes to the SOs and ACs.

CHRIS DISSPAIN: How do the SOs and ACs demonstrate they support it?

MIKE SILBER: By voting in favor --

CHRIS DISSPAIN: Which is exactly the same.

MIKE SILBER: Apologies. You got me.

[Laughter]

CHRIS DISSPAIN: Gotcha.

MIKE SILBER: By indicating their acceptance or agreement --

CHRIS DISSPAIN: Which is precisely the words we have used here, four agree.

MIKE SILBER: But we don't count numbers.

CHRIS DISSPAIN: Okay.

MIKE SILBER: People can run their own internal process how they want to do it.

CHRIS DISSPAIN: Precisely what we said.

Next.

CHERYL LANGDON-ORR: Glad you two can agree. That's good. Thanks, Mike. Thanks, Chris.

Sebastien, you're next.

STEVE CROCKER: What was the vote on that agreement?

CHRIS DISSPAIN: Exactly.
[Laughter]

CHERYL LANGDON-ORR: Sebastien.

CHRIS DISSPAIN: Sebastien.

SEBASTIEN BACHOLLET: Technical difficulties. Thank you very much.

I just want to come back to what Alan questioned before. I really think it is not because we are organized in the current silos that it's the only way to express the view of the community. And I would like to support that you take into account the fact that it's not just one SO and one AC who votes for or against but it must be a more granular system to take more into account of the diversity of this community. Thank you.

GREG SHATAN: Thanks.

CHERYL LANGDON-ORR: Kavouss, you.

KAVOUSS ARASTEH: Thank you. The agreement referred in this process does not seem to be interpreted as we favor voting. We just talk of consensus and then consensus -- agreement is part of the consensus. So it is not voting here.

And then I was not clear whether Chris properly described. There was no agreement that abstention be taken into account neither as objection nor as support.

CHRIS DISSPAIN: That's correct.

KAVOUSS ARASTEH: Can you confirm that?

CHRIS DISSPAIN: That's correct.

Are we done, Cheryl?

CHERYL LANGDON-ORR: Are there any more? Yes, you are done. We have one more presentation, of course. And I would like staff now to bring up the whiteboard from the remote participants huddle, I think we'll call it. I'm not sure what they decided to call themselves. Very diverse geographic locations they were working with.

And ask Steve to come forward and take us through what that breakout session done under very unusual circumstances, but I trust to some extent successfully. Over to you, Steve.

STEVE DeIBIANCO:

A whiteboard facility in Adobe that randomly rearranges the location and font of everything that you type. But we managed to persevere. And we kept in mind Thomas's new requirement, our new requirement, which is to keep things really -- first thing we said is that the Board should have an obligation to announce that it plans to consider a bylaws change and then wait 30 days before you vote on it. It's a heads up to the community. Because the Board isn't obligated in today's bylaws to do a public comment on a proposed bylaws change. In my 10 years of ICANN, every one of them has gone out for public comment, but there's no obligation in the bylaws. So this is the sort of heads up case.

We did four things -- trigger, quorum, decision making, and outcome.

The trigger is that any individual, regardless of whether they're a recognized member of the community, could begin an online petition. And they would do so within an AC or SO. We considered whether the online petition could be done outside an AC or SO. But very quickly we realized it had to be done within one to fit the rest of our flow.

So James Gannon, one of our participants is in the GNSO, decided that a bylaws change was worthy of a challenge. He would begin an online petition that would indicate the rationale for why this bylaw needed to be blocked. And that online petition would surface through GNSO. The other ACs and SOs could have their own online petition with a different rationale, but it could also be to block a bylaw. After 15 days, whatever the period would be, that AC -- in this case the GNSO -- would decide whether it's met its own threshold.

If the threshold were met in the GNSO -- let's say it was 60 different members of the GNSO -- then it would take it to the next level of inviting all the ACs and SOs to participate in the quorum.

Now, the petitioning AC and SO in step two would circulate its written justification. And then ICANN staff would be asked to host a conference call. The conference call would be open to all interested participants from all ACs and SOs or otherwise. After the call concluded, here's the quorum. At least two ACs and SOs would have to indicate that they are sufficiently affected by it but that they intend to participate in the community forum. That's the idea of bringing together the trigger point.

The second thing is decision making. The community forum, as Jordan described yesterday morning, would be the basis for the decision making. The aim is to get consensus. So there would be debate back and forth to get to consensus. Consensus in this simple model is the ccNSO style. It says there's the absence of a strong objection. There's indications of support with the absence of a strong objection. I suppose that's a little bit different than the GAC style consensus. But they're awfully similar. If there isn't an opportunity, though, to tweak the language to gain consensus, right, if we were actually proposing something new as in a policy, we could often tweak the language to get to consensus. But this is a consideration of a yes/no, binary decision. Are we going to block the bylaw, or are we not going to block it? It's very hard to know how one compromises on that to get to consensus. Most of the consensus discussion would center around the rationale for why we ought to block the bylaw and what we want to do instead.

So, at the end of the day, we said that, if there was no consensus under this definition, the ACs and SOs who petitioned can request that we go to voting. If we go to voting, each AC and SO would have several days to come back with a decision using its own method of voting. We said to block a bylaw, at least two-thirds,, 66% of the participating ACs and SOs would vote. That doesn't mean it's one AC and one SO. But that's 60% of the participating. And earlier we said the quorum to get together is we'd have to have at least two. At least two ACs and two SOs. Okay.

Finally, the outcome. If the community decided to block --- the statement is explaining why, including any amendment language that it refers the Board would use if it were to come back with the bylaw. You'd have to have an ability for any AC and SO to publish a minority statement. And that could be a minority statement saying they don't agree with blocking the bylaw. Or it could be a bylaw suggesting they don't agree with the rationale but support the decision to block it.

And after that, the bylaw would cease to become -- the bylaws would revert to what they were before the Board voted. And, if the Board went ahead and started the process over, decided to make the bylaw again, as they say on the shampoo bottle, we would rinse and repeat this whole process. Happy to take questions.

CHERYL LANGDON-ORR: Steve, you've got a list. But I'm suspicious that Mike and Sebastien's hands are up --- as opposed to --- I know you're an old hand, but I'm assuming then that we don't need to go to

either Mike or Sebastien. But speak up, if that's not the case. Okay. Good.

Which means we now have -- still going to call you George.

JORGE CANCIO:

Jorge Cancio, for the record. We can try to repeat.

I think that this model has the benefit of being quite simple and straightforward. But I have doubts that the quorum and the decision making thresholds are too low. Because you say only two SOs or ACs are needed to go forward. And then the majority is two-thirds of those. In the end, two-thirds of two that doesn't work is two. But two-thirds of three is two. So with two SOs or ACs, you could block a decision by the Board which represents all the community. I think that's way too low.

STEVE DEL BIANCO:

May I respond, Jorge? I believe for that to happen the other ACs and SOs had to say we don't care. Remember, the decision not to participate affects what the threshold is. If, in fact, only two said we even care enough to vote, that might be an indication that they care a lot and no one else cares at all. If other ACs and SOs really don't want to see this bylaw change be blocked, they simply need to participate. Because the minute you go to three, they're going to need two votes. So I guess we're really grappling with the fact that participation in this forum and voting is always optional. Can't be compelled. And it's an indication that an AC and SO feels that this is important. So we struggle with that. Go ahead.

JORGE CANCIO:

If I may respond to that. I think the Board -- and I'm not being sponsored by them as a disclaimer. They intend to represent the community as a whole, the 16 of them.

So for me it would be a bit awkward to accept that two ACs or SOs get edged out only because the rest of the community doesn't care too much or perhaps they are blocked inside of them. For instance, in the case of the GAC I can't imagine that very well so that three or four countries make an agreement impossible and we couldn't participate. And that would mean that a decision by the majority of the community as represented by the board is taken down by only two SOs or ACs. That's a bit of a low threshold. And that leads me to capture problems.

STEVE DEL BIANCO:

If that was the perception of the community, the Board would probably put that bylaw straight back in. 30 days later, vote on it. But this time the participation would be broader. Ironically, this would be the one element of capture that would be remedied within 30 days. It's within our power to turn that around by simply weighing in to participate. No cost. No penalty. And, if it was that obvious that what's happened here frustrated the greater good, the Board is entirely within their power to put that bylaw straight back in and overcome the objection. Next queue.

I'm looking to my 99 remote participant teammates to weigh in on the chat any time you have something to add to this discussion.

CHERYL LANGDON-ORR: Next up you've got Chris followed by Avri and Kieren, Seun, Kavouss, and Alan. I've closed the queue after Alan.

CHRIS DISSPAIN: Steve, thank you. I think this is really interesting, actually. So I just want to start with the trigger, if I can.

So I think having the idea that an individual -- so rather than having an individual in Mike's idea come and the individual goes to their SO and AC and gets their consensus, I think that's a really interesting idea. Obviously, could be a group of individuals, blah, blah, blah. So that's fine. So then they -- the first -- so your first step in this process is to get your SO or AC to coalesce around you. So, first of all, does it have to be yours. So could I go to the ALAC, for example, and say as a ccTLD person -- yes?

STEVE DEL BIANCO: We talked about that. Why even have it start AC or SO? Why can't it be an individual? We ended up saying the same thing you did when you were standing up here. For everyone, there's the ICANN structure. When you can't find a home, there's the ALAC.

[Laughter]

That is everywhere.

CHRIS DISSPAIN: The ALAC. The place for homeless people. Bring us your tired -- Okay. Cool. Fine. Just that's cool. That's just a little sort of --

you know, I can -- I asked the question because I could see -- I could see there might be -- you might end up with a little bit of forum shopping there, you know, if I tried to do it in my CC and SO.

STEVE DEL BIANCO: But, if you did, you'd have to reach the threshold for that. You're forum shopping, and everybody else agrees with you in that forum.

CHRIS DISSPAIN: I'm fine with that. So we're now at the stage where we have an AC and an SO coalesced around the trigger.

So they might agree that they want to stop it. But they might agree that they're doing it because they want a discussion. Fair enough?

So why then have you then gone straight away to the community forum rather than introduce a slightly -- get the SOs and ACs to do their own thing within themselves and then have a slightly higher threshold to go to the community forum?

STEVE DEL BIANCO: Great question.

CHRIS DISSPAIN: There's a cost to the community. Not money, but in time and effort and so on.

STEVE DEL BIANCO: Great question. Look at the first two sentences in the quorum part. The petitioning ACs and SOs -- there may be more than one -- are supposed to put in writing the justification for why we need to block this bylaw. Then we said ICANN set a conference call with all interested participants. After that call at least two ACs and SOs would have to indicate some number of days later, yes, we care. And we're going to participate in the upcoming community forum.

CHRIS DISSPAIN: What got me was the end of the sentence in the first one which says, "If the threshold is met, all others are invited to participate in a community forum." So that's why I got confused.

STEVE DEL BIANCO: I should probably say phone call at the end of number one. All others are invited to participate in an exploratory call.

CHRIS DISSPAIN: Cool. No problem. Good.

And then my only other comment would be I share some of the concerns with Jorge with some of the numbers. But, in essence, there's, obviously, a little bit more detail on our chart than yours. But they sit closely together.

I also think Mike's groups thoughts about having some kind of fast track thing might be worth considering, too. Thanks.

STEVE DEL BIANCO: May I ask you about fast track? Because the bylaw, while the Board voted to enact it, I was assuming, just based on page 66 of our second draft proposal that there's some period of time before that bylaw takes effect to allow these community mechanisms to kick in. I guess we were assuming that.

CHRIS DISSPAIN: Well, no, is the answer. In effect, if we vote -- if the Board votes to change the bylaw, the only -- you can make that happen by saying in the bylaws that a bylaw change cannot take effect until X. But that isn't currently what's in the bylaws. So you have to put that in. That's perfectly logical. Nothing wrong with that at all.

STEVE DEL BIANCO: Thank you, Chris. Next.

CHERYL LANGDON-ORR: Next is Avri.

AVRI DORIA: Thank you. Avri speaking. I just have a clarification question with no opinion intended, which is the question on "must indicate they are affected." I'm just trying to understand what was the intent there, and what was the degree of being affected that one would have to display? Thanks.

STEVE DEL BIANCO: Thanks, Avri. Becky Burr contributed that thought as affected being the path by which an AC or SO would decide, yes, we want

to participate. I don't think it should be a requirement. I don't think the word "affected" has to be a requirement. The true question is, ALAC, do you intend to participate in a community forum? CcNSO, do you intend to participate? I guess the presumption was the degree to which that bylaws change affects them may affect that decision, but it doesn't have to.

CHERYL LANGDON-ORR: If I might, Becky in the chat also said two things that I noticed -- that they care and self-declared, which I think is relevant, too.

Your next question comes from Mr. McCarthy. Kieren.

KIEREN MC CARTHY: Hello. Okay.

I just wanted to sort of warn against getting into these numbers and votes. Each time we do that, we go down a rabbit hole. In terms of, like, making decisions and getting stuff done and creating simple solutions to this, as soon as we start talking about when we have three, when we have four, when the GNSO gets -- the moment we start talking about that, we go down a rabbit hole for the next three hours and absolutely no one agrees on a solution.

So I do think I liked Mike's approach, which is you ask everyone. And, if no one objects, it moves forward. That strikes me as a much better way of doing things than, if we have got four, if we can game it here, if that person says yes. As soon as we start talking about it, we lose hours and hours and hours and never end up with a good solution anyway. I think we should try to be

a little more collegial and start creating processes that just enable people to say yes or stay out of the way or say no rather than think what am I going to do with the non-commercials, et cetera, et cetera.

STEVE DEL BIANCO: I will note that the rabbit hole of deciding on a method may well mean that the method will be easy to operate once it gets decided upon.

Believe me, the last 10 months have been a rabbit hole on the CCWG. But the effort is to design mechanisms that, once they are operationalized, are easy to operate. And it turns out that very clear voting rules, thresholds, and deadlines, boy, are they easy to operate. There's not a lot of discretion and fuss about it. Hard to design but easy to run.

KIEREN MCCARTHY: So, in response to that, I think, when a lot of people say -- especially people who haven't been involved in the process say these plans have too much complexity, they're too complex, I think often what they're saying is code for please stop writing in 8,000 rules about voting rights. I think that's what complexity is like. For example, the single member idea is a very simple idea. Where people's eyes start glazing over is when they look at the 25 pages put into how are decisions going to be made.

STEVE DEL BIANCO: You're right. And there were other eyes that didn't glaze but flared at us and said I need more detail before I agree to this

proposal. Sometimes we're just trapped between two lovers right here.

CHERYL LANGDON-ORR: Something says "Eat me." Something says "Drink me," and we're definitely in Alice in Wonderland world. Next is Kavouss followed by Alan. And I'm feeling extraordinarily generous for a tiny intervention by Mr. Disspain.

SEUN OJEDEJI: Next is Seun, right?

CHERYL LANGDON-ORR: My apologies, Seun. I looked over there and totally ignored you. It wasn't my intention, just my aging eyes. Over to you.

SEUN OJEDEJI: This is Seun, for the record. The start of this process assumes that the current process of changing bylaw will have been done. That is when you said they must announce the plans. Than doesn't mean that still kind of public comment or that it has gone to the normal process of the public comment and then it has implemented -- it's implement a change based on the outcome of the public comment.

STEVE DEL BIANCO: The bylaws do not require that the Board give advance notice or public comment before it votes on a bylaw. It can do a bylaws change with a two-thirds vote any time it wants to. That's not

the way the current board operates. They put it out for public comment.

Becky said that one idea here is a bylaws change to give a heads up advance notice. And, if it requires that the Board give 30-day notice before it votes on a bylaws change, that is an opportunity to begin to assemble community opinion. Let the board support thinking whether there is a public comment period or not. It's an advanced notice requirement so that we can let the Board know whether there's concern about a bylaws change.

SEUN OJEDEJI: Just one more thing. I'm just concerned about the 30 days. What if there is a need to actually change a bylaw -- I mean, have a change done immediately? Does this give consideration?

STEVE DEL BIANCO: Yes, it would say that the Board couldn't make a bylaws change any sooner than 30 days from when it thought it needed one. Chris. Chris is saying he can't imagine needing it any quicker than that. Okay. Thank you.

CHERYL LANGDON-ORR: Apologies to you, Seun. I do try and watch the list properly. Kavouss.

KAVOUSS ARASTEH: Yes. The quorum that you have mentioned in number 2 is useful but may not be necessary. However, if you maintain that quorum, you need to also under the decision making refer to the

quorum for decision making. Usually in all international decision making quorum is referred or decision making. That, if there are 100 people registered, should be a minimum number participating in the discussion in order that the decision should have a legal value. So your quorum number two should be accompanied by another quorum under the decision making. And, having said that, I'm happy in the decision making you refer to consensus. That is a good and positive step.

STEVE DEL BIANCO: Thank you, Kavouss.

CHERYL LANGDON-ORR: Next up is Alan.

ALAN GREENBERG: Thank you. I have a worry in a lot of these things about setting up rules that the established community will block other entities from coming in.

If you look at a decision to admit a new AC or SO, that may be one with the others simply we don't want to dilute our power. If you take one that is an ALAC favorite that we have one board member right now, there are some in ALAC and at-large who believe there should be two. But the other SOs are -- you know, may well decide no. We don't want to dilute our power. We're going to block it. And there's no way to fix that.

And overall problems -- we've seen similar problems within the GNSO and new constituencies. And the established groups often say we don't want to be diluted.

And I think we really need to make sure that we're not locking ourselves into our current structure because of that. Thank you.

STEVE DEL BIANCO: That would necessitate a lower threshold. That would necessitate finding an ally to say they care; they agree with your concern; and they're going to participate and stand in the way of a two-thirds vote to block a bylaw. That's good old-fashioned politics, but it may not be what you have in mind here.

CHERYL LANGDON-ORR: Chris, back to you.

CHRIS DISSPAIN: Gosh. I got so many places I could go with that. I was going to ask how -- I meant to say this before. So thank you, Cheryl, for allowing me to do this.

On Number 3, Steve, to block a bylaw at least 66% of participating ACs and SOs must vote. So each AC and SO decides its vote using its own methods. I don't know what that means. Are we saying that they actually can vote and are they voting as an AC or an SO or are they voting in bits? Or what were you intending?

STEVE DelBIANCO: It's binary, and each makes its own decision. They'd say yes or no.

CHRIS DISSPAIN: Cool.

STEVE DeIBIANCO: Yesterday we had a great discussion I thought of binary versus split. I see the real merits of split for a lot of things in GNSO. But here we wanted to keep it simple.

CHRIS DISSPAIN: I can't resist just pushing back a little bit and saying that under this model, I just want to make sure I'm clear, Alan is right. The change for the ALAC board members from one to two could be blocked by how many other? By 66% of everyone or 66% of those who participate?

STEVE DeIBIANCO: The latter.

CHRIS DISSPAIN: Right. So make some assumptions here. The SSAC and the RSSAC let's assume as we said won't. So that's fine. Now we have ASO, GNSO, ccNSO, ALAC, and GAC.

STEVE DeIBIANCO: That's right.

CHRIS DISSPAIN: 66% of those would need to be against that change. Thanks. I understand it.

STEVE DeIBIANCO: Anything else, Cheryl?

CHERYL LANGDON-ORR: Unless there is somebody on the list I haven't seen, thank you very much.

I just wanted to make a similar observation. That is, I think the dynamics of getting each of your groups as diverse as possible was a very good one. And I'm delighted that we went through this exercise.

I hope that we get a little bit more time -- and I haven't managed to press the send button and ask the chairs. They have only got half a sentence in front of them -- which was our timing for lunch would mean that right now we are some seven minutes later than we should be to leave the room.

So I think we should probably wrap up the Q&A-specific part now. And if I had my way -- and you can overrule this suggestion by all means -- we would encourage conversation over lunch and then come back to do a little tiny wrapup and see what we've got from this activity. And that would mean we get back here at our advertised time so the remote participants know what's going on. And they can then contribute in an equitable way as well. That's what I would have finished, if I had time, in that sentence.

THOMAS RICKERT: Thank you, Cheryl, for gently pressuring us in your direction. But as always, what you said makes an awful lot of sense. And it is,

in fact, very close, if not identical, to what Leon and I would suggest to the group.

Let me say this has been very remarkable. You have come up in almost no time with great ideas, and we think that these need to be fleshed out just a little bit more.

[Applause]

And I think, Cheryl, when we met this morning for breakfast, I suggested we have this breakout thing. And Cheryl made some suggestions how I should do it. And I said, Cheryl, you better do it. And she did and she did great. So a round of applause for Cheryl as well.

[Applause]

So if you have two or three questions on understanding the concepts, I think we should take them now. Let's not do value judgments on them. But what we suggest doing is ask the rapporteurs that presented the proposals to huddle over lunch and maybe consolidate that into one proposal that we bring in front of the group afterwards and hopefully can agree on. How does that sound?

For the remote participants, there is a lot of nodding in the room, which is a good sign.

So do we have any questions in the room?

CHERYL LANGDON-ORR: Chris' hands and Kieren's hands are old hands.

JONATHAN ZUCK: Sorry, this is just a question about process. The rapporteurs get together and create a combined proposal.

THOMAS RICKERT: If they can get. If they can.

JONATHAN ZUCK: I'm wondering if it makes more sense for their objective to identify the distinctions and boil it down to a set of questions that then get discussed about it. Because there would only be two or three. That might be a more productive thing than them trying to come up with a hybrid proposal themselves.

LEON SANCHEZ: I think that's a good approach. I mean, what we are trying to do here I think is to have a clear picture of what we do agree on and just then the three or two questions or one question that we need to answer. So we can narrow down so we can deliver, of course, an agreement later on in the day. So, yeah, I think both parts could be important.

JONATHAN ZUCK: Maybe even where there's points of disagreement, assign one of them to each make a case for what their groups -- you know, one of them is a quorum, right? So our group that Mike represented didn't have a quorum requirement; the others did. So maybe the two people need to come up and make a case for those two possibilities for the group.

THOMAS RICKERT: So Jonathan sees me smiling and is probably expecting what's happening now. How about you facilitating the group amongst the rapporteurs? So you have a new job.

[Applause]

Just to make sure we get exactly the outcome that you want to have. We want to make everyone happy.

And so I think we can even break for lunch early. There don't seem to be any questions. Earlier -- I said we can have two or three questions, you know...

The GAC wants to stand between the group and lunch. Thomas Schneider, please.

THOMAS SCHNEIDER: Yes, I would like to make a quick statement. It will not take more than 15 minutes. You find it also on the GAC Web site. It's about the weather in California.

No, I just wanted to ask a question. I failed to see the issue of the stress test in today's agenda. So that we know that we can prepare because I think it may be useful to also try and identify common ground to a possible way forward on this one, when will that be tabled this afternoon? I hope it will actually.

THOMAS RICKERT: Yes, you can expect that to happen. We wanted to see how things are going this morning. Let's come up with a revised agenda and a proposal with an exact time after the lunch break, okay? Thanks, everyone. See you again after lunch.

CHERYL LANGDON-ORR: Promptly after lunch.

THOMAS RICKERT: Promptly after lunch.

CHERYL LANGDON-ORR: 1:15.

[LUNCH BREAK]

THOMAS RICKERT:

So welcome back, everyone. We think this breakout session exercise worked really well. The quality of the results coming from these groups was very good. And I'm sure that Jonathan Zuck took it to the next level with the rapporteurs of these groups so we are eager to hear from them. We are not going to do that now.

[Laughter]

Let me just share with you how we intend to go about with the afternoon. And, hopefully, you're okay with this. Actually, what you see on the screen there which we designed five minutes back is already outdated because our friend, Steve Crocker, has just offered to maybe speak for two minutes about some board views on this. And that could maybe inform the discussions that we are going to have in the afternoon. So I think we gladly accept that offer. So that's going to be short, just like a two or three-minute intervention. After that, we are going to have the second breakout session. And let's not be confused, the time spent of three hours, that includes the whole exercise. Again, Cheryl will guide us all through this. So we are going to have various groups here onsite. We are going to have a group with remote participants. We will have a Q&A or a presentation session with the plenary afterwards. And now you might ask yourself what exactly is going to be discussed during that breakout session. And that is what's coming after the community has made a decision. And that is how do we think differences between the board and the community's wishes can be reconciled. That's been called dispute resolution on the sheet that's been presented by Chris and Greg. Others would say this is -- this is the area where the model would come into

play, but we are not going to discuss models. We are not going to use the forbidden names today.

But this is where we should think about what we need or what we would like to see as a community as a mechanism, as a process to reconcile differences where the board is being told by the community you can't do that. Certainly there are different options we could take into account. That's mediation. That's arbitration. That's litigation or a variation thereof. Try to think out of the box. You have heard all the concerns by the various stakeholders. You have read the concerns from community members. Try to work something out that will get most traction and remove most concerns.

So I think we should leave it quite open to not prevent anyone from having innovative ideas. That's the place where that's going to happen.

Afterwards, we're going to discuss stress tests for half an hour. And Cheryl has been looking forward to that very much so. That's going to be her half-hour.

Then we've reserved one hour for taking stock. So we will discuss then what we've discussed yesterday on the community powers. We will try to get clear instructions from the breakout sessions for the next week's -- for the drafting teams to operationalize the ideas that we have gathered here. And after that, we are going to discuss timing a little bit. Maybe we can discuss the statement so that our group can say to the outside world what happened in Los Angeles and let's not allow only for others to share their own impressions about what happened here with the rest of the world.

Then we have a few minutes for AOB. After that, we can go into the evening sessions where I'm sure Jonathan Zuck will be moderating another session on how to get things progressed faster.

So that's it from us. I think with that, I would like to hand over to Cheryl to guide us through the breakout session again.

CHERYL LANGDON-ORR: Thank you, Thomas. Cheryl Langdon-Orr.

THOMAS RICKERT: Sorry, I wasn't on the Adobe. Do we have hands raised?

CHERYL LANGDON-ORR: I'm not seeing any hands raised.

THOMAS RICKERT: Steve, I said you would be speaking. I'm so sorry.

STEVE CROCKER: Thank you very much. We can't emphasize strongly enough how thankful we are, how appreciative we are that everybody has come together. This is a hastily scheduled meeting. Displaced a lot of schedules and everything. And we know that a lot of -- there's a lot of energy that's gone into this. And I want to speak - I want to speak about the board's position and attitude about all this.

The transition is very important. "Very important" is not the same as it dominates every possible alternative. Our primary commitment, our overriding commitment is to the inclusive multistakeholder model.

We cannot support compromises that undermine that multistakeholder model. This has been built up in a -- by accretion in a way over 17 years with changes and additions and modifications over time. Each of us serves on the board for three-year terms. And even if we extend it out as I have for a long time, eventually it comes to an end. None of us are here permanently. There's no sense in which the board has a role distinct from the community. We come from the community. We return to the community. And we leave behind what we hope is a stronger and more vibrant operation.

But I want to emphasize that as strongly as we are supportive and believe that the transition away from the contractual arrangement with the U.S. government is in the best interest of the entire world, the entire community, not just the corporate structure of ICANN, it is something that has persisted for a long time. We wrestle with it. We chafe under it a bit. But it has not been disastrous. So that sets a kind of threshold for what our ultimate decision process is going to be.

We think that we are so, so close to wrestling -- wrestling to the ground to getting agreements on the big things that have been important here on accountability, on transparency, on enforceability, on community powers, and even ability to remove individual board members. You may think that that's a threat sometimes. We think that would be a relief as an escape.

[Laughter]

Another key thing that's very vibrant and visible to us is the underlying assumption, the predicate for the announcement made a year and a half ago was that the U.S. government was saying ICANN is ready for being cast loose. It did not say, We are tired of running it and we have got to find somebody to substitute for ourselves. They did say, of course, they wanted a global environment, the multistakeholder model to be comfortable, everybody to be comfortable with the system. And it opened up the dialogue which led to where we are today. But they did not -- and I shouldn't speak about what they said. But we certainly did not understand and don't believe that creating a superstructure to replace them in a corporate sense was intended, desired, needed, or appropriate.

So we're feeling our way very gingerly through this process. The board believes very deeply and tries to act appropriately that we represent and carry out the sense of the community. We're not in a bastion position of just defending ourselves against the community because in the end, we are trying to be representatives and caretakers on behalf of the community.

But at the end of the day, we have very strong responsibility. And that responsibility is carefully separated from each of the stakeholders and constituencies. We take conflicts of interest very seriously in the several instances where a particular board member has a business relationship or -- doesn't happen but a personal relationship, it has to be disclosed and they get removed from the decision process and so forth.

We don't have the same framework of protection and development of discipline if conflicts of interest, for example, and the rest of the community. And that's fine. That's perfectly fine, but it is something that we take seriously.

So the comments that we submitted some time ago did represent a board position. We did a quick check this morning, and 100% agreement that what we said then still stands.

We really, really do believe that this is so close that it's there. And, as I said, we are very strongly supportive of the principles and the objectives. And we're down to what is sometimes said with a little bit of irony, these are just implementation details. But the implementation details are, in fact, quite important.

I was reflecting I sat in meetings -- it is embarrassing to say this -- almost 50 years ago bringing people together to build the original protocols on the ARPANET. I was terribly chagrined. Fairly early on in the process we had -- first time we had people flying cross-country, all the way across the U.S. to come to a meeting. And the meeting fell apart by noontime because the solution that I had been pushing was rejected by the very people I thought that I was drawing it from. I was taking models about the way the advanced systems at MIT worked, and the MIT people came and said, "We can't do this." The whole meeting was in shambles.

I was a lot younger then, and it rattled me. Somebody took me aside and said, "You will get through this." Sure enough. Protocols got built, and they got rebuilt. And the ARPANET got built and lots of things have happened since then.

We can make this work, and we can make this work well enough. I was very, very pleased to see the different scenarios that were being discussed before lunch.

To my eye, they were more similar than different, differed in some details. And one of the test questions I asked: What would have been done differently? And there were answers. It wasn't zero. And I think that's fine. I think there were some things that one could argue it would have been better if it was done differently, and that's fine.

But I think we want to do it in a measured and incremental way and with the complete understanding that this is an ongoing process. We've had the ATRT reviews. We've had the structural reviews. We've had plenty -- we have all of the advice that comes in from the advisory committees. And we have the policies that come up from the SOs. This is an ongoing process that will go on tomorrow and the next day and the next day. And it is not essential that we grab hold of every sort of thing and make it all happen now.

So I wanted to convey that. I wanted to convey that the board is deeply invested in trying to be helpful, if we can, staying out of the way if that's the best thing to do. But we're not -- to borrow a phrase from some years ago, we are not potted plants. We are not just sitting here passively. We are very heavily engaged.

And we have quite heavy responsibilities. And those will get expressed as they are -- as I'm trying to do now. And they have been in the past, and they will continue as we go.

And we are hoping very strongly that we are not put into a position of having to make really tough decisions or get into a "it's this or that" sort of thing. But, if necessary, all of us are seasoned adults and we take our responsibilities quite heavily. And we don't have consequences except to our own personal reputations or conscience perhaps that we have to deal with perhaps. We will do what is necessary when it's necessary.

We don't want to convey that as a threat, more as a plea, sort of "please don't throw us into that briar patch," if you will. That's what I want to say.

I know there is a piece of work some have seen that is an assessment of where there's strong agreement, where there's not.

I know you guys have seen this. It would be my preference to be able to flash this up on the screen, if it's permissible.

THOMAS RICKERT: Steve, I guess this is the area where we want to take stock. This is not for now. Sorry. We are not yet there.

STEVE CROCKER: And I appreciate that. So let me return control to you and you say when and how or if, whether. I have said the main thing that I wanted to say. And then whatever else --

THOMAS RICKERT: I suggest that we get back to the agenda and revisit the areas of agreement once we get to that point. We hope between this

moment and later we are going to have some more points that we can put from the right-hand side of the table to the left-hand side as having agreement. But I didn't mean to interrupt you.

STEVE CROCKER:

No. I have come to a plateau point. My next -- if I were to continue, it would be to speak to the chart that's up there and take it down so we don't have to get distracted by that and return to the regularly scheduled program here.

THOMAS RICKERT:

Thanks very much, Steve.

We will get back to the point later in the agenda, at 1645 where we are going to take stock. But before that, we have some work in front of us. And Cheryl knows how to bring groups together, walk them in the room, outside the room.

So, Cheryl, the floor is yours.

CHERYL LANGDON-ORR:

Thank you very much, Thomas. Cheryl for the record. I feel like a bus conductor by that description. But, anyway...

What we need to do is gather back to where we were before lunch and look at the very busy work that I saw was going on over the working lunch with the leads from the groups we had this morning.

And I don't see Jonathan. Is he -- perfect timing. Right, okay.

In which case, who was in that lunch group? Rick, step on up and bring us through the consensus exercise, questions and answers, and what did you people do over lunch. Thank you.

JONATHAN ZUCK:

Okay. Thanks, everyone. Thanks everyone who participated in this breakout session. I think it was productive. One of the things that was interesting is everybody took their remit a little bit differently and started at different places along the process.

So while there's some distinctions between the proposals, what we found in discussing them is that they were sometimes just omissions by the various groups as opposed to disagreements.

So what we tried to do was lay out a kind of phased approach to what this would look like. And then we'll try to isolate here in pink where the distinctions were between the different breakout groups and then make that the product potentially of discussion for the wider group to resolve those differences.

So at the top of this, one group in particular started earlier, if you will, with the board announcing a plan to consider the change to the bylaws followed by a public comment. And that's because right now the bylaws don't require a public comment. The suggestion would be that they now would, right? So there wasn't a lot of disagreement about it, but only one group proposed it. That's why everybody just sort of lived with that.

Unless there is any objection to that, that was sort of a discussion of how the process might be changed or at least formalized on the front end.

And then with the standard bylaw that's a 2/3 board vote to pass that bylaw. And then if there's opposition, there would be a petition to oppose. And so this is the first area in which there was some distinction between the breakout groups.

So in one case, in the group that I was in with -- for which Mike Silber was the rapporteur, anyone or any group could initiate this petition to oppose, all right?

In the others, it was some form of an SO or an AC that needed to initiate this petition to oppose. So that's the first question, if you will, for the group, if we're trying to sort of get this down to a proposal, that's the first area in which there was some difference. Can an individual carry this process, or does it need to be an SO or AC that carries this process?

Yes.

(off microphone).

JONATHAN ZUCK: Yes, that's exactly right.

THOMAS RICKERT: Jonathan, could you please repeat for the microphone because not everybody could understand.

JONATHAN ZUCK: I'm going to.

STEVE DelBIANCO: Between the first and the third, 30 days.

JONATHAN ZUCK: Steve's group also recommended that this would be a minimum of 30 days during which there be a public comment, right?

STEVE DelBIANCO: We didn't require a public comment. We required a 30-day advance notice before the board votes.

JONATHAN ZUCK: Okay. So maybe there isn't a requirement for a public comment then. Just a 30-day -- I don't know if it is in addition to or instead of. But the notion that there is a time frame here as well that there needs to be at least 30 days between the board's announcement to consider a change to the bylaws and the vote to do so. There's a minimum of 30 days, okay?

Then the petition to oppose can be an individual or an SO or AC. Under one plan, there would be -- under the plan for which Mike was a rapporteur, that person or SO or AC would act as kind of a whip --- which is to go around and try and gain consensus, right? And if they did and consensus was defined -- and we'll get to the different thresholds. If they achieved consensus, that would cause immediate suspension of that board vote. Okay? So that's sort of the quickest proposal through this process, that if an SO or AC is able to present the Board with their threshold, that would be it. The vote would be suspended. Does that make sense? So that's one proposal.

The others had some more process in between. But in most cases began with a kind of briefing call by whoever the petitioner was, the SO or AC or individual. And there was some sort of briefing call to make a decision about whether there was sufficient interest to proceed is with a process to mount an

objection. So then every SO/AC needs to be a part or needs to be invited to this call.

And then in the context of the proposal from the Adobe Connect, which was Steve's proposal, there's a threshold through which they even proceed to the process of deciding whether or not there's consensus.

So that minimum threshold was two, right? Threshold of two SOs or ACs would need to agree that we should go through the work of having this discussion in the first place

Okay?

Then, if there was, there would be a call for a community forum that would be open to all followed by a consensus call and to decide whether or not there was a consensus among the community to proceed. And then that consensus is defined differently by each group. We didn't detail that here. But the different consensus were --

The presence of support and the absence of a strong objection.

JONATHAN ZUCK: Presence of support or absence of a strong objection. Greg.

GREG SHATAN: We had four out of seven SO/ACs.

JONATHAN ZUCK: All right. Mike? What was your threshold for consensus?

MIKE SILBER: We originally suggested no strong objection or no more than one objection.

JONATHAN ZUCK: No more than one objection was the proposal.

MIKE SILBER: But I think there might be a concession which says, if we can't get that, then maybe we do have to default to some sort of voting, as much as it pains me.

JONATHAN ZUCK: But we define the threshold.

MIKE SILBER: We'd prefer not to have a vote, but it may be necessary. Seems some people don't like it, Avri. But we may need to concede to these people.

JONATHAN ZUCK: We're not having that yet. Sebastien's group didn't define it. So those were the three. So those were the threshold. If you recall in Mike's proposal, that could happen right away. The SOs and ACs if they reached that threshold, which was no more than one objection, that would, in fact, be sufficient to suspend the Board resolution. Okay? Avri. Yes.

AVRI DORIA: Please, I just wanted to request that the word "vote" be on a pink sheet instead of a green sheet.

JONATHAN ZUCK: Yeah, it should have been. Because this vote was actually only one of the -- truly was only one of the proposals, which is in the absence of a consensus, as the group had defined it, they would resort to a vote which was 66%. So that is a pink sheet as well. Kavouss.

KAVOUSS ARASTEH: Yes. You said that no more than one objection. But we wanted to avoid the word "objection."

Say not more than where there is one or two advise against that. You're talking about advise, not objections. We did not use that. We use "advice" not more than one or two. In fact, it was two discusses but not more than two advise against that consensus.

JONATHAN ZUCK: You were in a different group than the one we're talking about with Mike.

KAVOUSS ARASTEH: I was in the same group, yeah.

GREG SHATAN: No, Kavouss was with Chris and I. Chris and me.

JONATHAN ZUCK: Right. Okay. So then there's variant thresholds. And, in the case of -- I'll just call it Mike's proposal, Mike's group's proposal, that suspension would simply be final. So, if the Board wanted to revisit it, they would go back to step one. That would be it. That would be the end of the process under Mike's group's proposal.

Under -- and I guess also on --

MIKE SILBER: No, Jonathan. Our group didn't say suspension is final. We said it could follow whatever mediation, arbitration process was needed. You could just decide it was final if you decided not to proceed.

JONATHAN ZUCK: But then Greg's group had this other distinction, which is the ability for the board to, essentially, through a higher threshold, through a 75% vote to 0, overrule that objection or suspension. And that would be followed by another consensus call within the community whether to keep pushing forward. And that would be a higher -- what he ended up saying at lunch was that would be a higher threshold of five out of seven rather than the four out of seven to overrule the overruling, at which point that would drop to the resolution.

To summarize, one proposal allows individual or SO or AC to launch the process in the first place. So that's one thing to get some consensus about.

One proposal allows you to skip a community consensus call and go directly to whipping a consensus within the SOs and ACs

to bring about a fast track suspension of the board vote. The others require going through a process of deciding whether or not to pursue the question, a semi-formal process to decide whether to pursue the question and then a community forum followed by a consensus call.

Then there were different thresholds. And then there was the notion of whether the Board could overrule the community with a higher threshold vote. So those were the sort of four questions for the group.

So I don't know the best ways to -- whether we're trying to actually reach any kind of consensus in this room. But that's how we reduced it to the four questions. Are there any questions about the questions? Yes, sir.

KAVOUSS ARASTEH:

Yes. I think at least we could dissolve one of the questions. The first round is one SO or AC push for the suspension. And the other is going to the full process. So we should say that is it appropriate that one SO or AC push for the suspension without consultations or involvement any others? Does it mean that we capture everything by that single SO or AC?

JONATHAN ZUCK:

Let me clarify, Kavouss. Thank you for your question. In the case of Mike's proposal, it becomes the responsibility of the petitioner to go get consensus among the SOs or ACs. Nothing could happen without consensus on any of the proposals. They all require consensus.

KAVOUSS ARASTEH: Is it mentioned in the diagram?

JONATHAN ZUCK: Yes. They all require varying thresholds. But they all require consensus to suspend the Board's. The only distinction is whether or not a formal process, including a community forum is necessary prior to a call for consensus.

Is that's the difference. Does that make sense? It's the presence of a community forum. That's the difference.

KAVOUSS ARASTEH: That's a very important element and should be maintained.

JONATHAN ZUCK: Thank you for your opinion. Are there any questions about the questions? Those are the four questions. And is that then the end of the homework assignment, or do we want to try to delve into all these at all?

CHERYL LANGDON-ORR: I think -- don't want to delve in now. This is Cheryl, for the record. I hope that now people have seen what happens is an output from the individual breakout group activities that will do the more chewy topic of reconciliation. And we'll try to duplicate this process before we bring it back in. You've got more homework coming. You've done such a good job you've got more homework. And the rapporteurs will give you more time. If there's no questions on the questions, this is now showing you what happens with the outcome from your

breakout groups even when there is some diversity in particular points of a process you've come up with. So we expect that there will be differences from the groups that are about to gather and work on a new question which, unfortunately, is not currently up on the screen. But it's the reconciliation of difference of opinion between board and community views.

So that topic will come up on the screen when the magic happens from the back end of the room.

I would encourage you now to not necessarily go back to the same group you were in this morning. I would encourage the people who were running the flip charts to go to their designated flip chart space.

So, if you had a pen in your hand and a microphone, if you were lead, rapporteur, gather your charts and go back to the original spots from this morning. But I'd like to see the people you're working with changed around a little bit. If you'd like. I'm making it open and generous and making it your choice. This is very unnatural for me. Very, very unnatural for me.

So the people with Sebastien this morning come work at the front of the room. The people by the coffee go work where Sebastien was working. What? Sorry? With the people who were with Sebastien this morning shall go, if they like, to the front of the room. The people who were at the end of the room can go to where the people were -- the coffee. Are we okay with that.

You want to change the composition of the groups or just where they're located?

CHERYL LANGDON-ORR: Just where they're located.

Can we discuss this?

Of course you can. It's open for discussion. That's the good news. You've got your topic. You pretty much need to hit the ground running because we had thought wrapping up from our prelunch break exercise would take about 15 minutes. And that meant that our three hours for this session was already done. But it is close enough to quarter past 2:00, so we have effectively removed an hour from what we had planned. Go, gather, work. And we will give you the how much more time do you need as we come towards the quarter to mark. And we will then have the same process excepting this time you'll all come back into the room because no one group will need more time. Come back into the room. Flip boards at the front. And we'll do the debrief and move on. Okay? Thank you.

The question I did ask to be presented up. I will call it up.

It is: Reconciling differences between board decisions and community wishes. Reconciling differences between board decisions and community wishes.

And, by the way, you don't have to sit down out there where the seats were today. You can take a seat, if you want. But you can stand. You can do whatever you like. But gather in those spaces and let's go. Thank you.

Decisions. I'm just quoting what my co-chair gave me to work with.

[BREAKOUT SESSION]

CHERYL LANGDON-ORR: Okay. Thank you, ladies and gentlemen. If we could gather back, we're going to do the combined presentations and Q&A.

So first up, I wanted to make the observation that there was a not insignificant number of people who thought it really wasn't worthy of their time to be included in the exercise today.

I don't know how those people who did get up and did include themselves in the activity and did contribute to the breakout work felt about that. But, if I was in one of your hard working groups, I would be somewhat underwhelmed by those who chose for whatever good reason I'm sure they had not to. However, I photographed you all. And I hold a grudge.

No, that's it. Yeah. Astonishing, isn't it?

We're going to go with Mike's group first. Then we're going to go to the remote reporting. And then probably we'll see who wants it next. Over to you.

MIKE SILBER: Thanks, Cheryl. We started off dividing board decisions into almost three areas. Sorry. So -- and this is my thinking, which the groups found kind of useful but then we didn't really use it to distinguish, but it might be useful to look at going forward.

Sometimes board decisions are corporate or governance decisions on the Board, which things like audit, employing the CEO, general corporate governance stuff, risk, sustainability, those good things are pretty much ordinary board stuff that happens.

We do have a policy role. Now, don't throw things at me. That policy role is really vetting the bottom-up community developed policy, making sure that it has been through a proper -- swallow it. So making sure the policy has been through a proper community process, it's implementable, it's rational, and we can move forward with it. So we do have a policy function over there. And the third in the green is kind of a hybrid or shared responsibility between board and community. It's the swear word of implementation. It's things like finance. Because finance splits, to some extent, between that. Some of it is a standard corporate governance function. We need to make sure the finances of the board are there. The organization is financially sustainability. But we also need to make sure that we're funding projects that meet the community expectations and the community needs.

So it may be an interesting way of looking at some different decisions and board differences or board decisions. And there may be different thresholds.

You know, the example I've given is I don't think that the community should be able to object to our employment of a CEO. You know, that's our prerogative as a board to hire a CEO. I think the community can make their requirements known or give us input. But there's some things that are board decisions and where the community has a right to give input but they don't necessarily have a right to demand reconciliation. As I say, we didn't have time to go into that.

So the first thing we looked at was ways to avoid disputes as well as to better frame the argument.

So there a whole lot of things ahead of a decision, some of what we discussed. But the bylaws stuff, which is defining and documenting our processes better in terms of how the Board reaches their decisions, making sure timelines are properly communicated and kept to, access to briefing materials, public comments and the community taking responsibility for better communicating its wishes in terms of the problem statement that we're given in terms of what are the community wishes, really finding a way of getting a better picture of what those are.

That then leads to a decision. And, when it comes to a decision, very similar to where we were with the bylaws changes, anyone can create a petition. If they get community support -- and we didn't go into what constitutes community support. But our feeling was, if there's an objection, they can go through the standard IRP process as it exists today. Obviously, there are issues and improvements that are needed. But that would be an individual -- and in particular at the moment we deal with a lot of reconsideration requests relating to commercial actors relating to their specific contract.

The second one would be a community process. And, again, possibly following a similar community consensus call as we've described under the bylaws, which would then, instead of at the moment the CEP, it would actually provoke a dialogue with the Board, not just with staff. And enhanced CEP engagement as it exists at the moment. A suspension of the Board decision.

Now, again, this is where the distinction between governance issues -- because I can see Cherine raising his eyebrows. So I don't think that ordinary governance decisions should be subject to suspension. But I think that policy issues or so-called

policy issues -- and, again, it may be necessary to put more meat to these bones. But items which are policy related could very well be suspended. Items which are purely governance related shouldn't be capable of being suspended. And items which are those hybrid or shared areas, that is something we need to think about how it's best possible to invoke that. And then it needs to go to a review process.

And, again, there was a discussion about whether this is just a standard review, have we followed the process? Or if this is potentially an appeal, meaning an external panel can substitute their own decision for the decision of the Board.

So we came up with a lot of questions. And we answered a few of them. But, hopefully, some of our thinking might be useful for others in terms of guiding more -- adding different thoughts into their thinking.

CHERYL LANGDON-ORR:

If I can find the right button. There are no hands raised in the remote at the moment. We are now open for questions. Look at that. That's very impressive. So, if you could give that to Steve.

Steve DelBianco is now going to come forward and report from the remote participants. And I know you are all aware of and avidly read when they are published the chat transcripts from all of the meetings you attend. But it is important to recognize that there is a very vibrant conversation going on in the AC room chat. And the contributions to these conversations needs to be recognized and read and, if necessary, read into the record. Thank you. Over to you.

STEVE DEL BIANCO:

This is Steve DelBianco with the CSG, and I was managing the remote conversation. And the first challenge of the remote conversation was that the regular chat, which was still reacting to a previous conversation, was stepping on top of our capabilities. But staff, ICANN staff reacted quickly and gave us our own chat window. So this is considering a decision on how to reconcile differences.

We came up with a 3-step plan that looks an awful lot like what we proposed before lunch. And it's about a precursor, a front end, before we do a community challenge in a formal way such as a community-based IRP or reconsideration. This reflects the fact that we felt very comfortable with the community-based reconsideration or IRP based on the bylaws standard. And, if it was community threshold, supermajority, then ICANN pays the legal fees. If you recall that was in the CCWG second draft proposal. But it seemed a bit abrupt to go straight into that to reconcile differences. We said can't we have a more accessible, easier to invoke way of surfacing emerging differences that could eventually lead to an IRP or reconsideration? But the objective is to make the differences understood and discuss them in a way that could work out a reconciliation prior to that step.

We did note at the beginning that this charter about reconciling differences, the CCWG has never claimed that virtually any difference with the Board has to be reconciled. We proposed very specific community powers on things like bylaws and budget. And we have review and redress mechanisms with a strict standard of review, namely, the core values, mission statement, and new bylaws. So it was never supposed to be any

and all differences should be reconciled. That's never been a requirement. Differences exist. This is just life.

Here's our 3-step process. The first is trigger, exactly like we said this morning. Any individual, any AC or SO can begin an online petition process to try to get that AC or SO to call for the precursor to the community forum on difference reconciliation. And each AC and SO would have its own threshold. So, if the ccNSO saw an emerging difference with the Board, they could have a medium sized threshold to get there. If they reached the threshold, they would invite all the rest of the community, including the Board, into a call. Let's say it's a 90-minute call. Like a precall before a community forum.

Before the call, the ccNSO as the petitioning body, would have to circulate a discussion of where this difference is, where it came from and what their concerns are. The Board has to attend that call. They have to send at least one representative to the call. And on the call, the job is to raise awareness about this emerging difference. It's possible that you can resolve it right then on step one. It's possible to resolve it on that call. If it is not reconciled on the call, then all the other ACs and SOs would have an opportunity to say we need to move to a community forum.

If two ACs and SOs decide we want to move to a community forum, then ICANN has to schedule a one- or two-day community forum such as we discussed yesterday. And the goal at the community forum is to focus only on this difference to try to work out a mutually acceptable solution, to borrow the phrase from the GAC obligations, to work out a mutually acceptable solution. And, if one cannot be found -- if

reconciliation is not evident at the end of that second day of that community forum, then that community forum has already laid all the ground work for what the CCWG proposed earlier, which is do we have a supermajority of ACs and SOs to move to an community-based IRP or reconsideration. If we did, we know exactly what it's about and will have done the work necessary. So the end result of this innovation or front end or precursor is to create two extra opportunities to reconcile differences with mandatory participation from the Board so that we don't move to the formal step of an IRP and reconciliation. The IRP and reconsideration involved in the case of the IRP a third party panel, an awful lot of legal fees, a lot of people locking in on their positions. And this is one way to avoid all that, if we can, by a mandatory discussion. Any questions?

CHERYL LANGDON-ORR: Yes. It's Cheryl, for the record. You have two in the queue at the moment. Kavouss, you're first, unless this was a delay and your question was for the previous presentation in which case that's okay as well. Over to you.

KAVOUSS ARASTEH: Yes, I think it's good. I fully agree with what you said. Maybe the word is request for a community consideration or consideration requested by community. Because what is community reconsideration? Community reconsider or the Board reconsidering?

STEVE DELBIANCO: Thank you, Kavouss. The last line on the slide refers to two review and redress procedures that CCWG proposed in our second draft and first draft. We said that the reconsideration process or an IRP. And, if the community invoked the reconsideration, ICANN pays the fees. If the community invokes the IRP, ICANN pays the fees. So it's community based as opposed to just a single aggrieved party.

KAVOUSS ARASTEH: Sorry. Reconsideration process or IRP. Delete the word "community."

STEVE DELBIANCO: Happy to do that. But I wanted the understanding to be that I'm referring here to the community-based reconsideration. Maybe community-based is the right word. Any other questions?

CHERYL LANGDON-ORR: Yes, we have Alan next and following that Samantha.

ALAN GREENBERG: I was going to suggest community invoked. I really like your idea of an early process. One minor change. You said if the problem is not resolved on the call, then certain things happen. The Board is not likely to be able to make a formal decision on the call, especially if only one or two members. Give them a week or two to respond and then go ahead.

STEVE DELBIANCO: That's a great idea. That response could take the form of emails or take to a list, established a list. Or it could take the form of another phone call. That's a great idea. Great idea.

CHERYL LANGDON-ORR: Samantha. Where are you?

SAMANTHA EISNER: Hi, this is Sam Eisner. Steve, I just wanted to ask you about the interplay between number 2 and number 3.

So I see that at least two ACs or SOs have to indicate that they'll participate in the community forum. So I see that as the threshold for going to community forum.

And then I know this wasn't part of the tabletop exercise, but was there any discussion about how the requirements of thresholds to get to the community forum interplay with the requirements to then invoke the community reconsideration or community IRP?

STEVE DelBIANCO: There was an attempt, Sam, to make sure it was a lower threshold to get to a conversation, a forum. Then a much, much higher threshold of actually invoking an IRP before we really start spending some money and digging into positions.

The idea was that it should be lower. And we sort of borrowed from this morning's simplicity and kept it to two. There wasn't a lot of thought whether it should be two or three ACs and SOs. But we did set it to be a quantity of ACs and SOs because we

haven't gotten to a percentage. I can't make it A over B because it is a raw assessment of how many members of the community feel strongly about this that we want to have a community forum.

SAMANTHA EISNER: That adds a lot of clarity and seeing it as the cascading that you would have the lower threshold to get into the conversation part and then you could still go to the higher, more strict thing.

STEVE DeBIANCO: Supermajority.

SAMANTHA EISNER: You need a higher threshold to get there.

CHERYL LANGDON-ORR: Kavouss' hand is back up again followed by Cherine. Kavouss?
Okay. Cherine, over to you.

CHERINE CHALABY: just a question on the role of the board. In 2, you are very explicit. You say the board must send a representative. In 3, you don't mention the role of the board.

STEVE DeBIANCO: We should have. The board has got to be there.

CHERINE CHALABY: I was thinking mutually acceptable solution, yeah.

STEVE DeIBIANCO: We should do that. We should mutually acceptable solutions without you guys in the room.

(off microphone.)

CHERYL LANGDON-ORR: Alan, stop joking while I have the microphone open. Everyone heard that now.

Next up is Mark.

CHERINE CHALABY: Sorry. Can I follow up, if you don't mind? Someone mentioned that there should be -- Alan mentioned the idea, which is a very good one, a time period between two and three where the board has an opportunity to meet or respond, right?

If there's a lot of that happening, hopefully not, I mean, the ability to convene the board on all the time at such short notice is going to be logistically a difficult process, I suppose.

STEVE DeIBIANCO: I think that's a good observation. But I don't believe either 2 or 3 anticipates that the entire board -- we talked about a representative of the board.

CHERINE CHALABY: Yes. But if you want a response, it's a board decision to respond. That means convening the board or having -- you understand what I'm saying, some logistics problem.

STEVE DeLBIANCO: That's a great point. We didn't put an amount of time. This morning when we discussed it, it was at least a week at the end of Item 2 to allow the SOs and ACs to go back and say, Hey, we're in or we're not. Here we have to extend that because there may be a dialogue back and forth. As long as there is a dialogue, I don't think you move to step 3 and I don't really know what kind of time limits are necessary.

If we put a hard-coded time limit in, I feel like it's going to be a bit after shot clock. It might be better to say as long as there is a constructive dialogue, the petitioners don't call for a formal community forum vote.

I realize if the ccNSO petitioned it and there was active dialogue and the ccNSO said, "No, no, no, let's move to a community forum," they may not get any support from the other SOs and ACs because they want the conversation to continue. I think that might happen.

CHERYL LANGDON-ORR: Okay, Mark, over to you.

MARK CARVELL: Yes, thank you. Mark Carvell, U.K. government rep on the GAC. Thank you, Steve, for recounting this very clearly. It's a very impressive sequencing of steps and provides, I think, real

windows for some bridging of the differences, certainly communication. And I think that precall approach is a very good idea.

I did wonder about this window between 2 and 3, between precall and community forum, what might happen in that period. I think it's useful to consider that because a community forum, if it is convened face-to-face, if that is the vision for this, it's going to be quite an expensive enterprise. It could be fitted into the ICANN meeting agenda, I suppose, program of meetings and public meetings and so on.

So it's what might happen, you know? And we've just touched on that in the points that Cherine was making. That is what I was wanting to sort of clarify. But as I say, I do like this approach very much. It's one that does -- could do a lot to head off a very difficult confrontation and costly exercise. And I think that's our shared objective here. Thank you.

STEVE DeLBIANCO: Thank you, Mark. As Cherine indicated, I think you are agreeing, as long as there is progress towards reconciliation, should not move to Step 3.

CHERYL LANGDON-ORR: Two more -- oh, no. Sam put her hand down. Sorry, Asha, I didn't see you there.

ASHA HEMRAJANI: Thank you, Cheryl. Asha Hemrajani for the report. I have two questions for you, Steve.

The first one is about -- I couldn't hear clearly or may have missed what you -- how you answered Sam's question. What was the threshold? Did you have a number of SOs and ACs that may -- that have to agree before we start the IRP?

STEVE DeLBIANCO: Great question. That threshold is the supermajority in the current CCWG proposal. We weren't proposing to change that at all.

ASHA HEMRAJANI: You want to stick with that?

STEVE DeLBIANCO: Right. That's Step 4. It is not even on here because whether to request a community consideration, that request then has to meet the supermajority threshold. Jordan, you are right here. Is it 3/4 of ACs and SOs to launch a community reconsideration or community IRP?

JORDAN CARTER: 3/4 who are participating.

STEVE DeLBIANCO: It is whatever we have in the book, and it is a very high threshold.

ASHA HEMRAJANI: That means what? Five out of seven? Okay.

And the second question is about the community reconsideration or IRP, have you considered mediation? You're saying --

STEVE DeLBIANCO: We didn't in this discussion --

ASHA HEMRAJANI: Okay.

STEVE DeLBIANCO: -- redesign the ultimate reconciliation process. We built a front end, a precursor to what the CCWG has already laid out, which includes an IRP. So we just built a front end to that to try to find ways to reconcile without having to go the extra step. We didn't consider mediation as a Step 4.

BECKY BURR: Apologies for breaking in. But mediation is part of the IRP proposal.

ASHA HEMRAJANI: That's what I wanted to confirm. Thank you, Becky.

STEVE DeLBIANCO: Thank you, Becky.

Becky, is there anything else you want to do to clarify misstatements or omissions in my descriptions?

BECKY BURR: No, I didn't hear any.

CHERYL LANGDON-ORR: With Becky's sale of approval, that's good.
We have got Kavouss, Alan, and I'm closing the queue after Alan.
Kavouss, over to you.

KAVOUSS ARASTEH: I have one comment complementing what Mark said. I think perhaps with respect to this community -- one or two-day community forum, perhaps it be preceded by a sort of community calls because it would be expensive anyway for any travel. First we have to start a virtual meeting before going to the physical meeting. For many people, it will not be possible to attend an ICANN meeting. The three months or four months may be too late. Perhaps we should add preceded by virtual call. If not possible to resolve, then you go to the physical.
Second, you refer two times to the supermajority. Are you still thinking of voting approach or some other things? I'm not in favor of voting. Thank you.

STEVE DeIBIANCO: Thank you, Kavouss. We didn't tackle the question of how the community invokes an IRP. We relied upon the current second draft of the CCWG which does involve in the current draft voting to see if we reach a supermajority that wants to launch it. We didn't get to that question. We were willing to sort of inherit that already.

Kavouss, to your point about a precall, we probably should have come up with this idea yesterday morning when Jordan was going through the community forum, right, because the community forum itself would benefit from a precall like this.

CHERYL LANGDON-ORR: Excellent. Alan and then that's it for this. We'll move on to the next one.

ALAN GREENBERG: Thank you. I actually thought the community call was the precall because we said it would probably be invoked with a teleconference. So who knows.

I am just responding to something that Cherine said about how often this is going to happen and the load on the board or the things like that. And I'll wonder -- I'm just rethinking whether one SO/AC is enough to trigger this process or we want to say something like "preferably two but one is enough," something to try to constrain it so we don't have frivolous requests.

STEVE DeBIANCO: That's a great point. There is a threshold of two to get to Step 3, the community forum. That's where the board has to be engaged probably more than one board member for a day or two. The threshold of one which is the threshold to get to the precall, number two. The threshold there -- it might be okay to be low because it is really just asking Cherine as representative of the board to get on a 90-minute phone call. Not that high of a threshold.

(off microphone).

JONATHAN ZUCK: This process comes after the process outlined in the previous discussion, right?

STEVE DelBIANCO: I don't know if I follow that.

JONATHAN ZUCK: The process -- before this process begins, you've already gone through the process outlined in the previous brainstorming session.

STEVE DelBIANCO: Not at all. The previous brainstorming session was about a bylaws change. That's what it was about. And we borrowed the petition and trigger thing.

JONATHAN ZUCK: Oh, I misunderstood.

STEVE DelBIANCO: It is a completely new breakout session that in general says how do we handle reconciling differences. What we came up with is a precursor for the IRP setting aside this morning's discussion of how do we challenge a bylaw. We just borrowed from a lot of that simplicity.

The way this begins is that an AC or SO member, as it says in number one, says, I see a real difference coming. I see a real difference. They are about to do an implementation of a PDP, an implementation that's so far removed from what the community ended up with we need to reconcile that difference. So that GNSO, ccNSO might start a petition to ask for the precall. If they get the precall, then the precall doesn't reconcile it, then we have --

JONATHAN ZUCK: We just interpreted the exercise differently than that. That's all.

STEVE DeBIANCO: How many OF the rest of you were as confused -- Chris is confused, too. So there was not. There was absolutely not a precursor to this. This begins as it shows on the paper.

Chris, I had confused you as well?

[Multiple speakers]

CHRIS DISSPAIN: Sorry, Jonathan. When we get to our presentation, you will see that is based on a follow-on from what we did. If that's the case, then I now understand what you are saying, then I have a question for you because it seems to me that this process that you are looking at, I thought the process was not like an individual member of the community wants to go to IRP because

they have been denied something. This is a community-based process.

Yes.

In order for this to happen, doesn't the thing that it's being used for have to be a breach of bylaws?

STEVE DeIBIANCO: No, it doesn't have to. The standard to succeed at an IRP --

BECKY BURR: That's not true. There is no proposal that says we can disagree -- I mean, at least if we are talking about going to an IRP, it has to fit into the category.

CHRIS DISSPAIN: That was my understanding.

STEVE DeIBIANCO: It is. And, yet, on our discussion on the call, there was some consideration as to whether this must meet the standard of an IRP-level problem or is it just an appropriate way to discuss other differences.

And we heard some folks from the numbers and protocol community on our remote participation who expressed some interest at perhaps it being an option.

CHRIS DISSPAIN: This is completely new, though, isn't it, on that basis?

STEVE DelBIANCO: If it didn't have to meet the IRP standard, it would be new. If it has to fit within the IRP standard, then it's just a precursor on the front end of the IRP.

CHRIS DISSPAIN: Agreed. The reason I said it is because the example you used, where there is an implementation coming on, blah, blah, blah, which is a different thing entirely.

STEVE DelBIANCO: An implementation issue -- I love the example because if I were to challenge an implementation decision, the difference from the bottom-up policy development, I go straight to the core value on bottom-up policy development and I have an IRP challenge.

CHRIS DISSPAIN: What you are doing there is you are saying -- you are saying the board is in breach of its core value. I know this may sound like semantics. But there's a difference between saying, "I'm challenging an implementation thing" and saying, "I believe the board's acting outside of its core value." The reason you believe that may be because of an implementation thing, but you can't couch it in those terms because otherwise it becomes confusing.

STEVE DelBIANCO: Great point. I should never have suggested that a mere difference over implementation is sufficient to meet this. It isn't. It would be a bylaws challenge based on implementation that's done without any underlying, bottom-up consensus support.

CHERYL LANGDON-ORR: Final from Alan.

ALAN GREENBERG: Just for the record, I may have missed your first words. I read "precursor to community challenge," not a precursor to IRP. I like this as precursor to any of the possible challenges.

STEVE DeIBIANCO: The one we described this morning was the idea of challenging a bylaw. So we already have that one. Maybe this is the one for IRP. There might be a slightly different one for a budget challenge, right? Maybe we design something like that for the budget.

ALAN GREENBERG: The point I was making is I like the informality of the lead-in to this for any of the challenges. Let's talk before we decide if we have to put on our boxing gloves.

CHERYL LANGDON-ORR: Radical concept. I'm not sure that will ever work.

Thank you very much, Steve. Huge thank you to the remote participants. Working in a breakout group remotely is in itself an extraordinary challenge. So kudos to all of you. I will send you a virtual group hug. Well done, indeed.

I believe, Mr. Disspain, you are up. It's the team. It's the team, Mr. Shatan and Mr. Disspain.

GREG SHATAN: Hello? Hello?

CHRIS DISSPAIN: Thank you. So we actually did a different thing entirely. We said we got to here and the community's gone through all of this process and it's decided that it should block a bylaw. And the board says, "No, not doing that. We're not blocking it." Basically --

GREG SHATAN: At that point, we had in our group decided that the board could have a 75% override of the board -- of the community's blocking so that we would -- at this point the board --

ALAN GREENBERG: Greg, could you stand back just a little bit so those on the right side of the room can see?

GREG SHATAN: At that point, we said that the board would notify the community of its intention to proceed with a vote that had 75% to override the community.

CHRIS DISSPAIN: There was some discussion about whether the board could actually pass a resolution subject to this process or whether they had no notify.

GREG SHATAN: That's a detail.

CHRIS DISSPAIN: That's a detail.

We said the board would have to provide a detailed rationale for the reason why it was saying it wasn't going to -- obviously. We just don't like it, it's not going to work.

GREG SHATAN: An additional rationale for why it decided to override the community.

CHRIS DISSPAIN: Correct. And we said the bylaw change wouldn't then happen for X weeks. And X is obviously a matter for discussion. And then we said during X weeks, there would be a discussion with the board and the community. So, in effect, that may well be a community forum.

It's all the stuff you were talking about, Steve, where you get the board together. It can be on a phone call. It doesn't have to be a meeting.

GREG SHATAN: After that, again, within that X-week period, four out of seven of the AC/SOs -- it doesn't necessarily have to be the same four out of seven that we proposed blocked it in the first place. But four out of seven would notify ICANN that there was -- we required mediation. That assumes that the conversation with the board and the community forum didn't end up with a decision that the

community was going to stop at this point and let the bylaw go over.

CHRIS DISSPAIN:

The key here there is no escalation. The 4/7 was our choice from our previous discussion. That's obviously a matter for discussion. But the key here is there is no change in the numbers required because this is a kick to mediation. So we think that should be the same level because it's the parties who have said, "We want you to not do this" who should be the ones who have the right to say we want you to go to mediation.

Then there's mediation and obviously sensible time lines and there needs to be an end date.

One of the issues with this CEP is there doesn't seem to be any kind of an end date. So there needs to be an end date to it.

GREG SHATAN:

And the community would appoint representatives of the four SO/ACs -- the four or more AC/SOs that were joining in this second petition.

CHRIS DISSPAIN:

And then you end up with a situation where if you don't have a settlement at mediation, you slip down to the next level.

Now, we didn't get to a discussion about whether you would lift your threshold to trigger a binding arbitration, but you might well do that. And the arbitration -- in either model, the

arbitration would be binding. And then if the community wins, obviously, it would be enforceable in court.

Now, we did have a discussion about what the basis of arbitration would be in the sense of what's the standard going to be for something like this? Is the standard going to be you breached fundamental bylaw?

And then we got into a really interesting discussion about things like, well, could the board say we don't believe that this -- sorry, We believe that this bylaw is in the global public interest and that -- and is there an obligation on the community to allow the board to act in the global public interest? In other words, should there be a final arbiter -- I'll not saying there should be. I'm just asking the question. Should be there a final arbiter that says, Yes, it is in the global public interest or it isn't. The easy one it is a breach of the fundamental bylaw, yes or no. But there are more complicated things to be talked about down at this level.

GREG SHATAN: Right.

CHRIS DISSPAIN: That's it.

CHERYL LANGDON-ORR: Any questions? Steve DelBianco followed by -- okay, Jonathan first.

CHRIS DISSPAIN: Steve and Kavouss.

Jonathan, you're first.

JONATHAN ZUCK: By what you just said, I know there's a lot of question about this, about ever going to an outside, including your very first comments.

CHRIS DISSPAIN: Yes.

JONATHAN ZUCK: This process about going to an outsider to determine a substantive issue about whether or not something's in a global public interest. You are serving that as a possibility under this scenario, though.

CHRIS DISSPAIN: What I'm saying is the following. If you want to use -- if you want to use this -- if there's going to be an independent finding on anything, an arbitration in any model, then it needs to be clear what it is that it is you're looking at.

I'm not suggesting that you should have someone else decide that something is in the global public interest. I'm just saying that's in the mix of things that you could look at. I wouldn't like it because I don't think it's useful for any of us. But it's there. And it's something which we need to at least address because otherwise -- the question becomes what would you -- what would you go to on this? What would be -- let's just ask that question.

We've gone through this process. There's a fundamental bylaw that says the board must -- the community has the right to block a bylaw change subject to a process. So at the end of the day, it's simply a case -- if all it is simply a case of going to a binding arbitrator to say, Here is the proof that we did the process. And now please say that the board must block the bylaw, that's fantastic. I'm absolutely fine with that. And I think that's, basically, what it should be.

GREG SHATAN: I think the decision -- the discussion didn't really get to a question whether this is a process or a merits-based discussion decision. I would say it probably should be merits.

CHRIS DISSPAIN: But the problem with -- this is great. The problem with merits is that then you have to decide what your standard is. You don't want merits in there. You want -- if I understand it correctly, you want the ability to say, "We just don't like if it." If you just don't like it, then we have to acknowledge that you just don't like it.

And the only defense, if you will, that we have is to say you haven't followed the process. And we could say you haven't followed the process because only three SOs and ACs said yes. You said four, but it was only three.

GREG SHATAN: You're talking about our process, not your process.

CHRIS DISSPAIN: Yes. I'm talking about your process.

GREG SHATAN: Well, then I agree.

CHRIS DISSPAIN: Does that make sense, Jonathan?

JONATHAN ZUCK: That makes perfect sense. I thought you were opening up a can of worms that no one has ever actually tried to open.

CHRIS DISSPAIN: No, I was merely explaining the discussion we had.

JONATHAN ZUCK: Don't have those discussions any more.

CHRIS DISSPAIN: I shall immediately cease to have them, and I apologize for traumatizing you and the rest of the people.

JONATHAN ZUCK: We never had this discussion.

CHRIS DISSPAIN: Consider this to be a smoky room.

CHERYL LANGDON-ORR: Strike the record. Steve.

STEVE DELBIANCO: I wasn't even in Los Angeles. I wanted to point out that a challenge based on a standard of review of the bylaws -- and I'm hoping Becky is listening and can help on this. One of the key elements of our proposal is that often there are multiple core values --

CHRIS DISSPAIN: Yes.

STEVE DELBIANCO: -- that contribute to a decision for the board to make these bylaws change.

CHRIS DISSPAIN: Yes.

STEVE DELBIANCO: Or for the board to have a difference with the community. And, when there are multiple bylaws at play, we need to specify a balancing test so that the arbitrators could figure out the panel, the expert panel can figure out which bylaw wins. And the text that we proposed in our second draft is, quote, in any situation where one core value must be reconciled with another potentially competing core value, the balancing that's done must further an important public interest goal within ICANN's mission that is identified through the bottom-up multistakeholder process.

So the implication to that is that in the balancing, that means one of the core values is going to take a hit. It's going to suffer. We're going to diminish our adherence to one core value in favor of another. This simply says that it has to be justified by saying that it furthers an important public interest goal that's within ICANN's mission and that was identified through the bottom-up multistakeholder process. It may or may not be right on point to what you're doing, but I'm just trying to indicate there are often conflicting parts of the bylaws. And we have to have a means to balance them against each other.

CHRIS DISSPAIN:

Yes, that's right. But, if that's the case in circumstances heading down this road, doesn't that mean that you, the community, would have to provide an explanation of why you believe we shouldn't pass that bylaw and point to the core values? And isn't that then testable? And that's not a good idea. That's a bad idea, because it means you've got an independent party making a precedential decision that says X is better than Y. It seems to me if we, the Board, are prepared to agree that the community has ultimate say of whether a bylaw should be passed or not, it really doesn't matter. At the end of the day, as long as you build your thresholds high enough -- it's a slippery slope and the thin end of the wedge, which is a very unpleasant place to be to go down that road. So for me I'd much rather be saying that we followed a process. The process is the process. And the only reason for putting in the 75%. We can take this out, because it's not necessary. But it was there because we thought it was important that you, the community, understood that, despite your four of you -- in our model four of the SOs and ACs

saying yes, the Board really, really, really felt that this was important. And then there's another process underneath it to actually mediate and so on.

I really don't see --

GREG SHATAN:

If I could follow up, under the example of a bylaws blocking, a bylaws challenge, there's probably no other core value that would be balanced against that. So, in your example, not going to happen. But in other examples where there's differences between the Board and the community, there may well be a balancing of two core values -- one on security, stability, and resiliency, and one against the limited mission statement or the prohibition against regulated content, whenever those core values clash, we have to bake in a balancing test that can be used and may never come into play with a challenge based on a bylaws blocking but on other challenges and other differences it may.

CHRIS DISSPAIN:

Sorry, Greg. So my response to that is simply this. I'm talking very specific circumstances of what leads to an IRP. And I'm not talking about an individual's IRP. You can claim whatever you like. That's fine. Talking about a community-based IRP.

And you seem to be suggesting that a community-based IRP could be -- could happen around a comparison between the core values of ICANN and having an independent arbitrator and ultimately a court in California make a finding that something

was within the core values or the core mission. And that's binding and precedential. And that's, for me, very problematic

GREG SHATAN: That's not what I meant.

CHRIS DISSPAIN: Cool.

GREG SHATAN: I simply said that, when an IRP is making a decision and the decision involves balancing one core value against another, it's incumbent upon us to give a balancing test.

CHRIS DISSPAIN: And I'm saying that arbitrations shouldn't be making a decision that's placing one core value against another.

GREG SHATAN: It's inevitable. It's going to happen.

JONATHAN ZUCK: I think this comes down to who has the last word. And, if the community has the last word, then the Board can't say, well, this is -- we have to do this because our core values demand it of us.

CHRIS DISSPAIN: So I need to take a step back for a second. Is it all right to carry this on? Let's think about what we're talking about. We're

talking about community-based IRP. And, if I understood it, Becky, I think you said it just now is all based around breaching fundamental bylaws. Well, okay. All right. Yes. Agreed.

So where there is -- where there is a process in place -- sorry. The Board says we will not make bylaw changes without -- if the community votes to block them. Yes? Okay.

Give me an example of where you think you would end up in an arbitration or an IRP as a community where you're asking the arbitrators to make the value judgment you've stalked about.

GREG SHATAN: So the community majority said don't implement that bylaw. And the Board listened. And now an aggrieved party says that we need that bylaw and ICANN needs the bylaw to fulfill its requirement of protecting security, stability, and resiliency. And could they launch an IRP that faces off a core value about SSR against a bylaw requirement that the community can block a bylaw?

CHRIS DISSPAIN: That wouldn't be a community IRP then, would it?

GREG SHATAN: Might be a private one. But either way this balancing test refers to community or individual.

CHRIS DISSPAIN: Can you give me an example in your current proposal where you could end up with a community IRP that would require the

arbitrator to make a value judgment such as the one you described? This is not a test.

GREG SHATAN:

Stress test 29 and 30, which I didn't write -- these came from New America Foundation -- anticipated an IRP challenge of ICANN forcing some part of the RAA. And, inevitably, that comes down to balancing of will not regulate content against other obligations to secure the space and manage the contracts. So there are -- that's an example of one where there might be multiple bylaws, multiple core values, that contribute, on the one hand, in favor of what ICANN is doing and, on the other hand, against it. It's inevitable that certain actions or inactions of the corporation will fulfill one core value at a slight expense of another.

CHRIS DISSPAIN:

I know we're out of time, Cheryl. So I apologize. Just one comment. I want to be clear. I had not understood that community-based IRPs as opposed to individual ones, community-based IRPs could occur in that circumstance. My understanding was the community-based IRPs were regarding ICANN and, in effect, the Board failing to do something that the community has the right to ask it to do. That was -- for community. I'm not talking about what individuals want. That's my understanding for community.

CHERYL LANGDON-ORR:

You're not released yet. We do have a final question.

CHRIS DISSPAIN: I apologize.

KAVOUSS ARASTEH: We cannot go too much into detail because of the little time we have here. Many, many important issues. You referred to the mediation. Who is the party of mediation? Who is the mediator?

GREG SHATAN: Sure. In this case parties to mediation would be on the one side and board or representative members of the board. And on the other side would be representative members of the AC/SOs that were supporting the petition. The mediator would be chosen, presumably from a panel of approved and trained mediators who were not just general commercial mediators but had the same sort of qualifications we've talked about for the panel of arbitrators.

CHERYL LANGDON-ORR: All right, Mark. Sneaking in as the gate is closing. Go ahead, Mark.

MARK CARVELL: Thank you for indulging me. Would you in that situation see a role for ACs or SOs who had not supported the objection to the Board's bylaw proposal? Are they completely off -- out of the picture at that time?

GREG SHATAN: We did discuss that, and we decided that that would muddy the waters. We thought it was appropriate that they did not have a

role and the petition should be taken forward by those who were mounting the petition. They made a sufficient --

CHRIS DISSPAIN: They could join.

GREG SHATAN: They could join, but they would have to join in support as opposed to joining for purposes of undercutting the petition.

CHRIS DISSPAIN: Just quickly, if there was an issue of public interest and the GAC, for example, had not supported the objection, perhaps they were sort of sympathetic to the Board argument that what the Board wanted to do was in the interest of public interest, would you see a specific recourse to the GAC, for example, in that situation to inform that arbitration or mediation process. Sorry. I've forgotten which one it is.

Not once it's gone.

These may feel they want to do that. Yes.

And the GAC could give advice and GNSO, if they were left out, could also give recommendations or shout at the top of their lungs as well.

CHERYL LANGDON-ORR: Thank you, team. That was excellent.

Sebastien, if you'd like to come forward. I don't know whether you want to put your papers up on one of those things so it's easy to work with. Hopefully, they've left you a microphone down there. Excellent. Over to you.

SEBASTIEN BACHOLLET: Thank you.

As we have no time, I will be very quick. And you have already discussed that at length. But one of the ideas is. If the Board is one of the components of the communities and if we want to be on equal footing, then we are eight structures in the organization. Then what the community is SOs, ACs, it's five, seven, eight organizations.

It's different advice to -- if there's difference on the advice to the Board, the Board decides what is the role of the community in that situation today?

If the community came to consensus, the Board needs to stop the process. And we need to open dialogue. What is the dialogue? Today, if we take the example of the board, you know, how it happens. There are different stages, but I will not read it because you know already. The community needs to be treated like the GAC in the different steps.

The other discussion we had was the Board and the community discussion could be an endless loops. And we need to have dialogue each time it's possible. Because we can't stay in the loop. We need to have agenda and action. And the question of which type of dialogue we can have and how it's screwed up and

-- then, of course, we need to have dialogue by phone conference call, video conference, whatever.

But, if we need to have a face-to-face meeting, dialogue, it will need to be during a face-to-face meeting. We will not add new meetings at the current situation.

And we say that maybe more than community will need a facilitator in the dialogue.

Then somebody said maybe we need to have a list of the possible facilitators. And we came. And that needs to be done before any other type of action, arbitration, IRP, and so on.

And there are two documents, but now I have a third one which could be interesting to look. It's -- within the very same contract there is elements to the name it's cooperative engagement. How the dialogue can be open between ICANN and VeriSign.

There is also an interesting part in the bylaw of the -- I guess it's a bylaw of the ccNSO where the process to dialogue with the Board. I already talked about the process with the GAC. And, if we look to the new gTLD agreement, there is mediation is possible encouraged before any arbitration. Maybe those steps could be useful in dialogue between the community and the Board prior to any substantial action like arbitration. Thank you.

CHERYL LANGDON-ORR: Questions. The floor is open.

JONATHAN ZUCK: This might be an addition rather than a question. Just a level set. We, too, thought that this process began where the other one left off. So it presupposed that the process of building consensus, reaching the threshold to have a community objection had all happened, and the Board had decided to go forward anyway.

And so it -- that's where we began our discussion. And so at that point, it begins with a call for a discourse at the next meeting, an open forum followed by mediation and then followed by some form of arbitration or litigation afterwards. So that was -- that's where we were sort of picking the process up. The community had already achieved consensus of disagreeing with the process that had been put in place by the board, the resolution that was brought on by the board. It wasn't specific to a bylaw. But instead that same process had been gone through to reach consensus initially.

SEBASTIEN BACHOLLET: Thank you, Jonathan. Yes. We tried to discuss how we implement the dialogue. And it was important.

Any other questions? No. It's time for drink something?

CHERYL LANGDON-ORR: Thank you very much and thanks to all the groups.

We've not taken as long in some of these conversations as we did in this morning's, and that's all right. Maybe you had more questions that didn't come out now because of the two different ways that the groups looked at it. One presupposing that we're

building on this morning's exercise and one taking it fresh. But that doesn't matter. What does matter is it would be very nice if we could give the rapporteurs from these groups a short amount of time with Jonathan to look at an analysis as they did at lunchtime today. All right? So, as we don't want to let any good deeds go unpunished and you've all worked hard as leaders, we're going to make sure you don't get to have coffee and cake. I'm going to suggest that, if you can gather together and see what you can do in a few minutes while the rest of us, get up, stretch our legs and take an opportunity for some coffee and cake and act literally at the top of the hour or not much later than five minutes past the hour, we'll see what we can have very briefly teased out. All right? You can hate me later.

Okay. Thank you. If the rapporteurs could gather around Jonathan around the front. And the rest of us can stretch our legs, grab a coffee and then reconvene. They may have to do some of this live, but just get yourselves lined up. And we'll see how we can go. Thank you.

[BREAK]

CHERYL LANGDON-ORR: Okay, ladies and gentlemen, if you would be so kind as to come back from your break now, please. This is not a two-minute warning. This is not a warning at all. You have heard me say that before, Nigel. Come along, ladies and gentlemen, if you would be so kind. In fact, you can do it begrudgingly if you would prefer. I don't mind.

(off microphone).

CHERYL LANGDON-ORR: And it is declared. It is on the public record and transcribed now.

[Laughter]

Okay. Perhaps I do need to use my parade ground voice. That might be better.

We need to give Jonathan the microphone for a very brief update on more where they're headed than where they've got. I think it is important that we close the loop on your interactive activities today. Did you want to do it from here rather than there, Jonathan? It makes it easy for the video to track you and make everything you said and do is taken down and held against you forever more.

JONATHAN ZUCK: All right. Excellent. Thanks, everyone.

This will be brief. As you are able to see from the discussion we just had, each of the teams took the exercise a little bit differently. So that meant sort of absolute reconciliation wasn't

practical. But, instead, there were definitely some commonalities and trends that sort of arose from it. Starting from something Sebastien said that came out of our group that Bruce talked about quite a bit is that there are already some established processes for dealing with the GAC, for dealing with the ccNSO, for dealing with the GNSO. And so a good starting point to -- for this might be to simply treat a consensus-based objection similar to a GAC disagreement with the board. Because that kicks -- already kicks in a process. So if you have reached the threshold of consensus among the community as opposed to an individual request for reconsideration but it is a community-wide and it has reached some threshold for consensus, then that community objection would be treated similar to a GAC disagreement and go through that same process of meeting, having a dialogue and eventually going through to -- and slowly escalating through a mediation process and only then when the mediation process, in fact, fails going to some sort of an arbitative process at the end. So that seemed to be a consensus of all the groups, is that a consensus should raise the standing of the objection such that the board is required to engage similar to the way that they do now with the GAC.

As Alan mentioned, I think there's also some agreement that of the five powers that the community has requested, whether it has to do with bylaws, the budget, et cetera, that they might have slightly different thresholds and they might have slightly different processes. But what they would have in common is the need to have a dialogue initially to move then to mediation and then to an arbitative process. That seemed to be the commonality. Tweaking out what the subtle differences

between the five powers might be in terms of that process is work yet to be done. Does that make sense? Are there questions about that? Excellent.

CHERYL LANGDON-ORR: Thank you very much.

Well, at a minute early, over to you, sir.

THOMAS RICKERT: Excellent! Thank you so much. And thanks again for your commitment to trying to find the innovative solutions to the problems in front of us. So I think this was very helpful. We will have the subteams continuing to discuss this and come up with proposals that would then be the basis for further fleshing out so that hopefully we can use that for escalation paths to factor that into the processes. So thanks very much for that.

I think these two breakout sessions have been very fruitful, and we will surely build on that in our way towards consensus.

This next topic is stress tests. So we're going to discuss a few stress tests, and we leave the one that some of you are waiting for most eagerly until last. So over to Cheryl and Steve then.

CHERYL LANGDON-ORR: Thank you very much. Well, it's here, finally. We do, in fact, only have a very short period of time to begin our discussion on this matter. But it is essential that we do in this face-to-face opportunity take time to listen to each other and to help gain some shared understandings.

We did have a particular formula that we were planning to do for all of the sections to deal with in terms of public comment. And so what Steve put together for us on behalf of the rest of the team is based on the public comment tool. And so what we will be looking at is those stress tests that were responded to inclusive of in Number 18. But we'll start with the simpler ones first and you won't get to 18 until last. So don't take too long on the first ones.

Over to you.

STEVE DelBIANCO:

Thank you, Cheryl. Steve DelBianco with the CSG and the stress test work team. Stress tests are in Section 10 of our document with pages 83 to 119. It's an area that nobody just reads but refers to at the right time. So I'm going to refer you to four little blocks of stress tests. Between the first and second draft from CCWG, we added ten stress tests. Those were done in direct requests from public comment, from the board in legal letter, and then NTIA, Secretary Strickling's June 16th statement which asked for four explicit stress tests.

In the public comment tool, which many of you have seen staff prepare, there is a tab in that Excel sheet called "stress tests." On that tab, there are 20 comments that show up. The comments most of them focused on are in four groups. The first was that we have several stress tests, Numbers 12 and 13, and then NTIA's 33 through 35 that had to do with capture and unintended consequences of changes, barriers to entry for to new parties who want to get involved in ICANN.

I think we did a decent job of addressing those. But a number of the public comments said we need to dig deeper on that, that it wasn't sufficient to say that proposed mechanisms are sufficient to address capture, that we needed to explore it some more. One took issue with the question of whether an IRP would be sufficient to try to challenge an AC or SO that it doesn't capture since the only thing you can challenge with an IRP is an action or inaction of the corporation. So that probably wouldn't include an AC or SO. So I think there's some great comments on how we have to tighten up our language on capture and barriers. That was 12, 13, 33 through 35.

The second category is 21. And stress test 21 was added very early on to address the revocation and reassignment of the manager for a ccTLD. It's on page 94 of the document. Now, from an early date, probably judging from the Istanbul meeting, we did not propose a specific review and redress mechanism to address stress tests 21. And that was done at the request, a written request from the chairs of CWG stewardship in connection with ccNSO leadership who suggested that they would be working on policy development which is what ccNSO does, and it would be done pursuant to the framework of interpretation.

So we made the conclusion at the bottom of 21, which Hillary was kind enough to put up on the screen -- we concluded that neither the existing or proposed CCWG mechanisms adequately address this scenario. And we note that ccNSO is developing policy.

The government of New Zealand and I think one other suggested that IRP should be available to address this scenario. And other

comments that called out the fact that we didn't address 21, I'm letting you know we probably aren't going to do anything with that except to explain why it is we are not addressing 21. So it wasn't an omission that was accidental. It was deliberate and let's try to be clear about it. So we are not addressing 21 because the parties involved asked us not to address it, okay?

Let me turn to 29 and 30. Those are on pages 112 and 113. There were seven commenters in the public comment who suggested and took objection to 29 and 30. Threshold objection was "shouldn't have them in there, why are these even there." Other objections went to the fact that they didn't agree with how we analyzed 29 and 30.

Let me be clear because 29 and 30 are there because during the first public comment period, Danielle -- David Post and Danielle Kehl of The Numeric Foundations specifically asked for them. They wrote up the stress test scenarios both in terms of the scenario and consequence and then it fell to our work team to analyze whether the current or proposed mechanisms would be adequate to hold ICANN accountable for the scenarios, accountable for the actions taken under the scenarios.

So we are happy to have a debate about whether we properly interpreted the use of an IRP to challenge contract enforcement. In fact, we talked about that for the better part of half an hour yesterday with Becky. That's going to be an ongoing conversation. James Bladel with the registrars is sending his thoughts on that.

Frankly, the stress test work team did what it is we proposed to do. We added stress tests pursuant to public comments that

asked for them. We did our best to analyze it. So happy to have debates on how to analyze them better, but we won't do that in this session. I'm letting you know that there is a lot of attention on those because they highlight this clash between ICANN's enforcement of contracts and potentially a limited public mission, core value mission statement, and other core values that require, say, bottom-up policy development. And there are policies that we're enforcing in contracts that weren't developed through bottom-up.

So I think we will be able to work this out. Becky seems confident that we can. And when we do, these stress tests will have to be updated. As I said yesterday, I do think the stress tests were successful at calling attention on the need to clarify that item.

And, finally, let me turn to stress test 18. You will find that on page 85. Hillary, if you would scroll to 18, I would appreciate it. Thank you.

Before I start off, I think Thomas wanted to kick in.

THOMAS RICKERT:

Yes, thanks very much, Steve. And, again, thanks to the stress test working party for its excellent work. I mean, this has really been fantastic. And if you look at the GAO report, it specifically points out the work of the stress test team as an excellent part of our proposal.

Before we discuss the substance of stress test 18, I would like to go on record with a few explanations because stress test 18 has caused discussions that we did not anticipate. And this was,

let's say, one of the unintended consequences of our report. And I apologize for what this has caused.

At no point in time was there a specific suspicion from the community that the governments could take over control or capture ICANN. At the same time, there was no suspicion that -- with respect to specific countries on limitations of free speech or openness of the Internet. Let's just make that very clear.

We wanted to flesh out scenarios that would impose threats to ICANN and the multistakeholder model. And these were the best-faith or good-faith intentions, efforts, to address those points.

So as I turn over to Steve, I think he will explain a little bit more about that, the genesis of the stress test 18 language and how we can hopefully help reconciling the differences on this.

STEVE DeIBIANCO:

Thanks, Thomas. Look forward to the discussion.

It was frankly within a few weeks of NTIA's announcement of the transition that I whipped together the first set of stress tests as a way to channel some of the fear, uncertainty, and doubt about the transition and channel them into specific ways that the community could guard against the problems that people were bringing up.

Stress test 18 came to me because I had an awareness that certain members of the GAC would have preferred a voting method somewhat different than the one they were using right

now in operating principle 47. That's no secret. Some governments have said they would like to switch.

And the GAC is perfectly free to do that. I understand how difficult it must be to have to make decisions in the absence of an objection. And I get that and have no intention of getting in the way of that.

However, it did highlight the need to check and see what would be the implications if the GAC were to change its voting method. It led me right away to the part of our bylaws where we require the board to try and find a mutually acceptable solution. That's a unique obligation that only comes to GAC advice.

And I noted it didn't say anything about the level of consensus necessary for that GAC advice so that a future change that deviates from today, deviates from the status quo could retain the obligation to find a mutually acceptable solution even though the nature of the advice that came over could be completely different if it were not supported by consensus anymore. So that doesn't interfere in any way with the GAC.

But here's where I completely blew it. If you look at the second paragraph on the screen, paragraph 611, when I wrote it out, I wrote up under their bylaws, they have to consider and respond to GAC advice, even if it is advice not supported by consensus. And then I added the words, "A majority of governments could thereby approve GAC advice that restricted free expression, for example." And I have since learned that that example was a terrible example.

[Laughter]

It had no basis in belief. It had no basis in experience. It was rhetorical, and it was uncalled for. And I'm sorry.

[Applause]

So suffice to say that once we learned that that was the source of some irritation with stress test 18, we are going to take that line out. I have come to appreciate that more recently.

I had originally thought it was simply a misunderstanding of stress test 18. This notion that it interferes with GAC decision-making is to me just a misunderstanding. And all I have to do is to clarify. If you talk long enough to people, they understand it doesn't change anything about the way GAC does what it does. GAC can make decisions on any basis whatsoever.

This only affects ICANN's obligation to try to find a mutually acceptable solution to say that that occurs when the GAC advice is just like it is today, which is based on consensus. Okay?

So having said that, I'll quickly categorize. There were 36 comments listed in the GAC tab and 20 in the stress test tab. And I looked at all 56 of those and found that 16 comments were explicitly in favor of the bylaws change for stress test 18.

So if you scroll, Hillary, to the bylaws change, it's the bold text right there.

See the bold text in paragraph 619? That's the bylaws change. So people say they want to talk about stress test 18, here, silly me, I thought we were always talking about the bylaws change. Some people were worried about the rhetoric that was used to set it up as an example. So I get that.

But the bylaws change itself with respect to supporting that, 16 explicitly favored it, including some governments, and four governments in particular were explicitly opposed to this bylaws change.

And that doesn't count NTIA who considers stress test 18 a requirement for the transition. They chose not to submit a comment. But I note that for the record.

So that's a significant majority in support of stress test 18. So let's have a conversation about how to make it more understandable, more palatable. Or, well, let's understand the degree of concern over stress test 18.

So, Thomas, I would leave it to you to conduct a queue.

THOMAS RICKERT:

Thanks very much, Steve.

And, again, we very much appreciate your openness in how this stress test was crafted. Let's move to the queue. I see Jordan being first. Is that a new hand? Okay.

JORDAN CARTER:

Just a procedural question, are we allowed to only talk about stress test 18 now?

I just want to mention the ccTLD appeals that the New Zealand government mentioned, the point there was that at the moment there was some restraint through the IANA functions contract for rogue redelegations -- I know that's the wrong word, but I will use it for now -- and when the ccNSO has developed a policy that

will apply to appeals, there will be protection through that policy.

What we were concerned about in New Zealand was the gap in between. We didn't want there to be a situation or a time when the ICANN board could make a redelegation decision that wasn't appealable with no external restraint to stop them doing it. We thought that would be bad for ccTLDs. That isn't an idea we would flesh out. The ccNSO knows it needs to do a PDP on this.

But if there is some way to reduce that anxiety as part of the work, I don't know what that is. One thing we floated was a moratorium on redelegations until the policy is in place unless the security and stability of the DNS is threatened. That's one point.

I'm going to break the rules and make two points. On stress test 18, I made some comments yesterday that might have left people thinking I don't support it. I do support it. This is a natural bylaws change that should be put there that has no impact on GAC decision-making or advice. And the NTIA could not have been clearer that they regard this as a fundamental underpinning. If we don't put this in, we're guaranteeing that the transition and proposal will not be approved. That is not our job. Our job is to help with the transition, not to stop it. This bylaws change wouldn't restrict anyone or anything. I think it's essential that we put it in.

If that means that one of the supporting organizations that's a chartering organization of this group can't express support for our report, that might be a price we have to pay. Thanks.

STEVE DeLBIANCO: Jordan, my hope is we don't have to pay that price. Thank you for that.

Jordan, you did mention stress test 21. It would be challenging for CCWG to propose a moratorium on redels. I don't know how an IRP would work because I don't know what bylaw I'd be looking at as a standard of review. But I would invite you to work with your colleagues in New Zealand government. If there's something we can add to the next draft report that addresses the gap period, we would love to add that to the report while at the same time being respectful of the fact that the CWG stewardship asked us don't try to solve for this issue. Thank you.

THOMAS RICKERT: Next in the queue is Greg.

GREG SHATAN: Thanks. Greg Shatan. First I'll say I support stress test 18 as well, but I'm not asking about it. My point was about stress tests 29 and 30. I was a bit surprised to learn only recently that not only were the -- was the stress test, the first box, taken verbatim from those contributed. But also the consequences were taken verbatim. I suggest that that's not an appropriate method or something we should correct. Because the consequences really reflect our analysis of the factual scenario. And I disagree strongly with the consequences that are there. But just purely as a matter of process, taking the commenters' consequence and adopting it is troublesome in this case, particularly, as Steve said, we will be using the stress test section as a frame of

reference. And these stress tests, if they're left in, would directly influence how certain new bylaws changes would be or could be interpreted. This is part of our legislative history, so to speak. And, if it stands the way it is, I think we end up with an interpretation that, again, I would strongly object to. So we really need to, if we don't scrap these, need to examine them carefully.

I would also note that stress test 29 really has two totally different tests in paragraphs 936 and 937. And if this is kept, they should be split out. Because trying to answer them -- kill two birds with one stone just ends up with a muddy mess. So I think we just need to -- this may be true of some of the other commenters' stress tests. We need to look at the consequences as part of our work. We should be looking at factual scenarios, whatever they are. Not shy way from any of them. But we have to analyze them carefully and understand how they will be used by the public in the future.

JORDAN CARTER:

Thank you, Greg. Right on time. I will note that paragraphs that really matter are 942, 43, and 44 where we analyzed it. None of those paragraphs relied on the consequence stipulated by Post and Kehl.

I fully support your admonition that the consequence shouldn't be taken verbatim from requester, that the stress test team should own that and feel as it appropriately reflects a potential plausible consequence arising from the scenario in the first paragraph.

Greg, I would like to you to help me out with more specifics. I will reread the IPCs' comment. As I said before, there were seven commenters who objected in varying degrees of detail. I would look for you to give me more detail for our next draft.

GREG SHATAN: Always happy to pitch in.

THOMAS RICKERT: Thanks very much, Greg.
Qusai.

QUSAI al-SHATTI: Thank you, Steve. First, let me thank you for your initial comment on paragraph 611. It is a constructive comment, and it is valued on our behalf. My concern with stress test 18 specifically, that it somehow interfered in the way of being how the GAC is reaching towards advice or recommendation. It's like a message to the GAC. If it's not by consensus, then your recommendation is not valued that much.

We should respect how a member of the community and ICANN makes this recommendations, whether it's by consensus or by another mean. Although, currently today, the GAC overwhelming believes that consensus is the best way for us to reach this recommendation. And I don't see the possibility of that process to change, not even the near future or --- . It does create a precedence where we are mentioning in a bylaw how a member of the community valued based on the -- his

recommendation based on the process of how we made that recommendation.

And here we not equally treated like others while we are respecting the other SOs and ACs and how they are making their recommendations or suggestions or positions. As it is, we should apply this also to the GAC.

So if we are mentioning by consensus in the bylaw, the maybe one day possibly will mention in the bylaw for other organizations how they will reach their recommendation. So this may be a precedence -- a precedent that may not help. Thank you.

STEVE DeBIANCO:

Thank you, Qusai. I am glad you give recognition to the apology, and I meant it heartfelt.

With respect to singling out the GAC, I'm a part of the GNSO. And it might surprise you to learn that for a decade, the bylaws of ICANN require that when the board acts on GNSO policy it requires GNSO supermajority. The word "supermajority" next to GNSO is in the bylaws 22 times. It is reserved for the GNSO thus far, and it is done because of a recognition that in the GNSO we are often a divided community. So the bylaws reflect the board's obligation to implement, conditional upon it having been a supermajority.

For that reason, I guess we call it the GNSO's consensus level. Happens to be supermajority and as defined in the bylaws. And it goes right down to defining the percentages for that, too. So there is a precedent already.

I take your point if the GNSO and the GAC have thresholds attached to the board's obligation to follow the advice, why don't we have a similar threshold, say, for ALAC advice or SSAC or RSSAC. And I think it's absolutely a fair question. And, yet, in this case, we are dealing with a bylaw that already has an obligation which is why we felt it necessary to attach a qualifier - the word "consensus" to that obligation. There is no attempt here to dictate thus specific consensus role. It doesn't say "supermajority." It doesn't say "unanimity." It doesn't say the "absence of an objection." It is meant to provide some flexibility there.

THOMAS RICKERT: Thanks very much.

Next in line is Olga.

OLGA CAVALLI: Thank you. Good afternoon, everyone. And thanks Steve for the presentation and for the apology.

Well taken.

I would like to make two or three comments. The first is that there are not four countries against stress test 18. It's 12. And I will add to the list my dear friend Quasi. So it's 13. It's -- you know, the GAC is discussing that internally. So I cannot disclose the names. I cannot tell you the number. The number is increasing, and that may change in the near future.

You mentioned that this amendment in the bylaws, it's a requirement from the NTIA for the transition. We haven't seen

that from the beginning. If this was a requirement, we should have known. And, honestly, I haven't seen as a requirement from the beginning.

And so in Argentina we believe it's not a requirement, and it's text that we may have a different opinion about.

I think that yesterday afternoon and today I heard from several colleagues that there is a general agreement that each SO and AC should find their own way or methodology for making decisions. So why is this change in the bylaws required only for the GAC? The GAC is -- would be able to -- I agree with Quasi that it would be difficult in the near future to change the way we operate, but that's up to the GAC. So we don't find a reason for this amendment in the bylaws. And, finally, Steve, when you say, "We find it necessary," would you clarify to me who is "we"? Thank you.

STEVE DELBIANCO:

Thank you, Olga. What we reflected four countries, that's just a reflection of how many submitted public comments by the September 12th deadline. And thank you for letting us know that there's another nine who have, as you say, registered on the private GAC list, so I wouldn't know about that. If any of you are here today, please speak up. Please speak up.

I wanted to address your question about NTIA stating that it's a requirement. And that first occurred right after the meeting in Istanbul. And the U.S. government representative to the GAC sent an email in response to Chairman Schneider. And that

email stated explicitly that the bylaws change associated with stress test 18 was necessary.

And I had circulated that in a document, and I can bring up that email for you. It's on the CCWG list.

And then there was some probing into that when we all gathered in Paris. And you were there in Paris. We had NTIA representative in the room on two occasions on two days that they considered the bylaws change for stress test 18 necessary to meet one of the NTIA's requirements that its role not in any way be replaced by governmental or intergovernmental influence over ICANN. So they have made that clear twice. First time was as early as Istanbul and then reiterated in July. I'm sorry we didn't do a better job circulating that more widely than we did. But whether it's a surprise or not, it's pretty clear right now, as Jordan said. So it's best for us to work from that assumption as we move forward.

Your final point was about treating others the same. And Quasi and I just had that interchange that the GNSO has for a decade had its advice, it's policies gated by a supermajority for the board to have certain obligations.

Was there a final question that I've missed?

OLGA CAVALLI:

I'm sorry for taking the floor again. You referred several times that "we think." Who is "we"?

STEVE DELBIANCO:

Great. Thank you very much. The way this worked is that the stress test team developed stress tests in December and January. Out of those stress tests there were several that suggested a need for bylaws changes. One is number 14, which is the idea that the AoC could be terminated. That suggested that a bylaws change or bring the AoCs into the bylaws, if you recall. That was stress test 1, which suggested a bylaws change. So beginning in January the stress test team, working with work party one, where Jordan is the rapporteur drafted a section of our first document suggesting that an appropriate response to stress test 18 would be to make that one line, one sentence change to the bylaws affecting ICANN's obligation. So the "we" became stress test team, which was unanimous in its desire. And then it became work party one, which was unanimous in its acceptance of putting those words in. And then it made it through our first set of approvals that we did for the first draft and made it through the second draft. Although I am completely aware that your country, France, Spain, Brazil, very emphatic in their opposition to it. And there seems to be some concern that we didn't note their concerns in the report. But our second draft report I don't believe there was any place where we would note where a small but important minority was against something. We almost always tried to draft a readable report. And we put it out for public comment for that. So there's no -- there's no attempt to ignore the concerns of the four countries that we spoke of earlier. But nowhere in the report were we parenthetically noting that four individuals or four groups were opposed. So we understood that and went ahead with it. So the "we" is the stress test team followed by work party one. I hope that answers your question.

THOMAS RICKERT: Thanks very much.

Pedro is next

PEDRO IVO SILVA: Thank you very much, thank you, Steve, for the clarifications. And also thank you for the stress test team for the incredible work you've been doing.

I want to -- apart from what Olga has just stated that expresses our concerns, I think one of -- or perhaps the central point that at least the government of Brazil sees in its objection to stress test 18, is that we failed to understand the reason behind it. We failed to understand why the GAC advice represents risk of capture by governments. We, of course, support that risk of capture by governments should be avoided. By the way, risk of capture by any individual SO or AC, we support that. But we can't understand why an advice that's nothing more than an advice. It's not an instruction. It's not an order. It's advice. How that can represent a risk of capture how that can turn ICANN in a government-led organization. It states in the bylaws that, yes, the Board has to duly consider the advice from the GAC. It has to start a process to find a solution. But it's not obliged to find a solution. At the end of the day, if no solution can be found, the Board can take a decision contrary to the GAC advice.

So how can this represent risk of capture by governments? That's, I think, the main question. Thank you.

STEVE DELBIANCO:

Thank you very much. On the question of why, NTIA's directive said to avoid significant expansion of the role of governments -- the role of governments in ICANN decision making. So we sometimes short change that word for capture.

But let's be clear. The word was the significant expansion of government's role in ICANN decision making.

With that in mind, the stress test team and later work party one looked at and acknowledged discussion that happens in the GAC where the GAC was considering moving away from operating principle 47. It may not ever happen. I know Qusai said he didn't think it ever would. Fine then. We're arguing over nothing at all. If they're not going to change the decision making methods, then there is zero effect of codifying today's status quo in the bylaws to say that when GAC consensus advice comes over. There may be other forms of advice that come over from the GAC to ICANN that you don't consider to be consensus advice. You may end up having some majority advice and some consensus advice.

If you ask why we focus on this the significant expansion of government influence would come, if more and more government decisions would carry the obligation of trying to find a mutually acceptable solution, an implication there is if majority voting alone were sufficient as opposed to the absence of an objection, the nature of the advice could change materially from what it is today. Because the absence of objection causes the GAC, just like the rest of us, to have to work hard to get to consensus decision to which no one would object. If simple majority voting were allowed, we could see different kinds of advice from the GAC. And it carries with it that very special

obligation. No other community advice carries this obligation to find this mutually acceptable solution. That's unique. That's special about the relationship with the GAC. We wanted to do nothing to affect that. It's still there. That obligation is still there with any of the advice that you give that is consensus backed.

THOMAS RICKERT: Thanks very much. Kavouss is next.

KAVOUSS ARASTEH: Thank you, Steve. I don't understand why the statement of the director of NTIA -- you said director of NTIA with respect to the influence of the government is so stress test 18. It has nothing to do with the GAC. It is arising from the way that the CCWG started to give the right to ACs to participate in the voting procedure and decision making. It has nothing to do with stress test 18. Number one.

Number two, you said that the representative of NTIA said that for me NTIA announcement is the only thing that I respect. Representative of GAC is respectful of the NTIA and the GAC, what he said. But it doesn't mean that it is a guideline for the CCWG. It remains a statement of that distinguished, respectful representative. For me, the announcement of 14th of March 2014 is count plus five others that NTIA and another five become 10, which you still have some, it is not in the initial statement announcement.

My question is: Did the GAC advice during the last 17 years cause any problem? I'm not talking the content. I'm talking substance

to the ICANN by thinking that this may have some difficulty for the community. GAC -- ICANN has some difficulties sometimes with the wording and language of the advice. I'm aware of that. But did not have any problem with the application of that. Why it came like this? We think that we should leave it to the GAC. If GAC decides that this is stress test 18 has value, we accept that. If we don't have GAC between the two, we do not want to take anything. So we should leave it to the GAC because it is the top policy issue as specificity of the GAC. And that should be respected. Thank you.

THOMAS RICKERT: Thanks, Kavouss. Mark is next.

MARK CARVELL: Yes. Thank you, Chair. And thank you to Steve for presenting on this. Expressing the awkwardness in the initial frames of this proposal. We appreciate very much his withdrawal and apology for that. I think it's very helpful.

The U.K. was one of the governments that supports and still is one of the governments that supports the inclusion of stress test 18 and the bylaw change proposal that it makes. And we acknowledge there is opposition to this proposal within the GAC. And there is some discussion going on. I think it was mentioned in one of the earlier interventions that the GAC is still -- this is still a live issue for the GAC. And, indeed, there is a text proposal that is circulating in an effort to enhance the bylaw change proposal.

So it's pretty much a live issue. I think, if we reorientate this proposal in a way that focuses on the issue and status of consensus advice, rather than majoring on this as a possible response to threat of capture, I think that's more useful because I think it serves the community well and the Board well to determine the circumstances in which the Board has to negotiate with the GAC in order to achieve a mutually acceptable solution.

And our view is that it should only happen when the advice has been submitted on a consensus basis. And, as you've made clear and others have commented to, it's for the GAC to determine how that consensus is defined. And there is, indeed, some discussion about how you deal with situations maybe where one or two governments are not supportive of a GAC advice proposal. And so the risk there is that there is some blockage in the process.

So we're looking at that. And that's a valid concern.

So I reiterate that we in the U.K. support the proposal. We can't see any harm flowing from it. It, basically, puts with greater clarity the current situation where the GAC strives to provide consensus-based advice and in their circumstances, where the Board rejects that advice, there is an obligation flowing from that.

I hope those comments are helpful. Thank you. I'm sorry I've gone way over time. Apologies.

THOMAS RICKERT:

Thanks very much. Steve, would you like to comment on that?

STEVE DELBIANCO: We anxiously await the resolution of the live issue in the new text. Very interested to see that. Appreciate it.

THOMAS RICKERT: Thanks very much. Next is Chris.

CHRIS DISSPAIN: Thank you, Thomas. And thank you, Steve. I want to come back briefly to the issue of the stress test or the issue of the ccTLDs. With all due respect to everybody concerned, I do not think that it is appropriate for New Zealand or Jordan to be putting things into the report. What should happen is that, if you believe that there is some doubt about it, you should reach out to the ccNSO and ask them again to confirm whether or not they'd like you to put any interim measures into the report. Otherwise what will happen is that something will go in. And the CCs will have to corral around it. And that's not a useful way to do it. I think the way to do it is to double check back with the CCs and see.

STEVE DELBIANCO: Could I ask you to handle that as a ccNSO member?

CHRIS DISSPAIN: Jordan and I can do that together.

THOMAS RICKERT: Thanks very much, Chris. Steve put up his hand but he's not in the Adobe. So, Steve, the floor is yours.

STEVE CROCKER:

Thank you. Chris touched on the topic I was going to say which is in response to Jordan's suggestion about what should be put into the bylaws about restraint on redelegations.

100% support for what Chris said that this is something that has to go back with the ccNSO. I wanted to take a second to make it clearer what the context to all this is.

The Board really, really, really does not want to be in the position about making decisions about redelegations. Redelegations happen. Sometimes in adverse circumstances. And that puts us in a difficult position. And what we have always done from the beginning is to take a slow roll -- a trailing edge position, if you will. So, rather than being proactive and saying we're going to make this happen, we try to bring up the rear and only when all the pieces are in place. That's not -- that's an attempt at the safest possible path. It is not satisfactory in all circumstances. We have sometimes been caught in the circumstance where the de facto situation is the redelegation took place with different operators in place and we've been informed about that. That kicks off a process in which we say oh, let's talk about it. Can you document this? And we get back a fairly huffy reply saying we did this. You will follow this and so forth. And we say but we have our processes. And it is a technically -- technically is the wrong word. It is a politically difficult thing. Individual CC operators, ccTLD operators do not want to be subject to control by others. The relationship between governments and ccTLD operators is very -- varies all over the place. So it's hard to write a prescription that says this is the way you're going to be. So I just first of all, want to offer that there is a knotty problem. It's been under review for a long

time. The framework of interpretation from the ccNSO was a big step further. The first thing I asked when it arrived was does this solve the problem. Oh, no we're going to get to that. This is just some problem that is not going to get resolved in this kind of forum. It has to be worked out over time by the people who are involved.

And I want to reemphasize that the Board's position on this is to try very, very hard not to be the focal point for these things. And, at the same time, we do get caught into certain amount of political things. So, you know, I could cite one case after another. There aren't that many. But they come up. Every year or two years something happens. And so I'm very empathetic with the point that you're trying to make, Jordan. But it is -- it's not like you just sort of stamp this down and then you've got it under control. Thanks.

THOMAS RICKERT: Thanks very much, Steve. Just to remind everyone that I had closed the queue. We're already 50 minutes over time. Next is Brett, please.

BRETT SCHAEFER: Brett Schaefer, for the record. I want to say that I support stress test 18. I also support the inclusion of the amended text into the bylaws. However, I think it's quite clear from what has been done here that what you're supporting is with respect to Governmental Advisory Committee advice that is supported by consensus, you mean the current definition of consensus under principle 47 in the GAC operating principles.

And, as you know, that principle can be changed by the GAC. I think to maintain that understanding of what current consensus is, you need to expand the amendment of the bylaw to include that definition under principle 47 within that text.

And I would suggest adding simply an addition to it which is the current definition as in the GAC operating principles, which is a decision adopted by general agreement in the absence of formal objection. Therefore, that wouldn't in no way prevent the GAC from changing its consensus principles and anything that the GAC does. But in regard to this very special privilege that they have on this bylaw area, they would have to operate under current understanding of how the GAC operates, which is obviously what we're doing. Thank you.

THOMAS RICKERT: Thanks, Brett. Suzanne.

SUZANNE RADELL: Thank you very much. Thank you very much, Steve, for your opening comments and several interventions that have sort of lent greater clarity and I think have certainly helped us, the United States, and I trust some of my colleagues in the GAC. There is a very robust email exchange that is going on in the GAC. And I think this is useful for us today to kind of flesh out, first of all, your very gracious apology and proposal to amend paragraph 611.

I have a slight twist and would propose that perhaps since there seems to be general understanding that the target of stress test

18 is actually the ICANN board, vice the GAC. Would I be correct in saying that was a general understanding?

If the target is, in fact, the board, we could consider revising paragraph 610 to indicate that the purpose here is to -- in our minds at least for the United States government, we want to memorialize the existing practice that has been in place for some time and was ratified by GAC board and community agreement on the ATRT1 recommendations. So this is actually simply confirming current practice that has been fully vetted and fully agreed.

It also, we think, has the added value. This is where I would propose that this group consider how paragraph 610 could be amended, that the intention is to protect the board from being put in a position where in the event they were forwarded less than consensus advice from the GAC, they would be put in a very awkward position of being at risk of taking action that could be contrary to some governments, laws, regulations, or policies or worse, they could be put in an extremely awkward position --

[Timer sounds.]

My apologies -- of having to rewrite international law. So it strikes us there wouldn't be a board member in this room who would feel very comfortable being put in that position.

So my proposal would be -- and I'm happy to offer language very quickly after the meeting -- the focus, the whole first paragraph 610 gets amended. Paragraph 611 is amended. And then I would agree with Brett, one of our proposals for amending the actual text of the bylaw change is, in fact, to include a reference

to the U.N. definition of "consensus" because that is, in fact, precisely what is in the operating principles.

None of that means that the GAC cannot share with the board a full range of views. There are going to be those cases where there are differences, there are different laws, regulations, policies, different priorities in national governments. And there will be occasions where the GAC is not able to reach consensus.

The GAC then nonetheless thinks it's worthwhile to forward to the board -- and all of this is public so the community is informed as well -- that there are a variety of views, not that you can act on them the same way or are obliged to enter into negotiations to find a mutually acceptable solution but that the board and the community should be made aware.

So in our minds, stress test 18 was never targeted toward the GAC. It was never meant to be restrictive. It was, in fact, meant to solidify the unique role that I think the GAC plays in the community. We have always thought that was unique and for good reasons. So I will stop there since I have gone over time. Thank you.

THOMAS RICKERT: Thanks very much, Suzanne.

Next is Alan.

ALAN GREENBERG: Thank you. First a very brief comment, the ALAC would be delighted if our advice had to be followed, including negotiations if the GAC -- if the board doesn't follow it. And for

the record, even though our advice does not need to be followed, we would be delighted to say that any advice we give has to be subject to full agreement -- full vote of the ALAC.

I thought I knew what the second half of my question was, but after Suzanne's intervention, I'm not sure I understand anymore. My reading of the change in the bylaw was that the board only had to take the special action if GAC advice was made by consensus as defined in principle 47.

STEVE DeIBIANCO: To answer you, that's not what's written on our first draft. The first draft we put out in May just said the word "consensus."

ALAN GREENBERG: Sorry, I was elaborating, "consensus" as defined in 614 which says according to GAC principle 47. What I heard Suzanne --

STEVE DeIBIANCO: That's a fair read of the stress test. Hillary, would you scroll down to the actual bylaws words, please? Thank you. The bold underlined words do not specifically reference consensus as defined in both -- both Suzanne and Brett were recommending these black underlined, bold words get further clarified to refer to the 2014 U.N. principle.

ALAN GREENBERG: That's what I was asking. If their interpretation is the intended one, then 616 is worded well. If their interpretation is not the

intent, then 616 is worded exceedingly poorly. I can elaborate privately, if you wish.

THOMAS RICKERT: Thanks very much, Alan.

Jorge.

JORGE CANCIO: Thank you, Jorge Cancio for the record. After this discussion, I think I'm more confused than ever.

[Laughter]

Because there's no rationale to this bylaws change. If I were in law class, a professor would say, This is conclusory. You go to the conclusion but there's no rationale. There's no premise. Where from are you drawing that conclusion?

The rationale we had, which is para 609 is the NTIA requirement on government capture. But we have been told that this is not really the rationale for this stress test and for the conclusion we find later. And there have been now discussions and there are ongoing discussions also within the GAC on what that rationale could be.

But having a conclusion in the draft report or in the final report without an agreed rationale is quite meaningless to me. So I think there should be a discussion on this rationale.

Only if we agree on a rationale that has some relation with this conclusion and this rationale is within the remit of the work of

this CCWG, then we can look into the specific bylaw change amendment.

But jumping into having that amendment there --

[Timer sounds.]

-- without an agreement on the rationale would be meaningless. And I'll finish very quickly.

I'm concerned that here we are seeing in the public comment support for this conclusion by some constituencies of the GNSO mainly.

And we know and we are seeing an ongoing discussion in the GAC with a lot of disagreement within the governments which would probably make it not possible to reach an agreement to support the final report by the GAC. That would still (indiscernible) eliminate the possibility that we have government support in the mix of this CCWG.

So I would suggest to the co-chairs that they think about a possibility of acting as neutral facilitators in this discussion within the community. Because an independent and neutral facilitator, somebody who has no declared stake in this debate would probably be needed. Thank you.

THOMAS RICKERT:

Thanks very much, Jorge. And I had closed the queue after you. We see Kavouss and Thomas' hands are still up. If you could please your keep interventions brief. Kavouss is passing.

Thomas?

THOMAS SCHNEIDER: Thank you. I tried to put my hand up several times but somehow the connection here doesn't seem to like my computer because I keep having problems. So sorry for this.

I will not comment on the substance of this as there is no agreement in the GAC. I just have a question to Jordan. He made a remark in his intervention that I did not really fully understand. And I was just asking for clarification.

You said something like, well, okay, if the GAC is not in agreement with this, we can live with that. Could you be more clear in what you meant by saying this? Thank you very much.

JORDAN CARTER: I didn't say that we could live with it. I was just reflecting on the submissions that had come in from some governments that they would object to GAC consensus in approving the proposal if stress test 18 was there.

I understand those comments have been made. It's not my role to try and interpret them.

THOMAS RICKERT: Thanks very much. Now, before we close this session, let me say that I was quite positively surprised by a lot of constructive proposals from board members and other community members on how the issues surrounding stress test 18 can be resolved, be brought closer to resolution, let me put it that way. Let's not be too optimistic with that.

But we understand that there are conversations going on in the GAC. And my question to this group is whether particularly to

those who have proposed alternative language, Suzanne and, I think, Chris also suggested some tweaks to the language, whether it would be appropriate for our group to come up with alternative language while the GAC is still in the midst of coming up with compromise language. I'm not trying to keep this additional work off our table. I'm more than happy to do it if it's helpful. But I think this is a discussion that really needs to take place in the GAC. And I'd be surprised if it could be, you know -- I would be surprised if there was no risk of us interfering with that with negative impact on the outcome.

So I suggest we do not start a different discussion on this. I would leave that primarily to the chairs of the stress test working party to consider and maybe to reach out to those who have suggested alternative language and then get back to the full group next Tuesday with a suggested way forward.

So with that, I'd like to thank the two of you and all the contributors for a very fruitful discussion on this point.

So we have gone into overtime with this session. So now it's time for us to take stock.

And you might take the co-chairs' flexibility on time, allowing the stress test discussion more time and having less time on taking stock as we don't need much time on taking stock because there's no progress.

[Laughter]

But this is far from the truth. Those who have been frustrated in these two days at times will hopefully now be positively surprised because we actually have identified some areas where

we can really improve and where we think we have agreement on improvement. So we will discuss that. I hope that staff is going to bring up the respective slide on that. So we're going to do this in two phases. First phase is going to be that we revisit the suggested changes to community powers and other areas such as OAC accountability enhancements. And of that, we suggest looking at the list with the three tables to see whether we have areas that we can move from the uncertainty column to broad support, if not consensus column.

Before we do that, let me just respond briefly to the statement that was made by Steve earlier this afternoon because obviously that has caused some confusion.

I think it's important to recognize that the board does have a view on what we're doing. At the same time, the board has a role as the facilitator of this process. And I think there was some confusion with respect to what the board said and what the board did not intend to say with the statement. It's not for me to construe what the board's intentions were on this. But from a co-chair perspective, we will follow the process that we've agreed with you, i.e., we look at the public comments. We look at the comments and analyze them, board's comments as well as everybody else's comments. We do that as diligently as we did after the first public comment period. And we will then see what model, what suggestions get most traction, which have community consensus.

That is our task as prescribed in the charter. We are there to come up with a consensus recommendation. And it is not for me as co-chair to predict the outcome of what the consensus might be.

But I would just like to remind everyone that we are operating on the basis of that principle and the board has passed a resolution a couple of months back on how it will deal with proposals coming from the communities. I think that the rules for both parties are quite clear.

I will not speak more to that. I think it's also not an area that we should spend more time on now. So, Kavouss, if you could please permit me that we move to the taking stock session now and actually review the areas where we think we have advanced consensus in the group.

So can we bring that up, please? We seem to have some technical issues here. But we wanted everyone to be able to see the improvements.

Leon will do the magic on the technology. This is why we call him Leon "magic" Sanchez.

[Laughter]

Shall we sing something in the meantime?

LEON SANCHEZ: Magic is done.

(Singing).

[Laughter]

[Applause]

THOMAS RICKERT:

And for those who are participating remotely, that was Zuck creating a little sound sculpture for us. Again, he helped out in the moment where we needed him.

So let's look at the areas of improvement. What we think we've agreed is that we would split the three powers: The budget, operating plan, strategic plan. We would put the consultation process into the bylaws which is currently not there, to reduce the risk of friction between the board and the community, and to take on board the comment received from the board with a higher budget for the subsequent year. So after two vetoes, we would not have the budget limited to exactly the amount that it was previously, but we would extend it to 110%. Not raised by 110% so that's important.

And we will make very clear that the PTI budget continues no matter what happens to the ICANN budget.

Do you think this accurately reflects the discussion yesterday? So I'd like to confirm the agreement in this group. We will have two readings, right? Kavouss -- Kavouss your hand is conveniently up from the previous intervention.

KAVOUSS ARASTEH:

Not because of the participant, because of the ICG liaison. I don't understand the meaning that what happens -- "very clear that PTI budget continues." What does it mean continue? The CWG also has the power to reject that. What do you mean "continues"? This is not clear. So I'm not convinced to message the ICG that the requirement for CWG will be met. I think you need to modify that sentence.

THOMAS RICKERT: Jordan, can you maybe respond to that?

JORDAN CARTER: We're trying to provide a very simple, high-level summary of what we thought the agreement was. This is not the language that will be used to formally communicate that. It will continue to be funded is the point. Or to make it even clearer, whether there is an ICANN budget veto or not will have absolutely no impact on ICANN's funding of the PTI budget. That's what's intended.

THOMAS RICKERT: Thanks very much.

Kavouss, you will see the complete language very shortly. But we want to agree on the principle that the PTI budget shall be preserved regardless of a veto. That was the intention. That was a request by the room yesterday to have that clarified. We are offering this clarification.

I see Brett's hand is up.

BRETT SCHAEFER: Thank you. This is actually just a question. I know that the board proposed a spending limit of 110%. Did they provide any rationale for why 100% and not 105% or 103%? Is there a historical basis on ICANN budget growth that would justify that as a reasonable or an historically relevant amount to increase or have a new budget limit?

THOMAS RICKERT: Thanks, Brett. Are there any board members in the room who would like to respond to that?

Bruce?

BRUCE TONKIN: Look, I think we are just really trying to conceptually indicate that there might be spending -- sorry, cost increases in any budget. Your supply costs can go up. Really it's just saying you want to keep the same framework as the previous year's budget but some scope for cost increase. Typically the budget runs probably with that level of contingency anyway from year to year.

If you want to make it 5% or 7% or make it equal to CPI increases or pick some other number, it was just conceptually saying picking up the same fixed number as the previous year, the cost of data centers or cost of rent could go up, all sorts of costs can go up from year to year.

THOMAS RICKERT: Thanks, Bruce. Kavouss had raised his hand again and then Jonathan.

Kavouss, you already spoke. So I would like to ask you to keep it short.

KAVOUSS ARASTEH: The sentence should read, Community writes regarding development and consideration of the PTI budget shall be met. That is the sentence. No other alternatives. I'm sorry, Jordan. I

cannot give you any other alternative than what is given by CWG. This is ICG conclusions. We cannot make any shift from this. Thank you.

THOMAS RICKERT: Maybe we can pull the sentence from transcript for everybody to take a look at. I have not been able to follow this.

KAVOUSS ARASTEH: It is in your slide.
[Multiple speakers]

JORDAN CARTER: Whatever language we have to get it right we will have to get it right because it all means the same thing.

THOMAS RICKERT: I guess, maybe we can agree what's on this slide is the same as what you are suggesting. This is not the language to be adopted. We will flesh that out, and you will get an opportunity to read that.
Jonathan.

JONATHAN ZUCK: I don't know if this is cross-purposes of what you are trying to accomplish right now. If so, I apologize.
Just to follow on Bruce's last comment about just accommodating for growth, can we assume the board's

proposals surrounding this assumes that the allocation of funds will be the same as the previous year. The budget isn't just about the total number, it is about how the money is being spent. If it was last year's budget plus 10%, is that money being spent on the same things as the previous year? Does that question make sense? Is it allocated the same way?

THOMAS RICKERT: It does.

JONATHAN ZUCK: I want to make sure we are on the same page about that. That's all.

JORDAN CARTER: The board proposal was they would pass a budget that was up to a 10% higher spending limit. The CCWG proposal was that the previous year's budget would continue in force. I don't think we've talked that difference out at this point.

THOMAS RICKERT: Okay. Question now is: How do we deal with this? We can certainly add two things later, but we wanted to keep things as simple as possible. So I would take the absence of further objection as agreement from the group to take these improvements to our proposal on board.

So we can now move to the next slide, please. Brett.

BRETT SCHAEFER: I don't think so. I think you have to resolve the 5%, 10% plus previous budget. That's still an outstanding issue. I agree that the budget should not be frozen or cut off. But to simply assume that a 10% increase is the norm I think is not what should be acceptable?

THOMAS RICKERT: Brett, then obviously I have misunderstood your previous intervention. I thought you were asking a question for clarification, and I didn't take it as an objection to this.

BRETT SCHAEFER: Sorry, it was clarification trying to figure out what the basis for it was and whether there was a justification for it rather than just an off-the-cuff, back-of-the-envelope estimate.

THOMAS RICKERT: Good. Let's just check whether there is more opposition to the 10% increase. So those who disagree with us.

SEBASTIEN BACHOLLET: May I ask one question. What is new in this sentence? What we are looking for is that budget will limit increase of 10% compared to the year before.

THOMAS RICKERT: That we didn't have in our proposal.

SEBASTIEN BACHOLLET: It is not in our proposal, but it is what is suggested here. But new spending limit doesn't seem exactly the same in English from my understanding of English. "New" may mean something really new and what we are looking for, it's possible limit increase of 10%.

THOMAS RICKERT: It's not referring to additional or new expenditures in categories that have not been made before. It's a clarification that the spendings for the subsequent year are limited to a 10% increase.

Rinalia?

RINALIA ABDUL RAHIM: Sorry. I just wanted to clarify one thing. Not on a 10% thing. But on a split into three powers, am I correct to interpret that you mean it's a veto on each budget operational operating plan and strategic plan? And, if that was the intention, then I think the linkage between annual budget and annual operating plan means that it's one.

THOMAS RICKERT: The suggestion was to separate the three powers. Cherine had made some observations on that that there is a certain interlinkage, but we have different periods for the two. In terms of reaching agreement in this group, we felt that there was little to no opposition to what's in the report on the veto right for strategic plan and operating plan.

So we want to separate the three powers, so that we can confirm agreement from the group and only work on revisions for the budget position.

Cherine.

CHERINE CHALABY: I just wanted to bring to your attention that there are two operating plans, one which is a five-year which is attached to the strategic plan, and one which is annual. And I was talking about the annual and the budget go together. And the reason is that the budget is no more than a translation of costing of the operating plan. And to focus only on that, you're really only freezing a number. It doesn't give you any power. I keep on saying it's to your advantage to think of the operating plan. But, if you don't want to, that's fine. So I'm going to keep quiet now.

THOMAS RICKERT: That sounds a little bit disappointed, Cherine. And you shouldn't be.

CHERINE CHALABY: Because I've repeated it so many times, but no one is listening.

THOMAS RICKERT: The community wants powers to affect the way the Board behaves, the way the Board spends its money, the way the Board should not deviate from its mission, the way the Board should not go and undertake initiatives without the approval

from the community. And you're not doing that by freezing a number which is just an estimate.

It's the wrong thing. But, you know, I think it's not the place here to have this debate. I think you should have it in a smaller group. And I can explain that in a much better way for you for your own interest. I really believe that. But this is not the forum to -- it's going to take some time. And it needs all the people around the table to understand that.

CHERINE CHALABY:

I guess from a procedural point of view, the question for this group is and was, if we have three items in front of us and there's agreement on two, why not try to tick them off the list and say we agree on these and just work on the one that is not agreeable by the whole group? Because the 10% increase, that's not affecting the operating plan. So we're trying to get things off the list that this group agrees. That doesn't mean that when we finalize, when we operationalize, that the linkage is regarded as valuable and that this is taken into account by the community when it discusses, which I hope will never be necessary, to veto the strategic plan or operating plan. But we just want to confirm consensus in as many areas as possible. So I think I would suggest we proceed as usual. We would -- I would ask whether there's more objection to separating these than from Cherine. Can I please get an indication of those that don't like to separate this? Asha and Ray. Good.

THOMAS RICKERT:

Jonathan.

JONATHAN ZUCK: I guess, if I can reiterate what Cherine said, there's actually four things, not three. And that they amount to two things. There's an operating plan -- a 5-year operating plan that's linked to the strategic plan, and there's an annual operating plan that's linked to the budget. And the budget is an expression of that operating plan. So those are the two paths that we actually want to separate is the operating plan and the 5-year budget plus strategic plan. There's four documents, two paths I think is what Cherine is saying.

THOMAS RICKERT: We thought this would be quick wins. And, if it's not a quick win, then it's not a quick win. So I suggest we take the separation off the table for today. And I'm tempted to ask you, Jonathan, to come up with alternative language. But no, I'm going to choose Cherine, since he was the troublemaker on this one. So Cherine, if you could come up with alternative language reflecting that, then we do another split.

I think we will easily confirm this. I think that shouldn't be an issue. But then I think we can't do it today.

But, on the other points, I understand that we're good to go. So we can move to the next slide, please.

Sorry to be pain point, but two vetoes of something. It could be veto of the ups as it is written, and we need to be clear what we want. Two veto by the community of the budget, I guess.

THOMAS RICKERT:

We were referring to the budget community powers. So let's correct that on the slide. Two vetoes on the budget will lead to that consequence. Good.

So I think Kavouss's hand is an old hand. Greg's hand -- Greg, did you want to speak? Or can you maybe resist? Thanks.

Let's move to the next slide, please. That's the removal of the individual directors.

So we understood that the group is okay with individual board member removal in case of wrong doings. So we can confirm that as agreement.

We have an issue -- there is pushback from the group on the removal without cause. And the suggestion was that in such case, the cause needs to be explained. So there needs to be a rationale. You know, there doesn't necessarily have to be wrongdoing like fraud or other bad things. But the constituency needs to explain why they want to let go the Board member.

Nonetheless, we're not going to work on the list of allowable causes. So this is left up to the discretion of the designating organization.

Then the community forum will be -- and this is tagged remember, because we already have that in our report. The community forum will be the place for a public discussion including the opportunity for the Board member to explain his or her view on the envisaged dismissal.

And we also took -- and maybe this was not very visible. But we thought that there was a lot of traction for a suggestion that the

SO or AC should go on record having tried to reconcile the difference with the Board member before they invoke this power. You know, that's what you would usually do. If somebody does something wrong, you wouldn't instantly send a termination letter. But you would give that person a phone call and say well, you better not do that again. And only if there is reason to believe that the differences can't be reconciled, then you would escalate to removal. And our suggestion is, in order to remove that tension, in order to increase the chances that there doesn't have to be a public discussion about director removal, that the organization that wants to remove needs to have -- needs to document attempts to reconcile differences.

So is this something that reflects the support of the group? Alan

ALAN GREENBERG: Thank you. Two comments. First of all, in terms of cause, as long as what we're saying is the cause doesn't have to be something which would -- you know, you use the case of termination, of being a rationale for termination under the, you know, California courts or something. The cause may well just be that the director has radically different views on issues than the AC or SO.

THOMAS RICKERT: That doesn't say anything different.

ALAN GREENBERG: The second thing is something I haven't brought up before. But, as you were reading it, it dawned on me. There could well be

cases where, if the director is approached, they may not want a public hearing. They may want to quietly resign. And we should allow that to happen.

Thank you.

THOMAS RICKERT: I think that's a theoretical question, because the director can resign at any time and thereby avoid that public hearing. But for transparency reasons I think we can't have both.

ALAN GREENBERG: Touche. You're right. If they're approached privately, they may choose to resign before a public statement is made. Yes, agreed.

THOMAS RICKERT: There is a queue forming. Let me just caution we shouldn't have repeated discussions on the same things. We're trying to take stock. So, if you are okay with what's on the screen, that's fine. Let's confirm this. Let's not try to come up with new proposals at this stage. We can do that later. We can still refine. But we would really like to capture the essence of what we agreed on or what we think we agreed on yesterday. So I'd like to close the queue after Seun. And Kavouss is next.

Kavouss.

KAVOUSS ARASTEH: Yes, but the text on the Board does not reflect the discussions. Discussions yesterday was removal should be by the

community, but not by the designator. It is not captured. So please capture that.

If you have agreement by the community, so far so good. If not, this does not reflect the discussions. It comes back to the point that designator will remove. No. Community will remove. We have discussed that for hours.

THOMAS RICKERT:

Well, yes. Some have made that point repeatedly. That does not mean that the majority of the stakeholders represented in the CWG see it that way. We are trying to determine whether there is consensus on a certain proposal. And we sense that most of the groups represented in the CCWG think that this is the way things should proceed.

I note that you, Seun, and also Cherine have asked for something different. But that would still be rough consensus. But we're discussing this now in order to confirm whether there is agreement in the room. So next is Robin, please

ROBIN GROSS:

Thank you, Thomas. This is Robin Gross for the record. I think this is a really good path forward on this issue of removing individual directors. I know we did have a lot of different views on it. But I think this is a nice compromise that can address some of the concerns that we'd heard from allowing too liberal of a removal process. But I think having the cause be explained and the opportunity for the discussion and to reconcile, I think this is an excellent path forward on this issue. Thank you.

THOMAS RICKERT: Thanks, Robin. Greg.

GREG SHATAN: Thanks. Greg Shatan for the record. Apologies if I'm reading this too much like a lawyer. But I cannot help myself. The first sentence there of --

THOMAS RICKERT: I can help you help yourself, so we can just move to the next speaker.

GREG SHATAN: No, no, no. My concern is talking about if there is cause. For cause ends up being a rather high degree of -- under U.S. law term cause generally has a lot of very negative implications about what is required to be a for cause removal. I think all that we should be required to do is give reasons, which -- a rationale is another good word. So we should stay away from the word "cause," because that traps us with a legal interpretation that at least I think we never agreed on. So this, I think, is just an accident of language. But the problem is language leads you down paths. So we don't think we're going down.

THOMAS RICKERT: Yes. I think on the first bullet point we wanted to say cause; because there is unanimity, I think. I haven't heard anyone say there shouldn't be director removal if there is cause. But you're referring to the second bullet point, and we should say reason to explain, to be explained.

So thanks for that.

GREG SHATAN: Yes, correct.

THOMAS RICKERT: Seun.

SEUN OJEDEJI: This is Seun for the record. I think, just repeating what Kavouss said, I really don't get the idea of rough consensus they should be on that page on the list, since we have achieved some level of taking stock here. We're taking stock of what has been discussed in the last two days. So, if you co-chairs feel there is not consensus on that particular point, then I don't see why we shouldn't add it to the list is my point. I don't want to repeat all that justifications for you need to have community, entire community involved in the removal of individual board member. But I think it should be on the list. Thank you.

THOMAS RICKERT: Seun, just a point of clarification. You're asking us to clarify that we had rough consensus on this rather than full consensus? I'm not sure I understand your request. I'm sorry.

SEUN OJEDEJI: My request is right now you've not put in the point which was raised. That's before a removal of individual board director can be complete, it must receive a significant amount of approval

from the community beyond the appointed SO or AC. We have reflected that on the list.

THOMAS RICKERT:

I tried to explain that. Sorry, Seun, for not having been clear enough. The way we go about with this is, you know, we need consensus on the whole package at the end of the day. But, before we do that, we are trying to establish the level of support for individual ideas of our package of recommendations. And, whenever there is broad support for a suggestion, we would confirm the support and keep it for our end product, if you wish.

And we check whether there's broad support by asking people whether they don't like it.

And, for this particular item, what we see at the moment is that Kavouss doesn't like it, Cherine, and yourself. But still that would be rough consensus by the whole group.

So we've addressed a lot of the concerns that have been there. So Tijani had a concern with this, which I think we have addressed. And we would like to establish the atmosphere of the group, put that in writing, and then move on. But that doesn't mean, you know, that we -- that you will not see the language on that any more. So we will establish whether there's consensus on that when we finalize the report.

Next in line is Alan

ALAN GREENBERG:

Thank you. I just guess I want to register surprise. We're here at the second day of a meeting that was primarily billed to review

public comments, and all we're doing is gauging the sense of the room without any input as to what the public comment said on this crucial issue. So I'm a little worried about how we're going to get to closure on this whole thing if we're not considering the public comments and trying to come to closure now. Thank you.

THOMAS RICKERT:

Just in response to that, while we were discussing yesterday, the inspection of the subteams will take place. I mentioned to you we have Bernie who has populated the public comment to check while we were discussing whether we had brought on the table the concerns that have been raised by commenters. So I'm quite confident that, although we don't have the written report of the public comment analysis done, that for the items that we discussed, we pretty much captured what the concerns from the community were. And this is why, you know, he's calling me Thomas "the braver times." This is why I have been brave enough to ask for your support on this one.

Mark is next.

MARK CARVELL:

Yes, thank you, Thomas. I just wanted to come in in support of the point made by Kavouss. And I registered my support yesterday. And this is an issue Seun has raised too. And this point about directors serving the community from their position on the board and so it should be for the community to decide their fate, I think it's an important one. I may have misunderstood because I see the third bullet there, re member community forum role. That provides opportunity for all SOs

and ACs to make their views known and to endorse possibly recommendations for removal of individual members. Am I reading too much into that third bullet, as serving to take account of the views that we've just been raising, Kavouss and I and Seun? Thank you.

THOMAS RICKERT: Thanks very much, Mark.

Tijani.

TIJANI BEN JEMAA: Thank you, Thomas. I'm really sorry I hate to repeat, but I am obliged to repeat again. There is not only three or four persons who are for the community to take this decision. There is a lot of people. I am one of them. And I said that the forum was a way perhaps to make it lighter, to perhaps arrange more or less things. But their positions are right for me. So we cannot say that there is a consensus among the group. There is people who are with, people who are not with. Thank you.

THOMAS RICKERT: Thanks. Seun, I'm about to take this off the list of consensus items because I think we can't afford to have a full-blown discussion on that now after we had it yesterday. So let's please remove this. Obviously we can't take stock on that.

Let's move to the next slide, please.

So we sense that there is agreement on the incorporation of the AoC reviews into the bylaws. Is there any objection to stating that at this stage? So thank you for that. That was quick.

Next slide, please.

Community forum. This is just to recap that further work is to be done on that. But we have some ideas on the operations on the composition standing or not, et cetera. Just to confirm that these are the areas that the subteam will have to do further work on. I guess, we can't say much more to that at this stage.

Next slide, please.

Human rights. There's the agreement that this is a workstream 1 item. Deadline for approval is in Dublin. So we should have the text available early October. And the lawyers are tasked with refining or drafting language to the requirements of the work party. So this is showing a clear path on how we're going to deal with this. Let's just check whether there's any objection to this approach, which I don't see. So we can move to the next slide, please.

That is SO/AC accountability. So we have collected the items, the excellent ideas that have been brought forward during yesterday's discussion. I'm just going to read it out for you: CCWG second report recommends that the scope of regular SO/AC reviews is extended to exclude accountability, external studies, and board supervision. This is to assure we have constant improvement there. Then accountability is to those who participate plus those -- plus to those who they should represent. We extend the IRP scope to include the challenge of

community mechanism decision-making due process being followed in the SO and AC. And set up a conflict of interest inspector office to investigate and assess breaches of conflict of interest, which is to be further studied because there was the issue as you will remember that -- I think it was Chris who said yesterday that a situation is unacceptable where those being held to account -- being held accountable are held accountable by those that don't follow comparable rules. So we should have conflict of interest rules in the community as well.

Use same removal processes for counselors in SO/AC as is proposed in the board.

I see Greg's hand is up. He couldn't resist for a second time.

GREG SHATAN:

Thanks. And you are going at such a break-neck speed that I'm actually commenting on the previous item on human rights and clarify we are not just talking the text of a bylaw but about the package that would be required to satisfy the workstream 1 requirement so that needs to be clarified. It was unclear in your statement.

I also see a broader issue saying workstream 1 approval is this Dublin. I'm looking forward to our stock taking and discussion of time line because I can't imagine what we are approving in Dublin.

THOMAS RICKERT:

I guess the plan is for us to -- and the language here might be misleading or is misleading. We want to discuss the major

pillars of our report with the stakeholders. In order to prepare for that discussion, we need to have some proposals from the human rights subteam. So this does not mean approval by the chartering organizations. I think we are in agreement that this is not feasible.

But we are we are looking for having language to can be presented to the community in the engagement session. So we would add for clarification purposes not only the bylaw language but also the rationale shall be provided. That was our understanding on this point anyway just for clarification.

I see Brett's hand is up.

BRETT SCHAEFER:

It is actually just a clarification. If you could make sure that the board has fully walked back its comment/recommendation that the human rights language is premature. They said earlier -- I know that was the implications of some of the comments earlier today. Then they came back after lunch and they said they fully backed the comments in a unanimous fashion. So I just want to get clarification.

LEON SANCHEZ:

It seemed to me it was very clear when we discussed the issue in the morning, and I think that there has been already some clarification on what it was not meant to be interpreted of Steve's statement. So I think that we can assure that we have support on -- or by the board on including human rights in workstream 1 and not considering it as something premature. Am I right? Can we confirm that? Yeah, it's confirmed.

THOMAS RICKERT: Next is Avri.

AVRI DORIA: Thank you. Avri speaking. I apologize for having raised my hand. I was so grateful when this went by without needing to discuss it further at this point.

I'm a little concerned about Greg's addition because what happens -- yes, a confirming background note of saying why we need this why we need this in the bylaws for WS1 is perfectly fine. But what happens in this discussion is there's mission creep on that particular goal that demands us to understand all the implications and everything about this that is the WS2 or ATRT3 through N work that has yet to be talked about.

So I'm very concerned that every time this -- all the rationalizations for this need to be put in, that we're taking on an indefinitely large basket of work. And so if the rationalization note is simply an explanation of why we need to have this in the bylaws, that makes a lot of sense. But if it's supposed to delve into the deep aspects of this issue, then I find that problematic. Thanks.

LEON SANCHEZ: Thank you very much, Avri. As we have discussed in working party 4, I wouldn't expect this to be a 300-page report but rather a very short explanation of why we consider this needs to be put into the bylaws and maybe a couple of guidelines on how to interpret for future -- for future -- well, for future events. Yes, definitely, it would not be a 300-page report. Not at all.

THOMAS RICKERT: Thanks very much. Let's move to Eric.

ERIC BRUNNER-WILLIAMS: Thank you very much. Would you clarify, please, that the WP refers to WP4? Or does it refer to something else? Thank you.

THOMAS RICKERT: Yes, we can confirm that.

Good. Then let's move to the next slide. I didn't hear any objection to that. Let's move to the -- what I think is the last slide. This is the last slide actually. Good. So this is what we've been able to take stock on. Can we please bring up the three columns with the areas of support, supports, concerns, and further work to be done.

LEON SANCHEZ: We put slide number 4 and then number 5.

So this is how we started our meeting yesterday. We had identified some areas of consensus that are on the left-hand side column and we had identified existence of the fundamental bylaws has having rough consensus, core values, balancing requirement, principles of binding IRP and standing panel and exclusions for ccTLDs. Principle of five community powers. The Affirmation of Commitments reviews and their five-year frequency. Jurisdiction in workstream 2 and not focused on ICANN headquarters. The standard bylaw change. The existence of a community forum. Their request for reconsideration enhancements and staff. SO/AC accountability enhancements.

I'm sorry, those red are actually some updates. So I just spoiled the feature. It was a spoiler.

Then we have the key difference that we had to bridge. Those were the model, the voting scheme, the budget veto, the stress test 18 bylaw changes.

Other issues were contract enforcement. We had SO/AC accountability enhancements. We had human rights as part of the workstream 1. We had board director removal. Costs but not limited set of costs. We had the strategic plan veto rights. We had contract enforcement capabilities, scope, standard of review time line, cost for IRP. We also had support of AoC reviews by consensus, process for fundamental bylaw changes. And workstream 2 or ATRT2.

Can we have the next slide please.

Where are we now? Where are we standing today? Or at least we think where we're standing today. Well, we added some items to the left-hand side column. We added SO/AC accountability enhancements. We added human rights as part of workstream 1. We now have consensus on that. We added board director removal for cause but not limited to set of causes. We added the strategic plan veto right to the consensus column. And we now have in process instead of gaps that need to be bridged because we believe that we are already bridging those gaps with the different discussions we held these two days. So now we are having processed the model. And one thing I would like to highlight is that one very important step that I believe we took in these two days is to finally get rid of the discussion on models but instead focus on requirements. And I

think that was a major step we achieved as a community, as a group. And I think that this will allow us to find a way forward.

The voting scheme is also in process. We have very fruitful discussions in the breakout sessions. The budget veto, the stress test 18, I think that there were some very important clarifications. But the stress test team I think Steve DelBianco made very important remarks with regard to stress test 18. And finally operational issues as opposed to other issues we had in our first slide. And we refer to these as operational issues because we believe they are in fact operational. As long as we can agree, of course, on the left-hand side column and the center column, the operational issues will, of course, be taken care of at some stage but we are already -- we could make progress very easily in that. So that would be the contract enforcement capabilities. The scope, standard review, time line and cost of IRP. The support of AoC reviews by consensus, the process for fundamental bylaw change and workstream 2 or ATRT3. So this is.

STEVE DelBIANCO:

I feel it was like in the original conversation yesterday and didn't make it here which was the CCWG's recommendation that we shouldn't proceed with a new round prior to implementation of recommendations of the review teams. That was an area in which the board disagreed as well. Am I wrong about that? I remember that coming up yesterday, but I don't see it.

THOMAS RICKERT:

I'm sorry. Could you repeat that?

JONATHAN ZUCK: Sorry. My understanding is that one of the points of disagreement raised in the Board's proposal is that we had suggested is that a new round of gTLDs should wait until the implementation of recommendations from the review teams and the Board suggests we should not wait.

You raised that yesterday, but I don't see it here now.

LEON SANCHEZ: Okay. We might have omitted that, and we should fix it. Thank you. So I see several hands in the AC room. I see Avri's hand is up. I see Tijani and Kavouss, but I'm not sure whether those are new hands. Avri is a new hand or an old hand? It's really old. Okay. Tijani is that new hand or old hand?

TIJANI BEN JEMAA: New one. Tijani speaking. We just removed the removal of board members by the appointing SO and ACs from the consensus.

LEON SANCHEZ: Yes. Unfortunately, the slide was created before we removed that. So it's going back to in process. We will be omitting that slide, yes. Thank you for pointing it out. Next is Kavouss.

KAVOUSS ARASTEH: Yes. One of my points was settled by Tijani. The second one, where is the entire board recalled?

LEON SANCHEZ: The entire board recall? It's missing in the columns, but I believe we could place it in the areas of consensus. Because I do believe that we have broad consensus on actually removing the whole board. The point of refinement, the point of refinement, it's just the individual board recall.

So I guess we would place it. And, of course, I ask for your comprehension that this was done in a very quick way. So we might, of course, be missing some points. But we will amend. And we will send the final version for the list so we can all be on the same page.

Next in the queue is Fadi.

FADI CHEHADE: Yes. Thank you, Leon. And thank you, Thomas. This has been an incredible two days, and I stayed back mostly. But I think it's time, if I could, to express comments.

First, I want to thank you because you have been remarkable chairs. And I especially today, Thomas, how you kicked the day for us, I appreciate very, very much.

I do believe that we are close. But I do believe we also have some areas of concern.

This middle column, for example, started two days ago by saying that we have major issues in that column.

And now it says in process. I don't know what that means. Does it mean suddenly that this group of people, without the full community has decided to move forward with these things when, in fact, 90+ comments did not indicate we have consensus

on these issues? I, therefore, ask to show a slide that I have prepared with the Board in the last few days in which we attempted in the best way we can to show where actually we believe there is consensus.

And this is not a belief based on our views. This is a belief based on reading all these comments multiple times, listening to you, reading everything you've done. And I -- I believe that this slide will help us move forward. So, if I have your permission, I'd like to show the slide.

THOMAS RICKERT: Fadi, thanks for the offer. I guess that this is what the group thinks is the current level of support. The Board may have its own view on the analysis of public comments. But that's actually for the working group to decide. So I think we should be very cautious not to have competing views or versions or assessments of consensus and share them. So I recommend that you take the slide and send it to the list for everybody's review.

FADI CHEHADE: I'm not on the list.

THOMAS RICKERT: We've walked through all these -- the areas of improvement. We've asked the group to chime in. Cherine did so. But I would caution us from, you know, presenting to the outside community the impression that we're now discussing the

Board's determination of consensus, which is, obviously, a task for the cochairs.

FADI CHEHADE:

Can I respond, if I could? This is not the Board's view. I'm presenting to you the view based on the staff's incredible work to understand your community's and my community's comments. And I believe that it is important everyone hears that as well. So simply saying that we suddenly move the model back to in process when, frankly, I don't know what that means. Most of us don't understand what that means.

I'm frankly, with all due respect, I'm not going to be steam rolled into this. I think we have to stop and understand exactly where the community, not the people who came to LA, have consensus based on the tremendous amount of comments to receive.

THOMAS RICKERT:

Sorry, Fadi. This is not something that's not for the board nor for staff to decide. I'm more than happy --

FADI CHEHADE:

So I'm speaking as an individual. How's that?

THOMAS RICKERT:

We have made very clear that our process is that the group and in particular sub teams will do the analysis of public comments. And we should await that. We have this assessment on the table which has been crafted with the assistance of the group. I don't

see any benefit in hearing the Board's assessment of the consensus level.

FADI CHEHADE: I'm not speaking for the board. I'm telling you I'm speaking personally. And you're not allowing me to even share where I think our views are. I don't know what --

THOMAS RICKERT: You said you want to present the assessment of consensus as you did it together with --

FADI CHEHADE: Based on all the comments our community have filed which we have spent two days and not analyzed.

THOMAS RICKERT: That's for the working group to be done.

FADI CHEHADE: And can we share them with the list?

THOMAS RICKERT: You can share them with the list. By all means, please do. We have a queue forming form. I would not want to spend too much time on this.

LEON SANCHEZ: I noticed that Fiona was raising her hand, although she is not in the queue. So, if those who have patiently waited in the queue -- I mean, is this an immediate reaction to what Fadi said, Fiona? Could you please --

FIONA ASONGA: I think, truth be told, we must have thought that would go through the public comments during this meeting. It hasn't happened.

THOMAS RICKERT: We have.

FIONA ASONGA: We've not gone through all. We've looked at just a few from the GAC and from the Board. There are a lot of other comments that we need to look at. So we are leaving the meeting, going back to probably what we should have done before we came in for this meeting, having a summary of public comments so that then we can be very clear on our way forward.

In the absence of that, and in view of the fact that we are not going to give Fadi the chance to share with us what he has managed to put together, I propose we get away with the column in process. Can we delete that? Because we don't have a consensus on that.

THOMAS RICKERT: But that's exactly what that column means is that we don't have consensus on that.

FIONA ASONGA: No. When we don't have consensus, we don't have consensus. It is not in process. The chairs have decided to put something in process that we have not agreed to have in process. Can we have that deleted?

LEON SANCHEZ: Yeah, we can strike that title in process and say clearly that there is no consensus. It was meant to say work in progress. Work in progress. Okay. We can clear the signal as no consensus. So, staff, can you please make sure we do amend that column with the title that says no consensus.

I'm going back to the queue. I had Sebastien Bachollet.

SEBASTIEN BACHOLLET: Yes, thank you.

Difficult to intervene now. But I have two feelings. The first one is that I remain outside of the consensus on some items where on the consensus and as it's needed to be said. We have difficulty to understand when you close the queue and same time you ask -- you need to have all the ones who disagree to say that's a little bit difficult.

And second point is that I think really something is missing. It was supposed to be in workstream two. But it's very important. It's all the work about diversity. And I don't know if this points -- all the points that we need to consensus or no consensus or just part of the report.

And now I will try to do something difficult is that I understand your point of view, Thomas. And I -- it is a CCWG meeting. But at

the same time, we as a group, we can't -- we can't stay without -- we can't say to someone who is offering to have inputs to the discussion not to do it.

And I know how it's painful for the working group. But I think it's as much as painful for the people who have made some work and who wants to share with us. And I would like to ask you humbly that you allow anyone to share their work, their thoughts. And we will be in better position to work. It's something important in this organization. We are adults. And, if we don't like what we hear, we can say it. We can still disagree with. I assure you that I still disagree with some points made during this meeting. But we can't avoid to have the inputs made by everybody.

Thank you.

THOMAS RICKERT: Thank you very much, Sebastien. Next in the queue I have Asha.

ASHA HEMRAJANI: Thank you. Asha Hemrajani, for the record. I have two questions for clarification. The first question is about the SO/AC accountability enhancements. You have it under the column for consensus. May I ask which workstream was this referring to? And shall I go with my second question? Or you want to answer that first?

THOMAS RICKERT: So the question is with respect to ATRT3?

ASHA HEMRAJANI: No, I'm referring to SO/AC accountability enhancements, the one that's currently under the consensus column at the bottom in the red. Is that -- is there any time frame specified for that workstream 1 or workstream 2? When you say consensus, is that consensus that this item will be put into workstream 1 or workstream 2?

THOMAS RICKERT: What we have discussed in the particular working group with regards to SO/AC accountability is that we would be stating as part of workstream 1 the commitment, the commitment to actually have this as SO and AC accountability enhancements done. We have already proposed some enhancements in our report. And it would, of course, be need to be completely fleshed out as part of workstream 2. So it's a 2-step process.

ASHA HEMRAJANI: Okay. All right. Then -- so I would suggest, if possible, to write that it's both, that is a two-stream process in here for clarification. Because it wasn't clear to me.

The second question I had about as we have all discussed many times today, not all the public comments have been considered by the CCWG. So is there a clear plan that this sheet will be updated after the analysis of the -- all the public comments has been done.

LEON SANCHEZ: Yes, of course, this will be updated. This is not set in stone. Consider this a work in progress. It's all a work in progress.

ASHA HEMRAJANI: Okay. Could I request or suggest that we have something on the title line to indicate that?

LEON SANCHEZ: Yes, we can talk. No problem.

ASHA HEMRAJANI: Thank you.

LEON SANCHEZ: Next in the queue I have Keith Drazek.

KEITH DRAZEK: Thank you, Leon. Keith Drazek. My hand is up for the next part of the agenda the road to Dublin, if there are other comments on this slide and this section, I will take my hand down.

LEON SANCHEZ: Thank you, Keith. Next I have Kavouss.

KAVOUSS ARASTEH: First of all, please change the title above that table. It's not "area of consensus." It is the status of the issues discussed.

LEON SANCHEZ: That is right.

KAVOUSS ARASTEH: Number one.

Number two, some people were emotional today. We should respect the colleagues with full respect. We should not attack the people. We should allow the people to openly, clearly express their views. I know Thomas may be very tired today. All of us are tired. And we should be up to the end maintain an atmosphere of friendship and mutual respect to each other. This is not acceptable. In particular with respect to his reaction with Fadi Chehade is not acceptable to me.

THOMAS RICKERT:

Okay. I feel compelled to respond to that one briefly. We have presented this slide of the different areas of work earlier. We said we would get back to this at the end of the meeting. It was very clear we would go through this exercise with the whole group. We asked after every slide whether people in the room had observations to make. It is unclear to me why we would know show a separate slide with the same points where there was the opportunity to speak to all of those at an earlier stage. You know, we could all have our personal versions of this. So I see limited sense after all this time that we spend together in the duplication of efforts.

I have invited Fadi to send that to the list. I have just in writing asked him whether he agrees to present to the group during next week's call. So this is not off the table. But I think what the issue is, is that this was prefaced by say I have together with staff analyzed all the public comments. And we are now going to show you what the level of the consensus in the community is. And this is an original task for the working group. And it's for the working group to agree or disagree with me. So this is not to suppress a personal view but this is a proposal to keep us in line

with our own processes, i.e., the consensus determination is for the working group to be done. And I think it doesn't help to get an individual, even if it is the CEO and president's version worked on with staff of what the consensus level in the community is.

KAVOUSS ARASTEH: Excuse me. Your argument is valid. But your tone is not accepted. The tone you have used in replying to Fadi is not accepted.

THOMAS RICKERT: I think we should move on. Let me directly ask, Fadi, are you okay with presenting next Tuesday?

FADI CHEHADE: Whatever would serve our community. I was in very good faith trying to respond to the fact that your slide which is now more correct than it was ten minutes ago that you are ready to move forward with I don't think was a representation where the community stands. We don't even have the community's input yet evaluated. And when we asked the room about some elements, people didn't feel there was an understanding. So this is all I was doing. I was trying to say, look, here's an assessment and I'm fine. I have such deep respect for what you are enduring there. So there is no personal issue at all. And whatever I can do to help, I will help.

What is more important frankly for all of us who have invested so much, especially you, Chairs, is for us to move towards solving

all these things and closing these issues. And I want to bring up what Ira Magaziner said today as an opportunity for all us to start working together immediately, starting tomorrow, to figure out how by Dublin we can have some solutions. I hope you will consider this, Mr. Chair, as truly nothing but an opportunity to cooperate and collaborate and work together, not board versus chairs, no. Community members together to solve this together. So I hope in that spirit we move forward and no offense. No issue at all. I'm fine.

THOMAS RICKERT:

And we have a history of having open exchange of thoughts. So I suggest there's a queue. The invitation for Fadi stands to discuss this next Tuesday. I would really appreciate if we could go to the planning for Dublin, for the time between today and Dublin, if that's okay with you.

LEON SANCHEZ:

We however still have a queue still. If you can keep it brief, I would appreciate it. But I don't want to leave those who have patiently waited without speaking.

Chris Disspain was with his hand up but suddenly disappeared. Chris, you were after Kavouss.

CHRIS DISSPAIN:

Thank you, Leon. I'm conscious you want to move on. This was the slide that Steve tried to put up earlier on today and you asked him not to. And you did actually say we'll get to that later on this afternoon. So I certainly -- I have got no problem with

the solution, but I certainly had an expectation when Steve put up that slide, that would have been gotten to this afternoon in that section. So I suspect that's probably the basis that Fadi was working on. So just wanted to say that. Thanks.

LEON SANCHEZ: Thank you very much, Chris.

Next is Wolfgang.

WOLFGANG KLEINWACHTER: It's late on the day. We should not open new areas of conflict. And what I had in my eyes and in my ears and in my brain this afternoon was we start to realize we are sitting in one boat. And I think this is really important to recognize. And it was such a good start this morning when Thomas said let's go beyond this sole membership model. We tried to find the best solution for the whole community regardless if comes from the group or the board or constituency or whatever.

If you remember exactly, what Larry said yesterday and Ira said this morning, it was a very good guideline that we should forget about, let's say, a tense moment just a couple of minutes ago and should look forward. It was a very good proposal by Ira. Let's break this down by smaller groups and discuss more clearly how to move in a preDublin process. I think this is the challenge. Let's forget about all this, who has said what. This is not helpful, though.

We are sitting in one boat. We want to achieve something. And we should not open new channels of conflict. This is destructive.

The constructive tone was already here in the room, the whole day, and we should build on this and not go to different avenues. Thank you.

LEON SANCHEZ: Thank you very much, Wolfgang. I think we are all on the same page. Next I have Steve.

STEVE CROCKER: Thank you very much. So this is hard work. I think we've all been here. One thing that you are hearing in various forms is two sides of the same thing. The board is not in opposition. The board is not an adversary, at least that's our view. We are part of the community. We're here to help. And we want a -- as much of an organized and successful conclusion and improvements in the exact same things that everybody else wants here in accountability.

That does not come through, frankly, and that's what you're hearing, neither in the basis for the group or the way we've been treated. It just adds to the burden of trying to get somewhere because it's an unnecessary drag on this. We operated in good faith. We will continue to operate in good faith. And we are very empathetic, truly, on the difficulty that you as chairs and that the group as a whole has in trying to move this forward.

There is no way to escape dealing with the substance. None of us can have any way to escape that. And everybody is proceeding as best we can. And one way or another, we're going to grapple with all of that, however long it takes.

We have heard multiple times from Larry Strickling, from Ira Magaziner, and others that there is a definite risk that if we are not able to wrestle this to the ground in a reasonable amount of time, that the whole thing may fall apart. None of us really want that at all.

But as I said earlier, we have an obligation as a community to put something together that is an improvement over where we are, and that is part of our mindset.

I support what Fadi has said and Bruce has said and with all of my colleagues. With that, I just want to urge that we take a deep breath, stay focused on what the goal structure is and appreciate the challenge not only intellectually on the objective issues but also the challenge personally on stamina and on composure. I am as subject to that as anybody. And I appreciate the difficulties. With that, I think we are fundamentally on the same side and trying to achieve the same things. And so I counsel that we should have that as our attitude going forward. Thank you.

LEON SANCHEZ: Thank you very much, Steve.

I'm closing the queue after Mathieu Weil. Next I have George Sadowsky.

GEORGE SADOWSKY: Thank you. I just want to support the comments that my colleagues in board have made. In the interest of time, I will stop there.

LEON SANCHEZ: Thank you, George.
Mike?

MIKE SILBER: Thank you, Chair. Maybe just one comment. I think Thomas specifically to your comment as to your exclusive right to call consensus, I think maybe you should qualify that. I think it's the chairs or co-chairs right to call consensus in the CCWG. I don't think it's the co-chairs right or prerogative to call consensus in the community more broadly. I think that's reserved to the chartering organizations. And I think that as directors, we have a fiduciary obligation to consider the views not just of this working group. So please give us a little bit of leeway. We don't intend treading on your toes and interfering with your prerogative, but we are looking at what other people are saying. And I think it is well within our prerogative to do that.

THOMAS RICKERT: Mike, brief response. And I think we should really move on. But it is our duty as CCWG to analyze all the comments and see what level of support from the community we have. So I think it's a misstatement of our role to say that we are not there to look at the community's views on what we are doing. It is a core task. And just to be very honest, it's more a challenge and a burden rather than a privilege to be doing that. So if I had the opportunity to let somebody else do it, I would gladly do so.
Keith.

KEITH DRAZEK:

Thank you, Thomas. Thank you, Leon. This is Keith Drazek for the transcript. Just trying to take stock over the last couple of days and look ahead to Dublin, I think -- I have five points, and I think it reflects some of the discussion that we've just had and some of the discussion of the last couple of days. I think we need to continue our review and assessment of all the public comments from the second public comment period. We are in the middle of the process here. We have an established process that must be followed. From the public comments received, including the boards, we need to identify the areas of our proposal that require additional work including further explanation and/or adjustment.

It's pretty clear from what we've heard, what we've read, what we've seen that adjustment is going to be required. So for the areas that require adjustment, we need to clarify and clearly show how the adjustments evolved from the public comments and the discussions. We need to show our work. This was clearly stated by Larry Strickling and NTIA, is that we have to document how we got to where we are and document where we are going. This is going to be important to inform any follow-on proposal and public comment period. As part of that process, or in parallel, I think we should consider Ira Magaziner's proposal to delegate some follow-on solutioning work to smaller groups. The public comment response to our second proposal has shown there is a lot of work to be done. As Ira and Larry both noted, time is getting short. I think we need to focus on delegating our work to groups that are prepared to focus and to deliver something in return for consideration by the CCWG.

And I think, finally, everyone must be prepared to compromise, to reach consensus without compromising our well-established goals. The community has been very clear from the beginning of this process through multiple public comment periods about the goals and from my reading of the board's feedback and even the comments distributed to the list today is that I think the goals -- there's strong alignment on the goals. I think we just have to figure out how we get there. I think we are getting closer. I think we actually did make a lot of progress over the last two days. Maybe not as much as we had hoped, but that's the nature of the beast.

And so, finally, on the comment of compromising without compromising on our goals, that's going to be true for the board as much as it is for the CCWG and the community. We all have to recognize that compromise is going to be necessary. And if we go into the next several weeks, going into Dublin with that mindset, I'm confident we'll get to where we need to be. Thanks.

LEON SANCHEZ: Thank you very much, Keith.

Next I have Mathieu Weill. Mathieu?

MATHIEU WEILL: Thank you, Leon. This is Mathieu Weill speaking. I haven't been speaking very much during this meeting, and it has been quite a change compared to other CCWG meetings obviously. And I will only speak to one point which was the question that -- the offer actually that was made by Fadi about helping us in our way

forward. And I think that's a good question to ask what can the board or Fadi or staff or anyone do to help this group because obviously as was stated by Steve Crocker, we are facing some difficulties. And that's the nature of the beast.

So I think the first thing that can be done is provide our group with the appropriate room to breathe and do the work we're supposed to do, starting with a thorough analysis of the public comment and, of course, as well as organizing and delegating work so that we can proceed efficiently.

And I'd like to stress that help is very welcome from the board members as well as Fadi individually or staff members in all work parties as individual contributors.

But help is also welcome in reaffirming the process that was set up initially and the fact that our -- the outcome of our work will be considered even if it's not in line with the view that the board has expressed as a stakeholder in the process, which was totally legitimate.

I think we've seen a lot of blogs recently around the CCWG by many stakeholders, probably this item would be a perfect topic for a future blog that would certainly reinforce the process.

Another thing as well is certainly this is not the time for us to start duplicating work, whether it's analysis of comments or power and processes of interactions and consultations. We need to streamline the process. We need to trust this process. And I think this is really the take-away message that I'm taking from this meeting, is that we need to put the process first if we want to make sure we deliver quality results in the end.

And, finally, I want to express how grateful I am to all the group members, everyone in this room for demonstrating their willingness to listen to the community input and, of course, the board's input is a very valuable one, but I think you've heard a lot during this day, a number of people expressing concern that we're not far enough in the community input analysis. I think that's probably the result of the way the meeting was organized. And that's just history now, and we need to look forward.

I also want to share my empathy and support for Leon and Thomas. They have had this Herculean task to manage this very, very difficult meeting taking place not exactly the way we were planning it to be and they have been flexible. They have been listening to inputs from the room. And I am admiring their ability to keep this running in these conditions. And I wanted to put that on the record. Thank you.

LEON SANCHEZ:

Thank you very much, Mathieu. We did miss you, and we do appreciate that you are hanging with us at this late hour from Paris.

As you will remember, I had closed the queue after Mathieu and we really do need to move on on our road to Dublin. So let's move on.

Thomas.

THOMAS RICKERT:

Thanks very much, Leon. I guess what we need to do now is flesh out as briefly as we can because I know that drinks are

waiting for us what we are going to do between today and Dublin. So I think our priority number 1 is working on the analysis of public comments and writing up our report, drawing our conclusions, agree on improvements to the report. And in parallel, I would like to give maybe Keith the opportunity to flesh out again a little bit what your concrete suggestion on a subtheme was. I know that Ira had suggested we would form a group. I guess, that's what you are picking up on. So maybe you can illustrate that a little bit more.

KEITH DRAZEK:

Thank you, Thomas. I think we heard Ira suggest if we were able to find some representatives from the community, the CCWG board and staff, the legal teams depending on the topic that we might be able to focus and drill down on specific issues and try to create solutions or suggested solutions that would then be brought back to the community or back to the CCWG for consideration. I think if I heard it correctly, it was a suggestion to try to delegate some level of work and to focus and to, I guess, work a little bit more efficiently because of the time constraints that we're under.

I think he suggested that not all the work can be done by everybody in the time that we have, and I think that we ought to at least discuss that and consider it perhaps on our next call on Tuesday.

THOMAS RICKERT:

Thanks, Keith. Any more views on that topic? So let me just check. I'm not sure, Steve, is that a new hand? Chris.

CHRIS DISSPAIN: Just to say -- thank you.

THOMAS RICKERT: You left your hand up, right?

CHRIS DISSPAIN: No, I have the ability to move it up and down the list just randomly. I just want to say that I think Ira's idea was actually really sensible, and I think that how successful it can be is demonstrated by the way that the small groups operated in the breakout sessions over the last day. It seems to me that you could take a view that you can't set up a group that has got a board member on it because that will be the board influencing. It just seems to me to be nonsense. If you take a view it is time to start widening the discussion, there can't possibly be anything wrong in trying involve the wider SOs and AC chairs in this discussion, they are the ones that are going to be talking about this in Dublin. It strikes me having spent the morning with Greg Shatan and I, basically, spending a huge amount of time on the same page, both figuratively and literally, that it's demonstration that this will be a very sensible thing to do and it's something that we should take advantage of as a really good suggestion. Thank you.

THOMAS RICKERT: Thanks very much, Chris. I'd like to close the queue after Jonathan. And when you speak, can you please keep it brief. Maybe you can also speak to suggestions on how to operationalize this, who should be on it, what should be the mandate and so on and so forth. Next is Greg.

GREG SHATAN: Thanks. Greg Shatan, for the record. I think we can look to our sister group, the CWG, for some thoughts on how to operationalize this. We in that group came to a similar point in our work where we broke down into what we called drafting teams, which we were A through M. So you had maybe they went a little longer than that 13, 14 teams, each of which took bite size chunks, really simple topics and were tasked with bringing them back to the whole group on a fairly short time frame, couple weeks for review. Some took it longer to bring it back. But the idea of getting small groups working on discrete chunks really worked well. And that really was what helped us get over the hump in that group. And I think you can speak to your fellow chairs, get a sense of how we organize that out. But I really think that provides a model for us to follow. Thank you.

THOMAS RICKERT: Thanks, Greg. Seun.

SEUN OJEDEJI: This is Seun, for the record. Thank you very much, cochairs, for your leadership. I just want to mention that this meeting was supposed to be a very good advantage in that I look at the room and it looks like there's a lot of people in here both physical and remote. I'm not sure we can get this kind of participation again before Buenos Aires. It -- Dublin, sorry. Dublin. So I think we lost that very unique opportunity to get a lot of contributions from this huge participation we are experiencing in this particular meeting. So that said, please, as we prepare to do something or fix this, let's all remember that some of us will be participating remotely. We will not have as much resources for

time to actually fully participate in this. Please put that in mind, and let's actually go for a solution that will be effective as well supports what has been suggested by Chris that we should actually have a blend, a mix of these working groups of the different communities, so that we can create a very direct and specific solution to the problem. We have been avoiding the obvious problems, issues. And I think we have to face it. If we don't face it now, we will never get anything done or presented in Dublin. That's my view. And please, I hope you take it serious. Thank you.

THOMAS RICKERT: Rest assured we take it seriously, Seun.

Next is Kavouss.

KAVOUSS ARASTEH: Yes, Chairman. First of all, I'd like to express my sincere thanks to the ICANN staff assisting us all the way through after and during the meeting and really I appreciate it.

Secondly, I would like to express also our thanks to the ICANN board, Steve Crocker, and Fadi Chehade, all distinguished board members. They came here. They shared their views with us. We are really grateful to ICANN to provide this very valuable document to have something to have a conclusion which is more acceptable to the community. Distinguished Thomas, you, like us, are human beings. Sometimes we lose our temper. Sometimes we are under pressure. Perhaps Mathieu is responsible for that. Because even if he was here, he would have really helped you to take part of this burden. I know you

were under pressure. We appreciate all your hard work. I have already admired you. I continue to admire you, and we would like to work together. We would like to maintain the environment of friendship, respect, and goodwill with each other and transparency allowing the people to really and very openly discuss with each other. We are all equal. If you are on the chair and participant, you can equal. You should be respected. We respect you. You need to respect us. I'm sure you will do that. Let us maintain this group. This group, in my view, is a lovely group. They are working very, very well. Very high experts in the group, except me, all of them, good lawyers and so on, on the Board. We appreciate and have learned a lot from all of you. And hope that we continue to learn from each other. Thank you very much, Thomas.

THOMAS RICKERT: Thank you, Kavouss. You stole my thunder on a couple points. Anyway at the end of the session, just when you think I've lost my temper, I think you said, I didn't. Rest assured I didn't.

KAVOUSS ARASTEH: In tone, but not in face. But in tone, yes. I'm spending 41 years, I know what --

THOMAS RICKERT: I think I should make one thing clear. Because there's been a lot of back and forth on this particular point.

This was by no means meant to suppress Fadi's views. The issue was with the presentation of what the community said and its

comments. So I'm interested in preserving the integrity of the process. That is all. And I would have said that to anybody else in the room coming up with the same suggestion. I'm happy to express this over wine or beer, when we meet. I'm sure I will talk to Fadi again. So there are no hard feelings at least from my side, and Fadi has confirmed that as well. Avri.

AVRI DORIA: Thank you. Avri speaking. After that I'm tempted to try to make you lose your temper. Because I'd really like to see --

THOMAS RICKERT: Try me, try me.

AVRI DORIA: No, the point I wanted to speak on was referring back to Ira's talk. And, first of all, I wanted to point out that we've been using that technique. Maybe we've been cutting and slicing differently than the CWG did. But we've had so many little groups. And, when it was necessary to talk about human rights, we built another little group. And we reached out to the community. And they joined the CCWG and filled out all those SOI forms and were brought in.

So doing it in little groups is not new. Perhaps the A through N methodology that CWG used was easier to understand than the W1 through 4 with all the little subgroups. But we've been doing it.

So now, the issue I had with --

[Applause]

The issue I had with Ira Magaziner's recommendation, though, was he seemed to be recommending that some small group of bosses go off and make the decisions and bring them back to us.

Now it's quite possibly I misunderstood him. I hope not. We're both Rhode Islanders. So I always cheer for them, and hope I understand them.

But, really, that notion I would have problems with of a few leaders going off and then coming and telling us this is what we've decided. I think we're already doing the slice and dice in the little groups. And we should keep doing it. And some day I'm going to make you lose your patience.

THOMAS RICKERT: You know, Fadi -- for the remote participants Fadi kindly brought us a beer, a Mexican beer for myself. And I'm not sure whether that was actually a good idea. Because, if you give a German a beer, he can work for another couple hours. So -- cheers.

CHRIS DISSPAIN: He'll be doing it on his own, of course. But --

THOMAS RICKERT: To Avri's point, I think you're perfectly correct in saying that the idea of having subteams working is not revolutionary. I think we need to be very cautious not to make such an idea look like there's a small negotiation team that does the deal.

The way I understood it -- and I think there's a lot of benefit in that -- is to ensure that the different SOs and ACs, as we progress towards consensus, do not work on subjects that would cross red lines or that we can see that, you know, obviously, there's no way for us to reach consensus.

So I would rather see this as a concerted effort with the works being done by the CCWG. But the groups talking to each other more closely. Maybe with the support from lawyers from outside to ensure that we increase our chances of success before we submit to the chartering organizations.

Jonathan.

JONATHAN ZUCK:

Thank you. I would like to add my thanks to the chairs for doing a great manage a meeting that has to change its focus many times over the course of two days. I certainly didn't feel like you did anything that was untoward or rude in any way.

My understanding of our original plan is that we are going to try to identify the issues that raised specifically with the CCWG proposal and see if we can address them and, therefore, make modifications to our proposal that address the concerns that were raised in the public comments including the board's and with those modifications be able to move forward to a final recommendation somewhere down the road. Through various messages we seem to have received from the board, not to single the board out, is that there are no circumstances under which the board will advance a proposal that involved a membership model. That's my understanding. Just so we are

all talking about the spirit of cooperation, my understanding is the board has stated clearly there are no circumstances regardless of what efforts we make to address the concerns that are raised that they will advance a membership model.

If that's true, that's fine in a way, right? It makes it tougher to paint the board as a victim in this process but if that's the truth, that's good to know. But if we are going to change the underlying model that we have put out for public comment, my question is one of process. Are we going to need to go back to public comment with a new model?

THOMAS RICKERT:

That's not a question for us to answer for today. Let me try to respond to that in a more general fashion. First of all, as I said, previously, we are going to analyze comments and we are going to work towards solution that reaches consensus in the whole community.

Whether or not we need to go back to public comment depends on how fundamental the changes to our recommendations are. I would consider this is a preliminary judgment that if we change the legal vehicle for community powers to be exercised, then we will need to have another public comment period. But I think we're not yet there. I think we met here to be open spirited to whatever solutions are best for the organization supported by the community.

I think -- and I think I have said this on a couple of occasions. I could sit with each and every one of you, and we could come up

with as many solutions as there are subteams and all of those would probably be robust and solid.

The community doesn't always come up with the most beautiful solution, but we have been tasked with a bottom-up-made consensus solution. And I stick to that. And this is again why I'm saying, I'm interested in the integrity of the process. Therefore, let's analyze comments first. Let's see where common ground is. Let's see that we address concerns and after that, we are going to make a decision as to what the carrying model should be.

Qusai, the queue is still adding up. After Chris, we really need to stop.

Qusai.

QUSAI al-SHATTI:

Thank you, Chair. Let me commend you and your colleague on the management of this and, therefore, managing this meeting. And thank you for your effort.

I would like also to thank the CCWG team in preparing the second draft report. It is a huge effort. The report is so much detailed that it triggered many public comments, many views, issues on consensus, issues in a process, issues that doesn't have consensus.

I have a suggestion that we take this report in stages or phases rather than one shot.

Focusing first on the issues related directly to the IANA transition itself, issues like the IANA operation, the service level, the

funding, or the budgeting of the IANA. Maybe that will help us within the time constraint that we have from here to Dublin. Maybe that will simplify the work of the smaller working groups rather than dealing with such a wide report that some aspects of it relates strictly to the ICANN operation itself. Some of it are indirectly related to the IANA transition and some of it not directly related.

So my suggestion is to forecast -- to take it stages or phases and to focus first on the issues that is related directly to the IANA transition. It's just a suggestion. Thanks.

THOMAS RICKERT: Thanks, Qusai. Next is Avri.

Chris, how do you manage to get the last word all the time?

CHRIS DISSPAIN: I don't know. I told you I can move myself up and down. Just a question for you actually. If you have already covered it, I apologize. On the subject of the road to Dublin, you gave the impression in the last CCWG call that I was on, which I think was the penultimate one before this meeting, that you weren't -- you were clear that we weren't going to have a final report for Dublin. Is that still -- are we still clear that that's the case?

THOMAS RICKERT: If there is anyone in the group thinking we can reach consensus on a model without having agreement on the legal vehicle for it, speak up. I think it's unrealistic, and that's been proven in the barriers and complications.

CHRIS DISSPAIN: Might I respectfully suggest that it might be a sensible thing for you to tell the chairs of the SOs and ACs that they should not expect to see a final report before Dublin because they might need to adjust what they will be doing in Dublin because I think that's what they were told to expect. So just a suggestion for you.

THOMAS RICKERT: Yes. And that's a very good one. I think we've tried to channel this information to a lot of channels already. I think our expectation would be to have the fundamental issues resolved by them and discuss with the community so we will be able to come up with a consolidated final report a few weeks later.

So with that, I think we should end this meeting.

I will be repetitive of what Kavouss has said in part. So let me thank ICANN staff for their awesome support.

[Applause]

And a specific shoutout to Nancy. She gave us a room with daylight. We had daylight!

[Applause]

Thank you to the technical people who made it possible for us in the room as well as remotely to understand each other.

[Applause]

Thank you to the XPLANE guys that came up with great visualizations of what we are doing.

[Applause]

Thanks to the remote participants. It's such a challenge to stay on and concentrate for so many hours. You are awesome, guys.

[Applause]

Thanks to everyone in the room. I won't give special credit to the board because we said we are one. So it is this group in this room, we have another challenge in front of us. Thank you. For all of your dedication.

[Applause]

Thanks to the lawyers who have helped us a great deal. Thanks to the rapporteurs and subtheme chairs. They are doing all the hard work. We are just taking the credit for it.

Mathieu has been great. Remotely Leon has been great. And I thank you all for your dedication.

[Applause]

LEON SANCHEZ:

And, of course, thank you to Thomas as well.

Cheers.

Don't everybody clap at once.

Consensus on one thing.

[END OF TRANSCRIPT]