
CCWG Meeting
Friday, 25 September 2015
Los Angeles, California

LEON SANCHEZ: Good morning, everyone. We are beginning our session. We have a very short time to do a lot of work, so I suggest we get going.

Good morning, everyone. Welcome to this CCWG face-to-face meeting in L.A. Day 1 session.

I kindly remind you to state your name whenever speaking for transcript purposes and of course for the benefit of our remote participants, and of course remote participation is encouraged. We welcome remote participants to please have your voice heard through the AC room.

We will be managing both a face-to-face queue and an AC room queue, so please do raise your hand if you are present in the room and you are also in the Adobe Connect room.

Please do raise your hand in the Adobe Connect room so you can be put in the queue. Otherwise, we will be having quite a problem managing the queue, so please do enter to the AC room and raise your hand if you want to speak.

We've gone through a couple of rules in our previous meetings. I believe we all are familiar with those rules. However, we would go through them very quickly, and it is very important for us to focus on what we need to do in this meeting.

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And I mean this by getting it right with regards to Work Stream 1 and of course having a look at what we will be doing on Work Stream 2.

One of the most important things for us to do in this meeting is to focus on the NTIA requirements and the CWG requirements, so I really encourage all of us to participate in an open-mind way, in a positive way, in a constructive way, collaborative way, so that we are mindful of what we need to address before the transition takes place in order to meet these NTIA requirements and the CWG requirements.

We would like to remind that all views are welcome. Everyone will have a voice in this room. We are all here together as stakeholders, so it is important that everyone is heard and that we have a respectful approach to everyone's points of views.

Some of the rules, as I was saying, are openness, of course. The work will be based not only on the participations that we get here and through the Adobe Connect room, but also on the work that has been based -- or written or received in our public comments.

We need to focus on this second public comment period work. We need to finalize analyzing those comments from the community, received from the community, so we can build a better proposal for our delivery as a group.

Let's keep the interventions concise and focused. Let's remember the rule on one topic per intervention as a best practice, and we do have a timer and we know how to use it, so

at a certain point, we may introduce this timer to keep interventions concise and short.

This applies, of course, to the chairs and to the rapporteurs as well.

Let's remember that Day 1 and Day 2 are different meetings, so for the purposes of maybe having to take decisions, if we do go into taking decisions, these are different meetings, so this will also be different readings.

As I said, we need to focus on NTIA criteria.

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

EBERHARD LISSE:

Given that this meeting is very poorly attended and two-day meetings are one meeting, I object against having this counted as two meetings and I object to any decision being taken as having read twice.

LEON SANCHEZ:

Thank you very much, Eberhard. Your objection has been noted.

And, well, continuing on our focus for this meeting, I would like to remind everyone on the NTIA criteria that we need to address, and Brenda, could you please put on the next slide? These are to support and enhance the multistakeholder model, maintain the security, stability, and resiliency domain name system, meet the needs and expectations of the global customers and partners of the IANA services, maintain the openness of the

Internet, and our proposal cannot replace the NTIA role with a government-led or an intergovernmental organization solution.

We also need to meet the CWG stewardship requirements, and let's hope we can find consensus across all the members and participants of the CCWG.

As you know, we have two work streams, as I said at the beginning. Can we go to the next slide, please?

And we will be focusing on Work Stream 1 issues, and just as per our charter, Work Stream 1 mechanisms are those that, when in place or committed to, would provide the community with confidence that any accountability mechanism that would further enhance ICANN's accountability would be implemented, if it had consensus support from the community, even if it were to encounter ICANN management resistance or if it were against the interest of ICANN as a corporate entity.

So this important note at the footer. It is not restricted to whether there is direct impact on the IANA function, consistent with the creation of the CCWG accountability in parallel with CWG stewardship.

So with no further delay, I will now hand it to my co-chair, Mathieu for the next item.

THOMAS RICKERT:

I'm happy to be Mathieu if you want me to --

[Laughter]

-- but my name is Thomas Rickert, for the remote participants, and Mathieu Weill actually can't make it for this meeting but he's attending remotely and he conveys his hello to all of you.

I hope that we're going to have a very interesting, very fruitful session, and I think in terms of our dialogue, you will understand that we will try to be as inclusive as we can with remote participants, so let's make sure that all views are being heard.

And in order to make it easier for the remote participants to follow, please do state your name and your affiliation when speaking, and we have a lot of board members here today and we would like to encourage the board members to say so if they present a board view versus a view that they might have as an individual, because I guess that will help our group understand what the board's positions are and what the positions of individual directors are.

We would like to welcome you all. This is a very important meeting. We very much appreciate that you take the time to be with us for these two days. And before we dive into substance, we would really like to capture where we are at the moment.

And while staff is going to bring up the slides for that, let me just be very clear that what we've put in our report -- and I think to a certain extent we have not fully accomplished signaling that -- we are describing escalation paths, and this is perceived by some as us trying to attempt to turn ICANN's decision-making upside down entirely.

So it will still be the board that is in charge of the operations. It's just to replace the U.S. government backstop for a limited

number of powers that would allow the community, an empowered community, to step in and ask the board to redo certain decisions, if, after a consultation process, the community's consensus views are not adequately reflected in the board's resolutions.

So I think let's keep in mind that we are keeping most of what makes ICANN -- the policymaking, GAC advice, all this will remain exactly as it is today. We're just adding a few bits and pieces in order to meet the requirements that have been put in front of us in order to enhance ICANN's accountability.

So for this meeting, you know, we tried, with the help of our friends from XPLANE, to set everybody's minds focused on what we're trying to do here. We recently closed our second public comment period. We have not yet conducted a full-blown analysis of all these contents -- of all these comments, but we do have a public comment tool that -- where all the comments are put in and where a first round of analysis has been started by staff to help us see where we have agreement and where we need to put some more work on.

So on the left-hand side of this slide, you see all the comments that came in, and actually the number is still growing. Fortunately, we had comments from China coming in, so it's good to see that geographic regions that have not been very dominant so far in this process are speaking up and making themselves heard.

So we have all these comments coming in, and what we need to do now is keep an open spirit, keep an open mind, as we did after the first public comment period.

When we presented our first report to the community, we got comments from the community. There were concerns by the community. We looked at that, we analyzed that, and we adjusted.

But adjustments doesn't mean that you lose anything. We improved. And I think that's very important to note that we are trying to be as good as we can with this exercise.

So let's be open to all community input that we received and that we're going to discuss during these two days.

We will speak about areas where we have support so far, so even if we've talked a lot about concerns and constructive criticism in the last few days, for most of the areas of our report we do have significant community support.

Let's not forget that.

And if you look at the board matrix showing where the board is in disagreement with what we're doing, these are four points out of like 30, 40 points. Four points. And if you look at those four points -- actually, it's three because there's one duplication in it. Right?

So we think that we're in quite good shape to apply finishing touches to what we've come up with so far.

There are important points that we need to discuss, but let's not forget how far we've gotten so far.

Let's review the comments that we received, let's try to better understand what the concerns are, and then let's try to take on board the best ideas.

Again, let's try to not see criticism or the need for change as a bad thing to happen.

We have put so many brains to work in the last couple of weeks. We had very high-quality comments and we can now cherry-pick, which I think is a very luxurious position to be in. We can cherry-pick. We can take the best ideas of all the stakeholders and make our proposal stronger.

Let's focus on requirements. There's been a lot of talk about different implementation models, and I would caution everyone not to be tied to -- married to a certain implementation model. When this group started its work, you will remember that we looked at requirements, we established requirements, that we see need to be met in order to enhance ICANN's accountability, and we said from the very beginning that as long as we come up with a concept that meets the requirements, the implementation doesn't that much matter. If your requirements are met, if concerns are removed, then there shouldn't be nothing to complain about.

So let's keep that in mind. Let's work on requirements, let's not discuss models, but let's discuss what we need to address, what we need to address now. We need to talk about prioritization in a moment.

And let's focus on concerns. Let's make sure that the model that we're coming up with, a refined proposal, has ideally none, but if at all, as little unintended side effects as possible, as less risk as possible, because the least we want to do is destabilize ICANN or make ICANN worse than it is today. Not saying that it's bad now,

but, you know, we don't want to have a negative spin on this, but we want to take things to the next level.

And just as a reminder, we've confirmed this with Bruce Tonkin, who is our board liaison, who has said, "Yes, we're going to start the discussion based on the structure of our report."

Remember, we had a public comment period on our report, and I think it would be very disrespectful of the commenters if we did not follow what we had in our report.

And let's see what comments there are. Let's see what concerns there are. Let's try to -- let's see whether we can remove the concerns based on what's in the report, and where that is not possible, we need to rethink what we had in our report.

Maybe some areas can be refined. Maybe some areas can be rewritten.

Maybe some areas can be further clarified to remove concerns. Because we need consensus on this. That's the most important thing.

And then after having done that, we will hopefully come up with a revised CCWG proposal.

Let's move to the next slide, please.

And that is the allocation of time and energy.

As you can see there, I think what's quite usual in groups such as this is that everybody has his or her favorite topics, things that he or she thinks are very important, things that maybe the individuals have been working on as subgroup members, as pen

holders of certain areas of our report, and they want to become live. They want to see this be part of the bigger picture. They want to see this being operationalized rather today than tomorrow.

But what we think we need to do is look at the resources we have. We have limited time. We have a limited number of people. We know that people have day jobs next to this exercise. So we -- we have -- we try to visualize this. We have 100 coins to spend, and so far we may have thought that we can allocate 10 coins to 10 topics, but now that we see that we got comments on certain areas, that we got a blog post from Larry reminding us that there is more work to be done in certain areas, that means that we need to reallocate resources.

The resources at our fingertips don't grow with increased demands or with an increased number of tasks, so we need to prioritize and make sure that we do the most important things first, and whatever we can do later, we should be doing later.

You will remember that during last Tuesday's call, I asked all of you to go through your requirements and score them, to find out each for yourself what's important and what you can do later.

That's not that we're going to throw things under the bus. Everything's important. Everything's going to be dealt with at some point. But we have Work Stream 1, we have Work Stream 2, and maybe there are things that we can do at a later stage. That doesn't mean that it's less important but we just need to make sure that we get the priorities right.

Next slide, please.

That leads us to the requirements.

So we tried to visualize, on this slide, what the requirements are.

We have three sets of requirements: NTIA requirements, CWG requirements, and our own requirements.

And one thing's for sure. We need to make sure that we meet NTIA requirements. And due to the conditionality with the CWG and the conditionality of the chartering organizations' approval of the CWG requirements, we also better make sure that we meet CWG requirements.

And then there is an extra set of requirements that our group came up with.

So NTIA requirements, it's a must.

CWG requirements is a must.

So things that we might talk about in terms of prioritization are our own requirements.

But if you look at what we've come up with and what the CWG is asking us to do, if you look at the colors used here, you see that everything basically that we put high on our list is requested by the CWG.

The power to reconsider or reject the operating plan and budget, that's a CWG requirement, and they've confirmed that in their public comment to our report.

The power to reconsider or reject changes to bylaws, that's also something that they've asked for.

The power to approve changes to fundamental bylaws. They've confirmed that this is something that they want.

The power to appoint and remove individual directors is something that they want.

The recall of the entire board is something that they explicitly mentioned as a must in their recent comments.

So that shows that the CCWG's requirements are not, in terms of topics, going beyond what's requested by the CWG.

Even they asked for enforceable appeals mechanisms, enforceable rights. We've double-checked that with their submission to the public comment period.

So even though NTIA doesn't ask for enforceability, CWG asks for enforceability.

So we need to carefully look at what the subset or what details of these requirements are that we can maybe discuss later.

It's not going to be easy, but I encourage each and every one of you to raise their hand either here or in the Adobe room if they -- if you find a point that you say, "Well, this is something that's not needed now, this is something that we should not erase from the list at all but that's something we can do later."

So whenever you identify something during these two days that you think we can afford to do later, please do speak up.

Next slide, please.

So these are the requirements, but let's now talk about where we think we're good to go or almost good to go.

So we've come up with three different areas, and those that have attended last Thursday's call -- last Tuesday's call will remember this.

We have consensus on everything that's in the right-hand column. So I read out the list for you, so I read it out particularly for the benefit of the remote participants, and then let's please test with this group and confirm whether you think that this is okay.

Because let's remember, the thorough analysis of the comments is still pending, so this is our initial assessment of what we got from the community.

Existence of fundamental bylaws has strong support, if not consensus.

That we need core values with a balancing requirement.

Principles of binding IRP. Again, this has been confirmed and asked for by the CWG.

Standing panel and exclusions for ccTLDs.

The principle of the five community powers.

AoC reviews and their five-year frequency.

Jurisdiction works in, too, and not focused on ICANN's headquarters but rather on the applicable law for disputes and contract language.

Standard bylaw change. There's principal agreement on that, that we need that.

The existence of the community forum.

Request for reconsideration, reconsideration enhancements and add staff to ombudsman. So these are the area where we've got overwhelming community support.

And if you think, you know, there's something missing on this list or there is something on the list that shouldn't be on the list, please do speak up now. Because otherwise, I think we should proceed on the assumption that these are areas good to go.

Now maybe show stoppers is too strong of a word, but we have disagreement or we -- we have different views on the model and most dominantly whether the community mechanism as a sole member or the MEM is the better way to go. Alan Greenberg suggested sole designator model. So, you know, we have different views on what model is the best.

And talking about the model, the model is the area that is the implementation vehicle for what we're doing. And when we are going to discuss these two days, we're -- let us please all focus on requirements and concerns and then the model will come quite naturally. So let's please all follow this. Let's not let this become a battle of models. And we apologize for the heading of the next agenda item having been misleading because that sounded like we want to have a clash of legal -- legal arguments. That's not the case. We'll hear that in a moment.

Then we have the budget veto. That's an area of concern. We need to work on that. And stress test 18 bylaw language is going to be an issue. We're going to spend a lot of time on those areas as we move along. So we're not going to discuss a lot what's

found on the left-hand side. These points are the points that we should resolve, where we should reconcile the differences. And on the right-hand side you find areas that we need to discuss but we think that these are areas that we can likely do offline in sub-teams. You know, they just need to mature a little bit more, but they don't show so many fundamental differences. And that's human rights. We know there's more work to be done in that area. Contract enforceability -- enforcement capabilities in the mission commitments and core values. Scope, standard of review and timeline. Cost for the independent review panel. Support of the AoC reviews by consensus. Then the process for fundamental bylaw change. Board removal and recall for cause or without cause. And then the question, do we want a Work Stream 2 or are we going to discuss the -- the Board's idea which I think I can say that now, which I find quite charming, to tack those continuous improvements and put them into ATRT 3. And we can still hard code that into the bylaws so that everybody knows these are going to be issues that are not forgotten, that are not being put on the back burner. But as I said previously with the coins, we can only do so much at a time.

And I think that's the last slide, isn't it? So this is more or less to get everybody focused on what we've achieved so far. I mean, this left-hand column is quite impressive, isn't it? So we have consensus on many areas that are important.

What we're now going to do, and this is what we're -- and I hope that you will all agree with us and I would like to invite Rosemary and Holly to the table if you want to. We're going to try to understand the concerns coming from the ICANN Board papers because I think we really need to understand what the concerns

with our proposal are and address the concerns. And I think there's been some confusion about what the motivation from the Board was to come up with alternative suggestions, and we think the best way for us to discuss this is actually agree with the Board on our correct understanding of where the concerns lie. And for that session to be chaired, I'd like to hand over to Leon.

LEON SANCHEZ:

Thank you very much, Petit. This is Leon Sanchez. I see Sebastien Bachollet. No? Oh, do we have -- oh, so we have some queue already in the AC room. I apologize for overseeing that. So we have first in the queue Avri Doria. So Avri, could you please take the floor?

AVRI DORIA:

Yes, thank you. Avri Doria speaking. I want to sort of question some of the ebullience of the left-hand column on consensus. Because so many of those things are listed as principles of, principles of, principles of. Which without an underlying structure that supports them are really words in the wind. So to say that we have agreement and consensus on those things, I really don't see that as more than a fantasy that makes us feel happy at the beginning of the meeting. Because without the means to do them, we have consensus on nothing. Thanks.

LEON SANCHEZ:

Thank you very much, Avri. Next in the queue we have Alan Greenberg.

ALAN GREENBERG: Thank you very much. Two points. Again, in the same gist as Avri's, we all agree on core values but we don't necessarily agree on the specifics in the proposal, the wording of the core values. So that's a -- you know, there's a conditional on what we're approving, what we're agreeing on there. And on the second one, the principle of the five community powers, some people word the powers differently. So the fact that budget veto is in the second column, some people take one of the community powers as budget veto and they would say we don't agree on that. So there's some conditionals or parentheticals on the left-hand column.

LEON SANCHEZ: Thank you very much, Alan. I think the intent of the left-hand column is to identify common grounds that we have made a lot of progress in and we have a general accepted consensus. But we do have an agenda that will go into addressing each and every one of the powers, each and every one of the core values, et cetera. So it would be, of course, taken into discussion when we get into the specific point in the agenda later in the day.

So next in the queue I have Sebastien Bachollet

SEBASTIEN BACHOLLET: Thank you very much. Yeah, I just want to raise here that I am not part of the consensus about the five community powers. You know that I disagree with somewhat on the budget and I strongly think that we need to find other way to have -- to change the Board members way proposed. It's not a good one from my point of view.

And my second point is that I would like very much that in the show stopper we talk about the model and maybe we didn't list any of those models because as you say that there could be a sub-model coming and I would like very much that we focus on what we have done but also a good idea who can come on and build a new model or a model we already discussed slightly. And I would like very much that we don't put the brackets. Thank you very much.

LEON SANCHEZ:

Thank you very much, Sebastien. We will be going into what you just said, and I would just like to remind that this is not a model competition but rather a way for us to build the best model that we can for the future of ICANN and the future of the Internet. So next in the queue I have Jonathan Zuck.

JONATHAN ZUCK:

I guess it's not a model competition but it might be a model talent competition, once we look at the requirements.

I actually just wanted to speak back to something that Thomas said about prioritization, and it seems to me that one thing that might help be a clarifying issue is to reiterate what our criteria was for Work Stream 1 versus Work Stream 2. And that if we do that and change the vocabulary about it a little bit or clarify the vocabulary about it, it might help to deescalate some of the emotions surrounding it.

So my recollection is that the criteria for Work Stream 1 were the power's sufficient to ensure that the Work Stream 2 reforms could be accomplished. And that that was in fact the criteria for

Work Stream 1. So what's interesting about that is that it does help us to identify what the priorities should be in Work Stream 1. It also doesn't suggest that those things are more important than the things in Work Stream 2. They are simply the things that are necessary to bring about the reforms in Work Stream 2. And I think if we maintain that clarification, we can make it less about using terms like pushing things to the back burner and things like that, which suggest that Work Stream 1 is more important than Work Stream 2, which isn't necessarily the case. It's literally about creating a baseline for community powers to implement the reforms as they evolve in Work Stream 2.

LEON SANCHEZ:

Thank you very much for reminding us of this, Jonathan. Next I have Kavouss and then Nigel Roberts and then Steve Crocker. So Kavouss?

KAVOUSS ARASTEH:

Good morning to everybody. We need a little bit of a smile from the chair. This is too serious. Yeah. That helps. This is experience that I have with a little bit of relaxation we could achieve more.

I don't want to get into the detail of the issue. I want to share with you some of my experience working with you, and I'm very grateful that you allowed me to join your group and share whatever I could with you.

Let us start with the accountability. NTIA was the first attach accountability to transition. So it is no doubt about that. If we look into the process, we should present something to NTIA

which convince NTIA, that satisfy the requirements and they could take it to the upper level, if it is a process, in order to be approved by the authorities that transition will take place.

Let me tell my experience that I don't think that NTIA would be any position to take alternative proposals or consider alternative proposals. They will send it back to us saying that it doesn't work. So we should have an agreement with each other.

We are grateful to the Board to making every effort and providing this very valuable document to help us understand. The problem that they raise in general is the implementation problem. I remember you went over the very high level meeting of the other organizations there was a preliminary of the conference decided on something and the chairman of the Board of that executive body said, Mr. Chairman, thank you very much. I can't implement that. I have difficulty to implement that. So something which is not implementable or has a problem with limitations need to be looked at.

We have to put our thought together to find out without any compromise to the quality of the objectives to see whether there are other ways and means to achieve that objectives which is more acceptable to the entire community, including ICANN and a proposal acceptable to NTIA.

ICANN raised a very important point in saying that you are changing the governance of the situations, going from the current situations to something which is a voting process. It may make difficulties. While they accept all objectives, they propose alternative methods. I think you have to carefully look at that one. And if it is achieving the objectives, we should take

it. If there is some room of improvement, we have to do that. But currently the way that we have proposed this voting procedures in community empowerment have -- would have some difficulties.

The second area of difficulties is the budget and strategic plan, that they face difficult things. But they purport something which is close to us with a different language and I think we could have some achievement on that.

They did not talk about the forum, but I don't think it is a major problem. This to say they don't want to discuss this Work Stream 2. I don't think that is a major problem. It could high level reference the work of Work Stream 2. But what we have to do, we have to work on what is the minimum requirement for the transitions. Something that we cannot compromise is the requirement of CWG. We cannot compromise. That is not subject to any discussions. That requires budget, removal of the directors, and bylaw. By bylaws means fundamental and a standard bylaw. I don't think that the Board's proposal has any difficulty in those areas except the budget. We could come up with that. And other alternative ways.

So if we look into the entire ground that the Board provide to us, A1 or 1A, they have agreement. It's what we have said. On B, they have agreement with some improvement and comments. I think we should agree. There are three areas they have disagreement at this stage. One is the mechanism instead of this sole member, they want to have MEM --

LEON SANCHEZ: Kavouss, we're going to discuss all these actions.

KAVOUSS ARASTEH: No, no, no. Two minutes. Let us see that we don't go to -- we go to -- what are the area that we have problems. These are the three areas. Mechanisms, budget, and accessibility and cost. This is why they put 2. At least they have to have another alternatives or we have to have another alternative. So let us look into the area that we have difficulties. The area that we have improvement we can do it with some discussions. So let us concentrate on the area of difficulties. And the first one is the mechanism, MEM or sole member or between the two. Thank you.

LEON SANCHEZ: Thank you very much, Kavouss. I think that Thomas was clear on how we will be addressing each of the issues that you very validly just raised. So next in the queue we have Nigel Roberts.

NIGEL ROBERTS: Thank you, Leon. My name is Nigel Roberts. I'm a ccNSO counselor from Europe. Most of you know me in the context of the CCWG as a participant and also in the context with Leon of facilitating the work program 4 work. But at this meeting I'm a member. I'm the alternate for Mathieu, though I'm grateful to the two of you not to have the co-chair responsibility.

My colleague Stephen Deerhake who is sitting next to me of the American Samoan Registry is here as the alternate for Giovanni Seppia.

I hesitate to overuse the word "objection." We've heard plenty of that on other occasions. But I must say that we're not in agreement regarding the triage that I see on the Board. I know we'll come to it in due course so I don't want to dwell on it at this time. But the question of ICANN's acceptance of fundamental human rights is more important than just other issues, and I want to place that marker down right now, if that's okay.

LEON SANCHEZ: Thank you very much, Nigel. Your comments and observation is well taken into account for our work later today. Next in the queue I have Steve Crocker.

STEVE CROCKER: Is this on? Yeah. Thank you very much. And I appreciate the opening comments and I appreciate Kavouss' very cogent comments.

I want to draw attention back to the question of the commitment to Work Stream 2 issues and particularly if there are elements that are moved from Work Stream 1 to Work Stream 2, what is the level of assurance that they would be carried forth. We've had some caucusing about that. Let me call on my colleague Chris Disspain to speak as part of my intervention here. Thanks.

LEON SANCHEZ: Thank you very much, Steve. Chris.

CHRIS DISSPAIN:

Thank you. Good morning, everybody. Just -- just to try and briefly address what we're calling the Work Stream 2 issue, it's covered briefly in the last paragraph of our -- of our comments. But, in essence, it follows what was originally discussed in this group quite some considerable time ago. And the -- the way this it works is this, first of all, it's -- it doesn't matter for the sake of this discussion what you put in Work Stream 2 for the moment. That's a separate point. It's a process for dealing with stuff that happens in the future, and there might be a Work Stream 2 or Work Stream 3 or Work Stream 4. It's a process for continuous improvement, and the goal is simply this, you write a fundamental bylaw that enshrines the process. Whether you call it ATRT or call it something else, it doesn't matter. Enshrines the process and says that the recommendations that come from the process, so CCWG 2, son of CCWG, et cetera, would be treated by the Board as, you know, recommendations from the whole of the community. You would probably need to put in a high threshold. You probably need to put in the ability to not implement them but you might put that up as high as 75% or around about there. And then what you do is you rely on the powers that have been created in Work Stream 1 to -- to force the Board to actually implement if they refuse to do so. So in simple terms, you go through the process, it comes in with a series of recommendations. For some reason the Board says no, and if that happens, the community then triggers its power to spill individual members of the Board or spill the Board, and that in itself gives you the ultimate enforceability. And, in fact, in respect to the MEM suggestion, and it may well be the same in the sole member model, I don't know, you would then have the

ability to refer that refusal to arbitration based on the principle that it was the Board refusing to follow its fundamental bylaws.

So in essence, that's the proposal. And it seems to me that that process creates the ability to give the -- to give the SOs and ACs the -- the comfort that they should need, that stuff that is going to happen in Work Stream 2 and 3 and 4 will actually be dealt with. In essence, it's what we discussed right back in Istanbul, if I remember correctly. Thanks.

LEON SANCHEZ: Thank you very much, Chris.

As you were called by Steve as part of his participation, I would just like to ask if you have anything else to add, Steve.

STEVE CROCKER: No. Thank you. I wanted to adhere to the single topic per intervention, and so that was what we had in mind. Thank you.

LEON SANCHEZ: Thank you very much, Steve.

So we still have a queue and I'm closing the queue right now, so we can go to our next agenda item, with Steve DelBianco. That's where I'm closing the queue. And I see Jonathan Zuck's hand is up in the AC room.

JONATHAN ZUCK: I won't take long. I guess, again, just to correct our vocabulary, I don't think there's any assurances around Work Stream 2 or 3

because it will be back in the responsibility of the community to decide what the priorities are, to decide what reforms need to take place.

So I mean that's the point is that it's about empowering the community. Some -- like Chris said, I don't know -- part of what we'll need to do is decide what sufficient empowerment represents. But that's really the issue.

It will be the community's responsibility, not the board's, to make sure that the reforms in Work Stream 2, 3, and on, take place.

LEON SANCHEZ:

Thank you very much, Jonathan.

I would just like to remind us all that the board is also part of our community, so I wouldn't like to draw that dividing line between board and community, as we are very well aware that the board is chosen by the community and is also part of the community.

Next in the queue and finally in the queue is Steve DelBianco.

STEVE DelBIANCO:

Thanks. Steve DelBianco with the commercial stakeholders group.

I'm intrigued at the idea that the board came up with of assuming that it's an ongoing process of improvements, and I'm intrigued with the notion of having that be the ATRTx, whether it's 3, 4, 5, and to make that happen in our proposal we bring the ATRT, which is currently only an obligation of the Affirmation of Commitments, we bring it into the bylaws so that it has

permanence, number one, and we try to give it more teeth in the sense of its recommendations.

But if you'll recall, we've stopped short of saying that the board must implement the recommendations coming out of an ATRT.

We were advised that we couldn't obligate that because it would cause the -- a binding result would cause the board to potentially violate its fiduciary duty if it had to implement the recommendations coming out of a team.

However, we did say that if the community disagreed with the board's decision not to implement a recommendation out of ATRT, that we could invoke an IRP or a reconsideration and the results could be binding in the case of an IRP.

So that if we think we can put all of the later items to future ATRTs, we should do so either with the reliance that they wouldn't be binding, or if we believe there are certain items that must be binding, we have to go to the recommendation that Chris Disspain mentioned a few moments ago where there may have to be a bylaws change in the transition delineating the specific items that a future ATRT could bind the board to implement.

But in the simplest case, to keep things simple, an ongoing process would say the community will determine -- as Jonathan Zuck said, the community determines what its priorities are. It takes roughly a year to do an ATRT and a couple of years to do the implementation, and if at the end of that cycle the board has refused to implement or implemented improperly one of the

recommendations, we do have a tool at our disposal called the independent review panel.

LEON SANCHEZ: Thank you very much for this, Steve.

So we'll now move for our next agenda item, which was originally labeled as the review of the memo prepared by legal counsel in comparison with --

I'm sorry? What was that?

>> (Off microphone.)

LEON SANCHEZ: I'm sorry, Tijani, I'm not getting what you're trying to tell me. I'm sorry.

TIJANI BEN JEMAA: I see Steve Crocker in the queue.

LEON SANCHEZ: Oh, I think that's an old hand. Is that right, Steve?

STEVE CROCKER: No, it's -- I wanted just to reply to --

LEON SANCHEZ: Okay. Just go ahead. Thank you, Tijani.

STEVE CROCKER:

Thank you very much. Appreciate it.

I've been involved with ATRT1, ATRT2, and if I might, I just want to add a little bit of color and detail on how the process works and what the issues are with respect to the relationship between what's recommended and what actually happens.

First of all, as a top-level statement, we take the recommendations very seriously. It is not --

The mind-set, even if there were no rules around it, is that whatever is produced in these recommendations is taken as the default of, "This is what we should do."

And if we were to come to a decision not to accept any of the recommendations, we would want to go through a very careful reply and analysis and engagement on what the reasons are, what the rationale is, and to sort that out.

So that's as a top-level statement.

Let me -- the main reason I wanted to say something, though, is to get at the next level down.

We take advice from a number of different sources. We take it from the accountability -- from the Affirmation of Commitments reviews, from experts, from the advisory committees, and so forth.

Our general process is to do the following:

We take the advice and the first question we ask is, "Do we understand it?" And amazingly, not every single piece of advice is clear in the way that it's written.

The second thing we do is we say, "Okay. If we were going to go forward with this, what would it take to do that? How much would it cost? Who would be responsible for it? What does the basic work plan look like? Not in detail but just roughly. Is it feasible?"

And that is information that, I think, is fundamentally necessary from an operational point of view before taking a decision as to whether to implement or not implement, whether to accept the recommendation and implement, and also whether or not there's any issues with respect to how to do it compared to what's expected.

At that point, we have enough information in hand to make a formal decision, and as I said, the bias is strongly in favor of "yes," and if we say "yes," then we have to put in place the actual execution and we have to instruct staff to carry this out.

Now, some of the recommendations are not entirely accomplishable within staff. They are recommendations that apply to other organizations or other components of ICANN, and so that raises somewhat different issues about whether or not it's possible to carry that out.

We have not been perfect in all of this, I will say quite forthrightly, and it is a major part of our agenda at the board level to improve the execution of this, to improve the visibility, and to improve the accountability, and we've been working incrementally -- not fast enough, from my point of view, but incrementally -- to get this process up and running in a way that is clearly trackable and visible.

All of this is part of, as I said, what our commitment is in advice from all quarters.

The fine point -- and it is just a small point of what I think is common sense -- is that advice from any quarter, whether it's Work Stream 2 or Affirmation of Commitments or from advisory committees and so forth, if it is couched and expected that anything that is advised, whatever the recommendation is, has a binding requirement misses the evaluation process, the feasibility, and other aspects which are part of sensible operational -- responsible execution, responsible oversight of the operation.

Under no circumstances would a decision not to do something be based on arbitrary or undocumented judgment.

Our mission at the board level is to make sure that the processes are carried out in a visible and sensible way, and that, as I said -- and I'm emphasizing it repeatedly -- that in the event that we want to say "no" or that we want to say "but here's an issue" or we want to say "here's another way to go at it," it's a rather important and implicit part of the responsibility to explain and to engage, because our posture is that we're trying to convey information that is necessary and would be seen by anybody else, not just arbitrary judgment on our part; that if the people who were making the recommendation were sitting in our seats, they would have the same set of issues to grapple with.

So I wanted to raise that aspect, the operational digestion process, if you will, what happens after advice comes in, and what's necessary to happen.

And our commitment, as I say, is absolutely to make it happen unless -- and then the "unless" has a very specific set of criteria. If it's not feasible, if it overruns the resources, if it has other serious problems. But with that comes the obligation that we explain it.

And then further, if we do say "yes," is to actually with make it happen.

And I well understand, probably as well as anybody in the room, that the actual execution that we've had in the past, it's not a black-or-white situation. We've done a lot of work. We've done many, many good things. But it certainly could be improved, and that commitment has been in place and is in process.

And I appreciate the sentiment that stronger enforcement of this or -- is desired, and I don't have any fundamental problem with the intention of that, but I think it would be a mistake to say we'll simply make recommendations from any source, including Work Stream 2 or including ATRTx, binding in the sense that what's written there becomes law.

What's written there becomes a recommendation and it has to go through this process, and I've got no problem if there is recourse mechanisms -- IRP and others -- attached to that. It's perfectly sensible. But in those recourse mechanisms will come up the issues of feasibility and what the judgments are and so forth.

Sorry to go on at length but you can tell that this is an area that I've both thought about and I'm quite invested in. Thank you.

LEON SANCHEZ:

Thank you very much for this very comprehensive and thoughtful explanation, Steve.

So we will be going into the next agenda item, and it was originally labeled as a comparison between models, but instead of that, we asked our lawyers to not do a comparison but, instead, try to categorize the different comments that were received in this second public comment period into three main categories.

The first one being those comments that do have a very valid point and we definitely need to consider and address in our next version of our document.

The second category being those that raise concerns that are compatible and can be addressed with the model as it stands.

And the third category being those comments that are in some way incompatible with what the community and the working group has proposed in its second draft, and that would, of course, need deeper reflection, deeper analysis, on how we could address those issues.

So as I said, we're not trying to carry here a model competition, and I would like to invite you to think of this exercise in a technical analogy with regards to open source software.

We're not speaking about proprietary models here. We're not speaking about proprietary software. Instead, we are trying to reach an open source solution. That, as Thomas said in the beginning, we are trying to cherry-pick the best parts of each of the proposals, of each of the comments, so we can have the best solution available for the future of ICANN.

So the memorandum that we received and that is in our reading list is, of course, a reference to help us move forward, but is not the point of discussion at this stage.

And I would like to invite you to have this as a listening session for our lawyers, as we will be addressing and going through each of the many details on what they will be commenting further or later in -- in the agenda as we go through each of the points of our agenda.

And I would also like to acknowledge that we have counsel present. Of course we have Rosemary and Holly Gregory with us, and we do also have ICANN legal staff. I see Samantha at the back, and we also have J.J. at the left side of -- well, my left side of the room, your right side, of course, and I do believe that we have also Jones Day attorneys here and -- okay. So we have her here, and I don't know if there are any other -- well, I would say "lawyers," but then we would be lost between lawyers --

[Laughter]

-- so external counsel. Do we have any more external counsel here?

>>

We have external counsel that haven't been introduced from Sidley and also from Adler.

From Sidley, we have Ed McNicholas, and I'll let you introduce your colleagues from.

>> From Adler, we have Greg Colvin and Stephanie Petit.

LEON SANCHEZ: Thank you very much. So now we'll know who are the lawyers -- the external lawyers -- in the room. So with no further delay, I will hand this session to Holly.

HOLLY GREGORY: Thank you very much. And I hope you don't think that by the great divide, that we lawyers are really all that divided, because I think you'll hear that we're really not, that there are not great legal disagreements between the legal teams.

I -- you know, a neighbor of mine passed away this week. I live in Montclair, New Jersey and Yogi Berra lives in -- lived in Montclair, New Jersey for many years. For those of you who may not follow baseball really closer, Yogi is a very famous catcher, manager, coach, who is also famous as a bit of a philosopher. He was very -- he was very famous with little quotes that were a little bit missayings, if you will. And some of them come to mind this week as we think about his passing that I think sort of relate to what we're talking about here.

And one of them is that "If you don't know where you are going, you might wind up someplace else."

So I was thinking, as Thomas was talking, about the need to make sure that we focus on requirements and concerns to come up with the model, rather than vice versa, because we need to really know what our requirements and concerns are to sort of know where we're going.

He also said, "In theory, there is no difference between theory and practice. In practice, there is."

And I think that's a great -- a great reminder that we have to come up with something that works in practice.

And so we have to be mindful of theories, but we also have to really think about how things work in practice and the stress testing.

And finally, he said, "It ain't over till it's over," and I think we're all experiencing that. We've got more work to do. We'll continue to work in good faith, and we're valuing this experience of working through consensus.

Now, we've provided you with materials that analyze the comments from the board in relationship to the sole member model, and I think there is a fair degree of agreement around community powers, but the different emphasis on enforcement and the legal structure gives rise to some important and nuanced differences in how those powers are effectuated.

We really want to emphasize a couple points at the outset.

We, as lawyers to the CCWG, are agnostic. We don't have a view about the best model for you. We've been listening to what you want by way of community powers and by what you're telling us you want, where you want to be, on that trust-versus-enforcement continuum that we've talked about. And we've tried to help you come up with a model that will reflect what we've heard from CCWG where you want to be.

Now we're getting comments in from a broader range, the board and others, and it's very important now to go through those and sort of test where we are, where you want to be, as we think about it.

I said there are really no fundamental differences regarding the legal rules that apply and how the legal rules apply, but as you know, different legal structures result in very different strengths to the community powers, and we've counseled you from the outset that the law provides a fair degree of flexibility.

So we think we can help you build whatever it is you decide you need.

There are twists and turns, and some things become more complicated, some powers become indirect rather than direct, based on some of the choices that you need to make, and you're all familiar with this because we've been working on it for months and, you know, I think you're all very well grounded in these concepts.

You will have to decide how much certainty is necessary with respect to enforceability of community powers.

Now, rather than focus this discussion on the legal models and, you know, how they impact the various proposals, we thought it would be helpful to share with you as we're reading this set of comments sort of the underlying concerns.

Because I do think that Thomas and Leon and Mathieu are right, that if we can articulate the underlying concerns and think about how to best address it, we don't maybe need to get all wrapped up in is one model better than another model.

So we thought that we would start there.

We will then try to focus on some of the areas where we think there's some easy -- perhaps some easy wins and then some of the things that might be a little bit more difficult to do, but we haven't really categorized them in the detail that Leon suggested we might have, because we got that assignment very late yesterday afternoon.

But we can help maybe with that discussion develop that throughout today.

So in terms of the key concerns, one of the key concerns that's very apparent is concern about the degree of change that's required to convert to a new accountability model. Both structurally and from an operational corporate governance perspective. And I want to suggest that that's a concern that underlies any shift to any model that's different. Whether we go -- whether you remain with a very board centric model and an environment post NTIA or you go to a membership model or you go to a designator model, this is going to be an issue. There will be some change. I think change is always scary, and I think part of the task here is for us to do a better job at articulating what kind of change is necessary. Some change is structural, some change is in a decision model, but some change is also a little bit cultural. And part of the thing here is to make sure that the valued culture around consensus is maintained.

Another key concern that comes through is the degree of experience and community preparedness to take on a new role in holding the Board and ICANN accountable. I think that looking around this has been a valuable experience and adds to

the community's experience level in that regard, but it's something that we certainly need to be aware of and consider.

Another key issue is how to assure that the SOs and ACs are accountable in their use of new community powers. What are we going to do to make sure that whatever power is given to the community is used in a responsible way? And there are some legal mechanisms we can use to help this. This can be a -- you know, talking about how great the level of consensus needs to be for various kinds of powers. And who participates and how you make sure that you've got a broad group of participating and that SOs and ACs are not -- are not captured.

How should community decisions be made? This is an area that I think we've heard great concern around sort of the voting mechanism, and is that voting mechanism really different from the consensus mechanisms that the community currently uses? And if so, is there -- will there be unintended consequences around that? I think that's an area where there's a lot more work to be done. And what is the relationship of community voting to consensus development? And is -- is voting inconsistent with traditional ICANN decision-making processes? There's another issue that's embedded in that concern about voting and that's about the allocation of power among community groups and is it sufficiently inclusive. For example, if some groups like the GAC prefer to remain in an advisory capacity, is their influence diminished? How do you address that? These are very legitimate concerns that certainly are raised and on the table.

How do we assure that community powers are implemented in a way that avoids any paralysis to the Board as your fiduciary?

Now, I come at this as a corporate governance lawyer. My whole practice is in advising boards of directors and companies and shareholders and membership groups in thorny situations. And I always start with the notion of, we really need role clarity. The most important thing in a governance structure is to know who has what rights, how are they exercised, what are the roles and responsibilities? And we have to be very clear.

Now here you already have this notion of kind of some sharing, some consensus developing and shared power. Any clarity we can give to that is important. But there is a concept, and it's a very important concept in all kinds of corporate law, for not-for-profits as well as for-profit entities, that the Board is charged with directing and managing the affairs of the corporation. And the Board are fiduciaries and they need to be able to have a fair degree of power as fiduciaries to do what's in the best interest of the corporation.

I think we have to be very clear about it. We've talked about this concept a lot. It's important that you don't bind the hands of the fiduciary. One of the reasons that we centered on a member structure is under California law you can give things like some budget oversight powers to a membership body without impairing the Board's fiduciary ability. And you can't do that to third parties. So as soon as we start talking about giving some budget veto to something that's not a member, we run into some struggles because courts are very hesitant outside of a member to constrain a Board.

So, you know, that really is one of the big issues when we start talking about the -- about the Board veto. And one of the reasons we centered on a member model. We're not -- certainly

you don't need to be wedded to it, but there are trade-offs. You know, I was thinking in some ways this is a little bit like we've got Jell-O and you push over here and something moves over there and trying to keep it all together. It's a very complex kind of system that you're creating.

How do we assure -- this is a really important one, a big concern. How do we assure that any exercise of statutory powers is appropriately constrained to avoid unintended outcomes and capture by a group that does not reflect community consensus? This is a big issue. But it's an issue that can be addressed and solved for. And we have some ideas about how to do that. But we think it's very solvable. It's not -- it's not -- it sounds scary that a member could dissolve the corporation. There are ways to put in thresholds and protections so that that eventuality essentially would not happen. And it's a pretty simple thing to do. And I think a big one, how do you assure that community powers are enforceable without leading to undue litigation? Nobody wants to think that we're creating a model that's going to result in people running to court all the time to enforce community rights. That's exactly what we're hoping to avoid. But sometimes if you have clarity around enforcement paths and escalation paths and everybody clearly understands it, it helps people come to agreement. And that is -- that is certainly the hope here.

So these themes from the comments are not new. They're all things we've been considering and discussing at great length. But clearly there's more work to be done. The feedback from the comments suggest that there's more work to be done in a couple of areas. There's one group of things I think that's really

about better communication about what you've considered and why, why you've come to a decision, what -- what was on the table that you -- that you sort of decided a pathway not to go and the reasons therefore and why you've decided to go in a particular direction. To me those are sort of communication issues. The harder issues is also undertaking to assure that a concern is addressed through additional processes. And there are a number of issues where we do need to work on additional processes.

I'm going to turn over to Rosemary now to talk about some of the examples where we think there's, you know, more work to be done, greater clarity that could be had. And then I think we're going to try to get us back into quick -- the right time frame. The chairs have asked us to try not take our full allotted time so we can use this time for real discussion. Thank you.

ROSEMARY FEI:

Thanks, Holly. So we -- we didn't have a lot of time, as noted. This assignment came to us last night. So -- so we're trying -- while I was still on a plane. So I didn't -- I got a little bit of a briefing. So if these are a little off point, it may be due to that.

We tried to come up with some examples of the themes, how we might resolve some of the themes or more specific concrete examples of the themes that Holly just talked about, and for example, it's pretty clear that the -- there isn't enough of a description in the CCWG proposal for all the places where you actually do contemplate community discussions. This came up in talking about the community forum. It talks -- it -- what kinds of consultation or collaborative process might go on with

respect to changes to fundamental or standard bylaws or the budget veto. So I think that's a communication issue where I think it -- our impression is that the CCWG intends a lot of that and it didn't quite come through how much you believe that has to happen and maybe it needs to be made more concrete rather than just an aspiration. And put in as a process, perhaps.

Another area where clearly more work does need to be done -- excuse me -- is on the IRP. Everyone seems to agree that more work is needed on the IRP, including the CCWG, so that won't be a surprise. I think there's agreement on the need for the independence of the panel. There is some lack of clarity about how -- when and how the IRP should be binding with respect to some of the community powers. I think there needs to be a little more clarity on standing, based on some of the public comments, on who absorbs the costs, and on what prerequisites there might be for going to an IRP. This gets into that concept of there being an escalation path and knowing which items are on the path and which are a separate alternative mechanism.

The thresholds for community decisions were specified in the CCWG proposal and somewhat differently -- other proposals have been made. I think there's room for revisiting those to see if you're still comfortable and whether some might need to be raised. I don't know if any need to be -- I don't know if there's been much for lowering them. Perhaps there has been. I don't remember all the public comments. But that is one of the ways, for example, as Holly mentioned, this concern about statutory powers. In addition to the enumerated community powers, there's been a lot of concern voiced about these other statutory powers that members have, and one of the ways to address

those, which we really haven't discussed, but I think certainly has been in the lawyers' minds for a month or two, is that we probably would want a statement, if we were to stay with a member model, that any power that is not one of the enumerated community powers needs to go through a super, super maybe even a unanimity standard before the member could exercise that, effectively making it perhaps impossible. If all you need is one vote against it, the chance that, you know, you won't get that one vote to stop it. And that might be a way, for example, of addressing dissolution. It's hard for me to imagine this community agreeing 100% on that.

[Laughter]

So those community thresholds, both with respect to the powers that have been enumerated but also with respect to these unintended powers I think need a little more work.

And I think this issue about the voting -- there were a lot of questions about who gets to vote, how many votes, how the votes are allocated between different interests. This is something that the CCWG obviously worked very hard on, but it also appears to be one of the areas that's attracted the most concern in the public comments. So that seems like an area. And I just want to point out -- an area that maybe you want to revisit. I want to point out that you should divorce in your thinking the decision mechanism from the model used to enforce it. So for example, if you want to stick with a model where the SOs and the ACs each pass resolutions and once a certain number of them have passed a resolution voicing the same view, whether it's a support or objection, and then something will happen, if that's how you want the community to

decide, that same mechanism could be used, whether it's in the MEM, whether it's in the sole member, or whether it were in some something new like a sole designator. So the mechanism for making decisions has been questioned heavily in the public comment but questioning that mechanism does not necessarily tell you which model of governance you should end up in.

And I think that it's a -- it's also a little unclear how voting and consensus relate to each other. And so maybe there would be a way of talking more about when you -- when the community -- when the CCWG came up with a voting model how did you see that relating to consensus? Is it a method maybe of expressing consensus or did you really see it as something different? Because I think that sparked some comment.

On the budget, I actually don't see that much difference between the two proposals at one level, which is to say -- two of the proposals on the table at least -- say the community have a right to object a number of times and then after that we need to have a fallback position. We can't have the community just keep objecting forever. So that principle everyone seems -- that's the concern about paralysis. What that fallback position is, there's some difference on. Should it be current budget plus 10%? Should it be last year's budget? Should it be last year's budget plus the Board has the right to make certain additions as needed? But I think that is -- that's a point of difference now. But not actually in my mind a point of very large difference. I think there is a little bit of difference in the enforceability level that you would get with different approaches as well. But I think if you focus more on -- I'm less clear how important the

enforceability is once you've already said there's going to be a fallback once two votes have been exercised, for example.

Another area of public comment, active public comment seemed to be on the Board recall. On the other hand, if that is in fact a requirement, as I think it's been framed as a requirement, either NTIA or CCWG -- CWG requirements are sort of immovable, then that might be a -- a set of public comments that you worry about less because you know you have to have the Board recall.

On the individual director recall -- not recall, sorry, removal of individual directors, I think there's still -- there seemed to be in the public comment some question about who should have that, whether that should be a community-wide right, how it should be initiated and all that. But I think there was actually a fair amount of support and maybe that's an area that doesn't really need to be changed.

So those are just some examples, again based on a fairly quick global view of the public comments and the email listserv communications.

These issues that we've been talking about, whether you have to have a voting mechanism or some different way of assessing consensus, all of these issues tend to apply across the models. They're not -- the difference between models probably comes down to some enforceability of certain rights, but not every single thing we're talking about, as I said, directs you into one model or the other. They're all concerns that would need to be addressed in any event. You -- we want to come back to the point that we want to focus on the outcome and have that drive -- your desired outcomes, your goals should drive the legal

structure and not the legal structure -- getting all caught up in the legal structure first. So it would be helpful to, as we've said from the very beginning, figure out what the accountability mechanisms and powers are and then work on how to achieve them. We still have the sense that there's some lack of clarity about what powers -- what the powers are that are sought. What the accountability that is that you're seeking, how enforceable it should be. And part of the reason we keep surfacing new models and having problems with the model is that there still doesn't -- there's still some lack of agreement, I think, on the fundamental goals.

And there will ultimately then be tradeoffs. There's probably not a perfect solution.

LEON SANCHEZ: Thank you very much, Rosemary. Thank you very much, Holly.
I see that Tijani has patiently waited for him to speak.

TIJANI BEN JEMAA: Thank you. It was about the previous subject, so I will skip it.

LEON SANCHEZ: Thank you. Thank you very much, Tijani, and apologies for having you wait that long.

I see Sebastien Bachollet has his hand up. Sebastien?

SEBASTIEN BACHOLLET: Yes. I have a question. What part is legal advice, what part is your opinion? Sometimes I have the impression that you are becoming a member of this group and you are saying that we may decide this way or this other, and I am a little bit puzzled with that. I really would like to have clarity on what is legal advice. Thank you.

HOLLY GREGORY: Certainly. I stated at the outset that we are agnostic. We are here to help facilitate your consideration, and so you tell us what you want and we help figure out how to structure it to get it.

So we also, in doing that, need to help inform you where there are differences between approaches and what the impact of those differences are, but we do not have a view on what you should do.

LEON SANCHEZ: Thank you very much, Holly.

ROSEMARY FEI: I'd just like to add that really, we do not have a view. If my client tells me, "Enforceability is my absolute top concern and I want complete enforceability in court," that's going to lead my advice in one direction. And if they say, "I'm willing to dial back on enforceability, I'm willing to go further along the trust continuum toward more of a trusting system, and I'm also concerned that without enforceability I might get too much

power," then I'm going to say, "Well, the model for you is this one."

So we really do not have advice for you that we're hiding.

LEON SANCHEZ: Thank you very much, Rosemary.

Yes, Sebastien?

SEBASTIEN BACHOLLET: Yeah. I get your point, but when you say that maybe you don't need to change this model or you don't need to change a question around the board recall or board removing, sorry, but I didn't feel that it was legal advice.

HOLLY GREGORY: Let me clarify. Let me --

SEBASTIEN BACHOLLET: But I would like to finish also.

HOLLY GREGORY: Okay.

SEBASTIEN BACHOLLET: Because if it's legal advice, I need to take it into account. If it's just your opinion, I need to take into account --

HOLLY GREGORY: No. Let me clarify what part of that is legal advice.

The part of the legal advice there is that we think you can address those particular concerns, we can find ways to address those concerns legally in the sole member model, if that's what the community wants.

What we're trying to do is let you know where there is flexibility in the law to try to find solutions. It's your decision whether or not you want recall or removal.

So is that -- so when -- I hope that's clearer.

LEON SANCHEZ: Thank you very much, Holly.

And we have a queue. We have Kavouss, Chris, and Thomas.

Kavouss, would you like to --

KAVOUSS ARASTEH: Yes. Maybe concentrate at this stage only to the two models, MEM and CMSM. I raise a lot of questions in the chat.

The first question is that according to the ICANN MEM, SOs only raise the issue, but not ACs. But to a resolution, it is not clear what and how the resolution will be adopted. By the full consensus, by a soft consensus, or any other things. Number one.

Number two, then these SO and ACs come to have a group which is called MEM issue group. In order to have MEM issue group, it is not clear whether we need to have some sort of unincorporated

association or not. Something that we don't agree with that took it totally away is very, very difficult and we don't want to come back, at least at this stage.

And then it is mentioned that this MEM issue group will submit the outcome to a standing panel. Is that standing panel the same panel as IRP or is it different panel? What is the decision-making of that?

These are the processes that we have to mention.

But one important thing. ICANN MEM mentioned that the outcome should not receive any objections from AC and AC. That means one single AC could veto totally. Is it the intention that we give such a power to an AC to veto the outcome of SOs and others?

So these are the questions that you raise in your memo. We raise it in our analysis. We send it to you. But we need to have it clear.

Moreover, most important, what is the legal status of this MEM issue group? Does it have standing or does it not have standing?

LEON SANCHEZ: Thank you. Thank you.

HOLLY GREGORY: So I think those are all excellent questions and are probably better directed to the board -- to members of the board who have come forward with the proposal. I agree that there's a lack of clarity. I agree that for the MEM issue group to go to court to

enforce a binding arbitration, you need to address issues of standing and capacity to sue, and that could mean an unincorporated association, but there may be other ways to do it as well.

I think those are issues for the board to reply to.

LEON SANCHEZ: Thank you very much, Holly, and I would just like to get us back in focus in our discussion.

While the different models might be part of the discussion, they are not the main part that we must be discussing. We should be focusing again on meeting NTIA requirements, meeting CWG requirements, and CCWG requirements.

So let's not fall into this very easy-to-fall-into trap between models.

So next on the queue I have Chris Disspain.

CHRIS DISSPAIN: So thank you, Leon.

So I actually raised my hand to talk about something that Rosemary said but I just want to -- before I do that, I just want to make sure. You don't want responses to Kavouss' questions now or you do want responses to Kavouss' questions now?

LEON SANCHEZ: Thank you for clarifying this, and I -- as I said in the opening of this particular agenda item, we would like to, of course, get the

sense of what our lawyers got into the analysis of the different comments received by not only the board but the larger community, and we will go into details later as we address each of the items in the agenda. We will be going through the IRP, the MEM, et cetera. But what I would like to do at this stage is to ask everyone to keep those questions in mind so that when we come to the specific point in the agenda, we can go deeper into analyzing everyone's concerns and everyone's questions.

So we keep --

CHRIS DISSPAIN: So that was a "no."

LEON SANCHEZ: Yes.

CHRIS DISSPAIN: That was a "no."

[Laughter]

Which is fine.

Okay. In that case, all I really wanted to say was I wanted to endorse what Rosemary said about the key is the clarity around what it is that we mean and what it is that we want, and that, to me, is the -- really is the key point.

Instead of saying, "I want the membership model" or "I want the MEM because it gives me this," it should be "I want this," and then "How can I get that?"

And then it may well be that there are two or three or four or five different ways that you can get that.

So I just wanted to endorse that comment. Thank you.

LEON SANCHEZ: Thank you, Chris.

Next, I have Thomas.

THOMAS RICKERT: Yes. And this goes back to the question that Sebastien raised, and I'd like to say that we've asked Holly and Rosemary to provide a list of the concerns that they take from the lawyers members in the board papers, and also to take a look at those from a legal point of view, and I think what is quite interesting -- and this is where we need their legal expertise and that is not a matter of personal flavor but these are legal facts -- is what concerns need to be -- or are present in both models or in any model, and what are concerns that relate to a specific model, and what are concerns that can be addressed under a specific model and where are those limitations.

And that will help us a great deal in getting agreement on the concerns.

Because concerns that exist in all models, we should address anyway. This is not a matter depending on preference for one or the other model, while -- and if there are concerns that exist in one model which we can easily remove by tweaking that model, then we can maybe also resolve such issues. And I think this clarity is good to get from outside counsel, rather than from our

group members speculating over what's legally possible and what not.

So I guess that's just to set the scene for this discussion and I guess as a next step, we would like to hear from the board members that are in the room whether you think that this list of concerns that you see on the screen and which Holly spoke to, whether you think this is a finite list of concerns that you have.

Does this encompass what you are concerned about?

LEON SANCHEZ:

Thank you very much, Thomas. Next in the queue I have Steve DelBianco.

STEVE DelBIANCO:

Thank you. Holly and Rosemary, when you talked about the budget, you characterized it as if the membership has the statutory powers to sort of balance or override the fiduciary of the board, and then Rosemary, you went on to suggest that there might be other means that we, as a community, want to do when there's a difference of opinion on budgets that would make that kind of a moot point and that would -- and I understood that.

But I would ask you now: Are there other requirements, such as the CWG's requirement for legal enforceability -- are there other powers and requirements for which membership is uniquely positioned to deliver enforceability over a nonmember-ship model? Thank you.

HOLLY GREGORY: So the member model allows for direct enforcement of community -- of some of the community powers in a way that's not available under other models, and we've talked about this in the group a lot. Budget, strategy, operating plans, the review of IANA functions and that separation are all things that are difficult to give direct enforceability mechanisms around outside of a sole member model.

That doesn't mean that there aren't indirect enforcement mechanisms that can be used. For example, if you have the power to recall the board, you know, remove the board, those are a way to have indirect power on these kinds of specific issues.

STEVE DeIBIANCO: One follow-up, then. Not being a lawyer, I need more help understanding what direct enforcement is. If CWG says that an IANA function review -- if it comes up with a recommendation it needs to be legally enforceable, what does direct enforcement of that mean?

ROSEMARY FEI: Steve, direct enforcement means that there is a person, a legal person that actually has the ability to go to court, ultimately, if -- if all other measures fail, but it's backstopped by the ultimate ability to go to court and get a decision by a court that will be enforceable against ICANN. Requiring something to happen, for example.

I did want to speak briefly --

HOLLY GREGORY: It's more than that, though. I mean, it's more than that, in that we have this fiduciary issue and --

ROSEMARY FEI: That's what I was just going to get to.

HOLLY GREGORY: Okay.

ROSEMARY FEI: I did want to provide some clarification because I think there's been a lot in the emails and -- and in some of the comments from the public and certainly from the board about the fiduciary duty question.

The California law that ICANN is currently subject to, as Holly mentioned earlier, says that the board is in charge, the board has fiduciary duty and is responsible for overseeing the corporation.

There is only one exception to that.

The board's duty to oversee the corporation, the board's duty to carry out its fiduciary duties essentially, is subject to powers that are reserved to the members.

You can't reserve those powers to anyone else.

The effect of a reserved power is to essentially relieve the board of the obligation with respect to that narrow decision to be in charge of the way the corporation is run. They're still going to be in charge of making it happen, but it is -- it's -- one way to

think of it is that when the member exercises one of these narrow, defined, reserved powers, it essentially relieves the board of having to say, "Is this really the best thing for the corporation?"

And I would want to note that there is -- in the discussion of fiduciary duty, I also think there's been a little bit of blurring between the best interest of ICANN, the corporation, and the global public interest. ICANN's mission is to operate in the global public interest, but I don't think you can necessarily collapse what's in the global public interest with what's in ICANN's best interest. Especially in the shorter run when ICANN might have financial issues that affect it, that would mean it needs to do something that maybe isn't at that moment the best thing in furtherance of the global public interest.

So there is some tension there that the board has to resolve whenever they're trying to make sure that ICANN stays on mission but also do what's best for the corporation, which can be affected by all sorts of external things.

So this concept that the member allows you to relieve the board of fiduciary duty with respect to these narrow reserved powers also has a corollary, which is, well, if the board's relieved of fiduciary duty, who has fiduciary duty?

And the answer is: With respect to narrow reserved powers, nobody.

And I think that's a real concern that has been voiced.

And then the question is, I think, really as a legal matter, do you trust the members with respect to those narrow powers that

they are reserving and taking away, potentially, from the board, do you trust them as a whole -- whether it's a sole member or many, many, many members -- to do what's best for the corporation through some sort of community consensus or voting process?

HOLLY GREGORY: And so that's one of the reasons why, on the budget, the notion was a veto, to send it back to the board twice to express concern, but then to have the ability for the board to still come to some decision.

LEON SANCHEZ: Thank you very much.

So we have a queue, of course, and I just want to make sure. I have some hands in the AC room that might be new or old.

I just want to get to you, Steve DelBianco. Okay. You lower your hand. So next on the queue is Chris Disspain.

CHRIS DISSPAIN: Thank you. It seems that we are actually discussing -- despite our best efforts, we are actually discussing the models, but I have some questions or some comments for Holly and Rosemary.

On the direct -- on the direct enforceability point, it's correct, isn't it, that in the case of the sole member, it's necessary that one or two individuals stand as the legal person within that sole member and that that is the equivalent of having, in the MEM,

one or two persons or the chairs of SOs and ACs, merely as examples, stand as legal persons in order to bring a binding arbitration?

Those two things are equivalents, it seems to me. Is that not correct?

HOLLY GREGORY: I don't think they're quite equivalents. The sole member would be organized as an unincorporated association. Yes, it does need a human being or two to actually --

CHRIS DISSPAIN: Exactly.

HOLLY GREGORY: -- act, but those people are only acting on behalf of the unincorporated association.

It wasn't clear to me that in the MEM you had an unincorporated association or whether you were asking the chairs to actually be the people named as the plaintiffs taking action. In a sole member context, it would be the member that would be the plaintiff going to court --

CHRIS DISSPAIN: We said --

HOLLY GREGORY: -- and not the individuals.

CHRIS DISSPAIN:

Yeah. So if it's not clear, let me just make it clear that it would be entirely a matter for the community -- the communities to -- for the SOs and ACs to decide.

It seems to me that -- whichever way around you look at it, you need real people.

Even if you've got an unincorporated association, you still need real people in order to make that unincorporated association legal.

So that -- I don't mean individual people; I mean legal people. So whichever way around you look at it, you need those.

My point is that, yes, you're correct. I don't think our proposal says it could be an unincorporated association, but clearly it could be.

It -- the difference, it seems to me, is that in this specific context I'm talking about -- there are other differences, but in this context, the difference is simply that for -- in the case of the sole member model, you create the entity that has the enforceability power now and keep it there for all time, and in the case of the MEM, you create the entity that has the enforceability power as and when you need it in order to bring that enforcement.

That's, in essence, the difference, I think. On this -- I guess there are lots of other differences, but on this specific issue.

Now, I've got a couple of other points and I apologize if I'm taking up too much time.

ROSEMARY FEI: Can I respond on that?

CHRIS DISSPAIN: Sorry, Rosemary. Yes.

ROSEMARY FEI: Before you go on? I'm sorry. I think I agree with much of what you said.

However, I think the question of when the unincorporated association that's going to potentially be the complainant, when it arises, could actually affect standing and capacity to sue, because I'm -- I'm not sure that an entity that came into being after the complaint arose, after the wrong, the claim arose, is going to have standing. So I have a little bit of concern. But that would be easily --

CHRIS DISSPAIN: It's easily fixed, yeah, I agree.

ROSEMARY FEI: -- in the MEM approach by just saying we're going to create it ahead of time.

CHRIS DISSPAIN: Yeah. You create -- it depends on at what point you create it but I agree, I think you're right, that can be fixed.

I just have one other point, really, which is just that the -- the point you made about reserving powers and the fiduciary duty. Is it not correct that the board can, in fact, agree to be bound by arbitration, and then on that basis there isn't, in fact, that much

of a difference between the reserving the power to the member on those narrow number of things? Because the way you -- and this may be wrong, but the way you said it was the only way you can do that is through a membership model but it seems to me that you can do that through binding arbitration.

HOLLY GREGORY: No, I don't believe that you can. I believe that binding arbitration can only be available for areas in which the board could otherwise be bound in its fiduciary duty, so that's one of the reasons, and I think it's recognized actually in the Q&A -- the FAQs from the board about the concerns that binding arbitration is also subject to some of this limitation.

CHRIS DISSPAIN: Okay. I'll pick that up -- I'll pick that up on the list and come back on that because that's not my understanding but I'll check it. Thanks.

LEON SANCHEZ: Thank you very much. So we still have some people in the queue. I want to note that after Kavouss we have Nigel Roberts who's not in the AC room, just for the record. And at this point we are very short in time so we'll be beginning using the timer, the two-minute timer. So next on the queue is Kavouss. Kavouss, just go ahead.

KAVOUSS ARASTEH: Thank you. I suggest we concentrate and address one issue at a time but don't go to many other issues. Budget, leave it, discuss

later. We are concentrating on the MEM and the CMSM and to see the deficiencies and how it would apply to that. If we (indiscernible) many other issues it will be difficult because there are so interconnection. So let us concentrate on one issue at a time. Thank you.

LEON SANCHEZ: Thank you very much, Kavouss. Next is Nigel Roberts. Can we have a mic for Nigel, please? Yeah, and reset the clock, of course.

NIGEL ROBERTS: Thank you. I just want to -- it's very quick anyways, so I don't think you needed to reset the clock. I've been a member of a board of a nonprofit organization, national one in England. I know a little bit about how these things are set up. And it seems we're coming at this exactly in the wrong direction. We talk about fiduciary. A fiduciary is somebody who has -- is trusted by the members. When you incorporate something, it's normally -- and this is not the case in ICANN -- but it's normally the case that some people get together for a common purpose. It's the same as when you incorporate a corporation. And what we have is a situation where we're trying to retrofit something. And we're saying well, we don't kind of have any members in ICANN. And for certain purposes of holding the Board to account, we kind of need to have some members. So we're talking in terms of the Board giving -- trusting the membership with certain reserve powers. The place I come from is that when you come together it is the members of the organization that have every power and then they trust the board with the day-to-day management of the corporation and give them fiduciary responsibility. And I think partly this is where some of this is coming from. If we had

gone -- if we had kept ICANN 1.0 and gone to an actual membership model where every single person who participated in ICANN became a member, your source of legitimacy and your source of authority is obvious. And I'm not offering a solution here. I'm just trying to point out something that -- of why we could possibly be going around in circles at some point.

LEON SANCHEZ:

Thank you very much, Nigel. Next on the queue I have Jordan, and I just want to note that we have to close the queue with Greg Shatan. So Jordan.

JORDAN CARTER:

Thanks. Jordan Carter. That's for the record. I just want to come back to the direct and indirect enforcement and a way this was described in Paris, which I think might help people get their heads around it. The way it was discussed there was to say that if you were -- the direct enforceability of the powers under the membership model is clear, if there's a nice clear line of accountability, if the Board doesn't do the thing, if a director doesn't remove themselves when they've been dismissed by the SO or whatever, in the end the organization can go to court. Without a membership model, to the extent that some of those powers aren't directly enforceable, the indirect enforceability means that you might have to do something else to make people do it. So if there's a designator model and you could enforce the removal of a director, if the community power to say no to a budget was ignored by the Board, you can't do anything about that budget direction being ignored but you can remove

the director. So I think that's what's meant by indirect enforcement of the community powers here.

So I thought that one of the reasons -- and again, like Chris I'm (indiscernible) too at the models, that we end up with a member model in both of our draft proposals so far was there was a nice clean line of enforcement here. So I just hope that helps people get their heads around it.

LEON SANCHEZ:

Thank you very much, Jordan. Next in the queue, Avri Doria.

AVRI DORIA:

Thank you. Avri Doria speaking. I have a question which I think is a clarification on this discussion we're having about fiduciary responsibility and removing it or overruling it. And in the way I was looking at it, except perhaps in the case of the removal of board directors which I believe is probably the least of the powers we're talking about because it's so impossible to use, that in most of them we're only asking for sharing that responsibility in that in all of the instances there's no replacement of the Board's fiduciary responsibility. There's a working with the Board, the community and the Board, to come to a determination. It's working together to approve a fundamental bylaw, both have to. It's working together. So I have a certain amount of difficulty when the conversation switches to removing that fiduciary responsibility. Because except in their own removal, I don't see the proposal as doing that. It's just a sharing of responsibility on a few particular instances. Thank you.

LEON SANCHEZ: Thank you very much, Avri. I think you want to react to that, Holly, or Rosemary?

HOLLY GREGORY: I'm not sure if we agree so feel free to contradict me. I think that's right, Avri. And I think when we were using that example of the override, we were talking about the -- the extreme. But in order to even share powers in the area of a budget, we think that it's a clearer ability to do that through the member organization.

ROSEMARY FEI: My response builds on Holly's rather than contradicting it, fortunately. This is Rosemary Fei. The -- and now I'm going to get pretty granular. The Board proposal says that if there's two rejections, then the Board can adopt a budget that is plus 10%. The CCWG proposal says after two rejections by the community, then automatically the budget that's in place is last year's budget. And I'm not getting into all the details there, but that's fundamentally on the budget.

The concern I have, where this membership versus non-membership rubber really hits the road, is whether that bylaw that says and after two rejections the Board shall adopt a budget that provides for no more than 10% increase, whether that bylaw, which the Board is proposal to put in, so they're agreeing to constrain their powers, but I'm concerned that it could be unenforceable because, in fact, maybe what's really needed is a 12% increase and in the exercise of their fiduciary duties they decide, you know, we agreed to this bylaw, we agreed to 10%, but it's just not going to work. It's not in the best

interests of the corporation. We can't vote for it. We're going for 11%. And now the question is, how do you -- is the bylaw enforceable or not.

[Timer sounds]

LEON SANCHEZ:

That was the two-minute timer. Thanks. Okay. So next we have Greg Shatan, and we will be closing the queue with him. Sebastien, I am mindful that you have your hand raised but I would just like to call for your comprehension and we -- you will be the first to speak after the break. So Greg, please.

GREG SHATAN:

Thanks, Greg Shatan for the record. I'm concerned with an underlying issue here as we talk about fiduciary duties and recognize that there are duties other than fiduciary duties and when we're looking at the -- the power that a member would have or could have, and they are narrow powers, that would be given to the multistakeholder community, there seems to be a concern that the multistakeholder community somehow has no duties, has no judgment, has no -- it's kind of like this untamed beast and we're going to, you know, give it the keys to the car, at least in some narrow fashion. I have a little bit more optimism about the multistakeholder community. I also think we need to explore, as we said, both how to constrain those powers and how to define the duties or at least the process and procedures and kind of the ability -- and how the ability would be exercised, which I think altogether, you know, would provide a pathway and a controlled logical way for the member to act. So the -- you

know, contrasting the Board with its fiduciary duties with a member that can act like a 2-year-old and throw all its toys out of the crib I think is not the compare and contrast, in my mind. So I would ask that we, you know, do think about how -- how a member is constrained, both statutorily and in however we set up the member. And I think we should be able to come up with something that would make everyone quite comfortable that the member is at least as grown up as the Board. Thank you.

LEON SANCHEZ:

Thank you very much, Greg. And this takes me to, of course, back to the slide that we have on our screen. And I would like to just go through it so we have agreement that these are the points that we should be focusing in while advancing our discussion later in the agenda on each of the items that we're going to discuss.

We need to addresses, of course, the degree of change. That is a very valid concern that has been raised. Some might think of our proposal as it stands as a very complex solution. This might be fixed, I think. And so having in mind this, we should definitely try to discuss and find a way to address this concern on degree of change.

The second one being the degree of experience and community preparedness to take on a new role. So this adds to what Greg just said. I think we have a very mature community that would be able to handle its responsibilities in front of the wider Internet community and the multistakeholder community. So having in mind that we already have a baseline and we won't be

starting from scratch, of course. Let's make it so that we can address these -- this concern in our proposal.

Then how to ensure SOs and ACs are accountable. This is, of course, another very valid concern. It's been widely discussed within our group. It might not be properly reflected still in our proposal, but I can assure you that this is something that we have taken very seriously in the course of our work. We have spoken to our advisers. Our advisers have provided us with great advice on how to tackle this issue, too.

[Timer sounds]

Okay. That's the two minutes so -- no. Then the next point would be, how should community decisions be made? This will be addressed when we speak about community forum about how we would be trying to come into a solution that addresses this concern and how decisions would be made. Of course, this deals also with voting/allocation of power. The questions about sufficiently inclusive, is influence diminished for the GAC? These are all concerns that we have heard and we will be assessing as we move forward in the agenda later today.

Another very valid concern is, of course, to avoid any paralysis to the Board. We don't want a Board that is hand tied, but we also want a Board that is accountable to the community. We don't want to break with fiduciary duties of the Board. And as I said, we don't want them to bind the hands on their fiduciary duties as well.

Then how to ensure statutory powers are appropriately constrained. So this is something we need to carefully assess

and discuss, continue discussion. And finally, how do we ensure that the community powers are enforceable without leading to undue litigation? And that is, I think, a concern that's been raised by many in the public comment, how do we ensure that we keep the safeguards or the appropriate safeguards so that any powers that we vest into the community are not abused against the community itself or the Board or the wider Internet community.

I don't know, Thomas, if you want to add something to what I just said.

THOMAS RICKERT:

This is Thomas. We'd just like to ask whether this actually accurately reflects the underlying concerns. So are these the questions that the Board has? Are these the concerns that the Board has? You know, we said we wanted to step away from the models or some of us couldn't resist discussing models and it was good to have questions asked and answered surrounding that, but I think we need to capture the concerns. And this is our take, our lawyer's take, on what the Board's concerns are. So can we agree that these concerns need to be addressed? Or are we missing something? So hopefully by -- after these two days we will be able to take the -- take the concerns off the list. There's a hand up, Steve, and then George.

STEVE CROCKER:

Thank you. Sorry, it's faster to do this than to go to the Adobe room. You know, in the interest of clarity and consistency, I think that we tried, from the Board's perspective, to write out

our concerns and we supplied them in the response that we gave to the second proposal. So those -- those comments still stand. We've tried subsequently in various ways to make them more compact and to solidify them a bit, but the question of what are the concerns that the Board has had with the proposal, I think we did lay out. Happy to go through them again. But that would be the base that we start with.

THOMAS RICKERT: I think the difficulty is that we need -- we sort of need to come up with main topics, the concerns that the Board has in order to see how we can address them. You know, just pointing to like 200 pages of documentation will be very difficult to address in this session.

STEVE CROCKER: No, I wasn't talking about the 200 pages. I was talking about a much more compact half dozen pages I think that we sent. We can sort that out.

THOMAS RICKERT: Yes. Maybe you can. But the suggestions that you made in the papers and the in the comparison chart do address concerns. So you're coming up with suggestions because you have concerns and we're trying to understand the concerns. As we try to understand the concerns from other commenters, and we want to remove concerns. George.

GEORGE SADOWSKY: Thank you, Thomas. I think everything that's been said is helpful toward the discussion. But I'd like to take a slightly higher level view, and this may be silly but I feel it fairly strongly.

I can't help but feel that we are fighting a proxy war here and that the concerns about these extreme cases that we're talking about -- what happens if the board goes rogue, what happens if the community goes rogue, et cetera -- are more manifestations of a fundamental destruction of trust or lack of trust or low level of trust in the entire community, and that no matter how we settle the CCWG accountability, we are going to -- unless we solve the trust problem, these problems will continue.

I think we're dealing with symptoms and not root causes here. We may need to do it this way, but I think that I wanted to highlight that feeling of -- that there's a fundamental problem we're not ignoring but not addressing directly here. Thank you.

LEON SANCHEZ: Thank you very much, George, and this makes me come back a little bit to the open source software approach. Remember that when you use open software, you rely on trusting that the corporate holder won't sue you for that, so I think we need to trust each other in any approach we take in our solution.

So do you want to --

THOMAS RICKERT: I was just about to suggest that we break for lunch now. Obviously --

LEON SANCHEZ: Not lunch.

THOMAS RICKERT: Break for coffee --
[Laughter]
You want to answer the question?

CHRIS DISSPAIN: I want to answer the question you asked about this list, or rather address that first, if that's okay, before we go.

LEON SANCHEZ: Yes. Yeah. We have a -- we have you, we have Mike, and we have Fadi still on the queue, and Mark Carvell, and after that, we will go into the break.

CHRIS DISSPAIN: So yes. The answer is yes, this covers a number of the points that we raised.

What's kind of missing is the timing thing. It's the -- it's that -- it doesn't matter if you want to fight with me about the words, but let's call it ICANN 3.0. It's that we are doing -- we are making fundamental -- so it's kind of covered by the degree of change, but that implies there is a problem with the change per se, and actually there may not be a problem with the change per se.

The problem is ramming it through in such a quick period of time. And one of the reasons why the board was so careful to try to -- to try to provide a basis for the future -- continuing improvement, the new ways to get to ICANN 3.0 -- was precisely

that. It's about what's happening now within the confines of what we have to do. And it is, in fact, a -- in my personal view, and I think probably in the view of the board, it is a big pushback against the statements that have been made from the very beginning of this, which is, "This is our chance," "This is our leverage," "If we don't do it now, we'll never get it." Frankly, that is nonsense, and the board's view is very strongly that if we go about this slowly, step by step, we use the -- we ask the question simply, "What do we need to get done in order to get the transition through," and we all agree that the time has come for ICANN to move to its next iteration -- you know, it's already done it twice -- and there is a process in place to make that happen, that I think is the essence of the board's position that is not covered by the words on that list.

Thank you.

LEON SANCHEZ: Thank you very much. I think at this point, it would just be unfair to continue to hold Sebastien in the queue, so Sebastien, could you please --

>> (Off microphone.)

LEON SANCHEZ: Okay. Thank you for agreeing on that.
So next in the queue, I have Mike.

MIKE SILBER:

Thanks. I was actually going to offer Sebastien the -- my place in the queue because the queue is closed and then Thomas raised a question without dealing with the previous interventions, but seeing as Sebastien waved it forward, let me say, Thomas, I think that you're asking the wrong question.

This is not an engagement between the CCWG and the board. My understanding is that this is a meeting of the CCWG. Just that there are more board members that are present and the board has submitted substantive comments.

But I think there are comments that have come across from all the community, and I would really encourage you, instead of saying, "Well, is this the comprehensive list of the board's comments, are these the only issues," and we deal with the board, that's not what we're here to do. We're here to try and identify -- and I'd like to go back to what Holly was saying -- what are we trying to solve for and what are appropriate models? Have there been concerns raised? Can those be resolved? Should we rethink some of these issues?

So yes, this is some of the board's issues. This is also some of the community's issues. But there are other issues raised by the board and the community. Some more important, some less important.

But I think that your approach of saying, "Is this the board's list" is totally the wrong way of going about this.

Let's rather look at what is needed and address all people's issues, not just the fact that you have a couple of board members or a couple more board members in the room

suddenly turns this into a dialogue between the CCWG and the board.

I'm not hearing consensus amongst the CCWG on these issues either. I'm hearing a lot of people saying, "Well, we can solve for it." And I'm just saying let's change the dialogue, please, because this "Is this the list and now let's go into a negotiation" is not going to be helpful.

THOMAS RICKERT:

Mike, just before we move to the next speaker in the queue, to make this perfectly clear, we have received comments from others that we could analyze in a fashion that we really had a finite list of the other commenters' concerns.

There was a lot of communication between the board and the CCWG, and it is at least our impression as a leadership team that we haven't been to fully -- been able to fully grasp the board's concerns.

And since the board is a stakeholder in this community, which is true, but it has a special role in that it has to pass on these recommendations to NTIA, we want to make sure that we fully understand what the board's concerns are.

That's the purpose of the exercise. That is why we sort of put it in front of the bracket. And as we continue to move through the various sections of our report, you will find that we will speak to the concerns raised by the whole community and not only by the board. Thank you.

LEON SANCHEZ: Thank you very much, Thomas, for that clarification. I think it's very useful.

Next is Mike -- Mark Carvell.

MARK CARVELL: Yes. Thank you, Chair, and good morning, everybody. Mark Carvell, United Kingdom representative on the GAC.

I think it is a very helpful list. It helps us to focus.

My reason for taking the floor is with respect to the fifth bullet in relation to the GAC.

I think it doesn't quite give the full story of the board's concern in relation to the GAC, because I -- as I understood it, the board did have reservations about how the proposal would shift the role of the GAC into a more operational function by participating in voting mechanisms and so on.

So I mean, that's certainly an issue for the GAC, but I do recall the board expressing that concern, and that would have wider political ramifications as well. Thank you.

LEON SANCHEZ: Thank you very much, Mark.

And I think we can now go to our coffee break and we will come back, of course, to deepen the discussion in what we have just put into this list, and I think that that's a very valid clarification and we will go into that, Mark, when we --

We will be reviewing, of course, the GAC role and how we -- how we want to or how we could address those concerns raised not only by the board but of course by many members in the GAC and by the wider community.

So, yes, that is definitely something we will be discussing.

So we will have a break and we will be reconvening in minus three minutes, as per the scale, so -- so --

Okay. So it is a 15-minute break, so enjoy.

[BREAK]

THOMAS RICKERT: So this is the two-minute warning. We're going to reconvene in two minutes. Please be seated. We're going to reconvene in two minutes.

So for those who are trying to continuously ignore me, this is a two-minute warning. We're going to start again in two minutes.

So everybody, please be seated. Can we get the recording started again?

And for the remote participants, welcome back.

Since the remote participants might not be able to see this, let me just describe what's happening in the room. Everybody -- almost everybody is ignoring my authority.

[Laughter]

CHRIS DISSPAIN: I'm sorry, Thomas. In order for us to ignore your authority, you actually need to have authority in the first place.

THOMAS RICKERT: Didn't we have that same discussion in --

[Laughter]

Chris, didn't we have that same exchange in Istanbul or Paris, or wherever that was?

[Laughter]

JONATHAN ZUCK: Thomas, I support you. I think we need to be more disciplined about sticking to the agenda so I support any efforts on your part to bring that about.

THOMAS RICKERT: Thanks so much, Jonathan.

So just to put things into context, let me introduce this next -- these next couple of agenda items that we have, and that is also an attempt to address again what Mike Silber said earlier.

This morning, we tried to do a couple of things. We tried to establish what the requirements for our work are, or to remind the group of what the requirements of this -- of our work are.

Then we tried to capture what -- our preliminary assessment of areas of support -- i.e., consensus -- are versus areas that need more work and areas where we have divergence.

We then tried to understand better what the underlying concerns with the board were, because to us it wasn't as clear for the board's position as it was with the other commenters.

And now the section that sort of looked like we were giving too much attention to the board's view is over. We're now going through the individual areas of our recommendations and discussing these, and we're discussing all community input, including the board's input, and we will try to resolve the issues. We will try to address the concerns by improving the recommendations that we have in our report.

And at the end of this day, we will revisit the list of support, divergence, and more work to be done, to see whether we can

maybe move one item that was on the left-hand -- on the right-hand column to the consensus column.

So let's try to firm up the consensus in the group and identify more clearly what work needs to be done in what areas.

So that's the plan.

We're now going to have the rapporteurs with us.

For this very section, it's Jordan Carter. We will later hear Cheryl and Steve, and we'll have Becky joining remotely to speak to the sections that she and her team were responsible for.

And what we're going to do is we're going to have the rapporteurs introduce their understanding of the community feedback, we're going to discuss it, and we're going to then confirm with Bernie -- Bernie Turcotte -- I'm not sure where he is in this room. He's sitting over there.

But he is our dragon master of the public comment tool number 2, so he has been working on other comments and he will -- he will be the person that we will double-check with whether we have actually addressed the community concerns adequately or whether we've forgotten something.

And if you think we've forgotten something important, also please do let us know.

And again, if you think we have areas in our report that we can put in for later, for Work Stream 2 or ATRT Number 3 or whatever it might be called, please do speak up.

And with that, I'd like to hand over to Jordan to introduce us to the first community power.

JORDAN CARTER: Thanks, Thomas.

I'm thinking you're talking about the budget. Is that right?

THOMAS RICKERT: That's a good one to start with.

JORDAN CARTER: Okay. We're going to start with the budget/strategic plan/operating plan veto, because it's got the most contention, so it seems sensible to start with that. I just wanted to open with a couple of intro comments, I guess.

The first is that we were kicking around the idea of possibly separating these powers and saying -- keeping the discussion about the budget as maybe needing to be separately described for a number of reasons.

First of all, because there's a timeliness with financial decisions that doesn't apply so much to strategic plans. You can have a very long debate about your strategy, if you like, but there is a reality of the start and end of a financial year that means you need to be a bit more tight on timing for that.

The second point is that there does seem to have a bit of a misapprehension that's crept in.

There's a lot of similarity between what the board has proposed for the budget thing in its comments and what the CCWG has proposed.

Both of the proposals or both of those sets of comments proposed that there should be a limit to the number of times a budget can be vetoed.

The difference is that the board has said that in the event of a second -- a second disagreement, there can be a budget presented as up to 10% higher, a kind of contingency in case something bad has happened to require further spending.

And that was contemplated by the CCWG and it just wasn't put in the proposal, not because people didn't think it was a good idea or because people thought it was a bad idea that they didn't want there, but just because it didn't seem necessary.

So I think Working Party 1 certainly is entirely open to the idea of a contingency permission where there's been a couple of disagreements.

And there isn't a big difference, I don't think, between saying it's last year's budget that continues or that it's a holding budget that continues with a higher contingency.

And the difference then becomes, you know -- I'll stay from the model difference, which is, you know, in the board's MEM alternative it's the board makes the final call, in the membership model the member makes the final call.

That isn't so relevant for this.

The other thing I just wanted to mention is to clarify a little bit about why there's a separate process dealing with the PTI or IANA budget.

There's been some concern that's come back to us, particularly from the more technical parts of the community, that an ICANN budget veto must not disrupt the resourcing available to the IANA functions; the IANA functions are at the core of this, they need to be operated effectively at all times.

And what we tried to be clear about, but as in so many areas of the report the wording might not quite have done that justice, is by separating the two vetoes, you're saying that whatever happens to the ICANN budget, the IANA budget is protected.

So if there is no veto of the IANA budget, it will carry on. It should be seen as the sort of first call on ICANN's financial resources, if you like.

I know that the CWG discussed ideas like holding a couple of years' funds in escrow or something, to make sure there's an absolutely cast-iron guarantee of resourcing available for those functions.

So I just wanted to be clear that underpinning the proposal is that absolute clarity. Even though PTI is funded by ICANN, you have to think about this as a kind of clear slice of the revenue that's available to ICANN going to PTI or IANA, and that will be ring-fenced and any community disagreement about the broad ICANN budget should not and will not affect that.

And it could have the same contingency. If it was vetoed a number of times by the community, have a last year plus 10%

limit on it. So that that would provide assurance -- because I'm pretty sure that if there's a problem in IANA and if people are getting very angry about it spending too much, that's one thing, but if they're getting very angry about it not being able to do its job, that's a more serious problem to avoid. So having a contingency that raises the threshold is all right. So I guess in summary, you know, people were concerned about the operational impact of having any budget disputes.

There's not a lot of difference between what the board has come back with and what the CCWG was intending.

So I think that's kind of the scene-setter, Thomas, for that particular community power.

It would be interesting to see what people have got to say about it.

THOMAS RICKERT:

Thanks very much, Jordan.

Before we open up the discussion, let me just try to capture what we've -- what we've heard and maybe add one point to it.

First, do you think it's a good idea to separate the community power and budget, operating plan, and strategic plan?

We haven't seen any pushback or almost no pushback on operating plan and strategic plan, so why not separate those and concentrate on fixing the budget issues? Okay?

I see a lot of nodding. You should make yourself heard if you object to this.

Because then I suggest we take stock of this and say we separate out the two of them.

Then -- and I think that's a point, Jordan, that you haven't made clear is -- that was also a request -- let's hard-code the mandatory consultation process into the escalation path. Let's make sure that we reduce the risk of friction up front and thereby decrease chances of friction at a later point.

Okay?

So that's the second point. And I see that Cherine wants to talk and I'll get to you in a moment.

The third point, then, would be let's be clear that PTI is separate, and let us know if we need to do something about PTI or whether we are sufficiently clear that there is no risk for the PTI budget.

Question: If I don't -- if we don't hear from you, we assume it's good to go on an as-is basis and the --

>> (Off microphone.)

THOMAS RICKERT: There was a no, but yeah, please make yourself heard. Get in the queue.

And the fourth point, Jordan, I think you wanted to offer is also hard-code a plus 10%? You know, take on board the board's suggestion and say, "Okay, the -- we don't remain on the last

year's level but we add these 10% because the bigger fear is that there is not sufficient money rather than excessive expenditure."

So I guess these are the four takeaways that I would offer, and there's a queue forming. Cherine, you are the first to speak.

CHERINE CHALABY: Just a reminder that there's -- in the operating plan, there is an annual operating plan that is consistent with the annual budget, so you cannot separate those when we talk about veto powers.

So in your recommendation about the operating plan, you have to separate the long-term one, which is attached to the strategic plan, and the annual one which is attached to the budget.

THOMAS RICKERT: I see no hands. Ah. There is.

George?

GEORGE SADOWSKY: Thank you, Thomas.

First, a comment on your last point about speak up now.

It's difficult, in a room of a hundred people, that everybody can speak, so I think you should assume that silence doesn't necessarily mean assent.

Two points.

First of all, you have an ICANN budget and you have an IANA budget, and for the purposes of the transition, the IANA budget is really important. That has to be preserved at all costs.

I don't quite understand why one puts controls on the entire ICANN budget when it does not really affect the transition, and that's the purpose of Work Stream 1.

The second point I want to make is that the budget, to my way of thinking, doesn't really reflect the appropriate control point to the extent that the community wants to influence how ICANN does.

The control point really should be the substance of what ICANN does and the priorities associated with the substances.

The budget is a proxy measure and sometimes it's used. It's used, I know, in the United States government. But I would encourage you to think of valuing the control point of the operational plan and not of the budget. Thank you.

THOMAS RICKERT: Thanks, George.

Next is Chris.

CHRIS DISSPAIN: Thank you. I just want to make -- check in with Jordan just to make sure that we're on the same page. And I agree with much of what George just said, but just to check we're on the same page, Jordan, what I think we're saying is that if you remove the 10% issue, then -- and ignore, for the moment, the way that it's

enforced, then, in fact, there is a -- what the board's comments and what you're saying are at one.

Is that, in effect, correct?

JORDAN CARTER: I think so, yeah.

CHRIS DISSPAIN: Okay. So -- and then in that case, I have a question, which is: Have you considered and worked through the logistical challenges, rather than the principle challenges, of how you would, in --

It is not an acceptable -- it's not acceptable, in my view, to create a process that consistently leads to the budget having to remain in place over the end of the financial year because we're still faffing around trying to figure out if we agree the new one and the board and the staff worked extremely hard to (a) up the community's input into the budget process in the last couple of years and (b) do it on time, so I'm just wondering if we've actually factored into the discussions that logistical issue that arises, and if so --

I'm fine with it if we have. I just wanted to raise it as a point.

JORDAN CARTER: In terms of working with financial staff to model through the steps in the process and the additional time that would need to be added to allow for a veto, no, that hasn't been done.

But it also hasn't been done in the board's comments either, as I understand it.

So -- and that's a piece of work that ought to be done, needs to be done, but whether you -- whatever the process that's involved, there's going to be a timing impact there, which is inconvenient.

Part of the point of that, though, is that it increases the -- the pressure on the system to come out with the right budget first time.

So...

CHRIS DISSPAIN:

Okay. May I just respond?

Cool. The other question that arises from -- again, from a logistical point of view, as opposed to a principle point of view, is: How do you prevent the mechanism being used to block a budget line item that is for one SO or AC?

Is that -- is that something that you're fine -- that we are fine to have done?

In other words, it's conceivable that you could block a budget line item that was a ccNSO expense and that the others could, you know, gang up and block it. Is that -- are we fine with that or are we not fine with that, and if we're not fine with that, how are we going to deal with that?

JORDAN CARTER:

I think probably that's a matter for debate, but just the point we've said is that there isn't a line-item veto, so people -- if people want to do that kind of gang-up on an SO or AC, by

having an only whole-of-budget veto, there are consequences for them as well.

Those consequences are lessened if you've got a plus 10% carryover, but I think the scenario you're talking about, for instance, is if the ccNSO adopted a new policy that the other -- that the rest of the ICANN community didn't like and the other SOs and ACs came together and said, "If that's in the budget, we're going to block the budget." Is that -- that's the kind of hypothesis?

CHRIS DISSPAIN:

Yes. And the response to you would be: Yes, it is correct that there's a cost to me for blocking that, but that cost to me for blocking that is only if I also have new items in the budget that are relevant to me and that I want.

So there's no cost to me if it's just a continuation of my existing budget. It doesn't matter to me in the slightest.

So I'm -- I don't -- I'm just -- I'm not trying to create an issue. I think there is an issue and I think you guys need to work -- we need to work through how we're going to handle that.

It's about threshold, really, and it's about considering how you would create your threshold, no matter what model you choose, to block.

THOMAS RICKERT:

Thanks, Chris. This gentleman over -- we haven't yet met so you might want to introduce yourself, please.

QUSAI AL-SHATTI: Qusai Al-Shatti, the GAC member of Kuwait, participating in the CCWG meeting for the first time. Thank you.

My concern with the budgeting is really referring to Paragraph 381, 379, and 382. Obviously, in Paragraph 381, it says that the budget after the approval of the board can be vetoed by the community and then the budget will be so.

My interpretation is correct here, right?

>> (Off microphone.)

QUSAI AL-SHATTI: First, the veto process. I mean, I can understand that there is a president who can veto, someone with an executive power who can veto, and yet there should be a process where this veto can be overruled, because right now, what we are looking for -- what we are looking at is a disagreement between the community and the board over the budget. There is no guarantees that the ICANN may stop function- -- will be dysfunctional because the budget has not been approved.

What assurance do we have that ICANN as an organization or the IANA as an organization will not dysfunction because the budget has not been approved?

The budget means all. Even the payment of the executive -- of the staff of the ICANN. That's my understanding of the ICANN budget.

So right now, there is no guarantee, after the approval of the board and the veto from the community over the budget, that the organization will stop -- will not stop functioning, because there is a halt in the budget process.

And again, obviously in Paragraph 379, because there is a concern over the IANA, they separated the issue of the IANA budget from the ICANN budget because if we disagree on the ICANN budget, we don't want to have the IANA operation get affected.

[Timer sounds]

There is a possibility here that the ICANN as an organization -- or the IANA will dysfunction because there is a disagreement over the budget. Yet, if someone -- a veto cannot be by multiple person. I mean, this is the first time I would hear that -- a community, any entity in the community can veto this budget or exercise the right of the power of veto without clearly defining when this right to be exercised and how it is exercised and who is in that organization has the right to say I veto. This is a wide open question for me.

THOMAS RICKERT: Okay. I suggest that we take some more interventions from the floor and Jordan, you can maybe respond to them together. Next is Kavouss, please.

KAVOUSS ARASTEH: Yes. I understand that the PTI budget is separate from the general ICANN budget. It is good. We agree to that. With

respect to the ICANN budget rejections, when we discuss the level of working party on some of those really late time when I -- so on and so forth, in fact there was some disagreement on the unlimited time of rejections. Imagine that we have to react on the third time and fourth time. How do we implement that? The implementation is a very time-consuming issue, and I don't understand the logic that if the community reject the budget, why ICANN insist that they were right without any convincing reasons? If the reasons given by ICANN that they have to maintain the budget as they have proposed and the community reject that for a second time, I think logic permits that ICANN would reconsider its position because there is no hostility and fight within ICANN and the community. There are collaboration, cooperation. I don't see any reason why we have to go beyond two or maximum three. And I don't know why we need to put it in the -- in the ICANN bylaws because they have clearly mentioned previous year's plus 10% maximum. That is -- that is sufficient.

I have some difficulty people sometimes talking of overregulations, sometimes talking of no regulation. This time we're going overregulations. Let us limit it to two times or if you want three times, but not unlimited. It is impractical and difficult to implement. And it is not possible to block the operations of ICANN because of the communities having taken into account that any time that we want to reject we have to have a formation of the group, either the CCWG always in session. We have to have formalities. We have to have too many things. So implementation would be difficult. Let us not go beyond the two or maximum three. Thank you.

THOMAS RICKERT: Thanks very much, Kavouss. Alan.

ALAN GREENBERG: Thank you very much. With regard to the veto of the IANA budget separately from the other one, certainly people have expressed to me the concern of since the IANA budget is implicitly part of the ICANN budget how can you protect it if you veto the ICANN budget. Now we've used words like "ring-fencing" and things like that that don't mean a lot to most of the people reading this document. I'm told by the accounting people they can describe exactly how they do it this, and I suggest we actually get words from the accounting people to make it really clear that we're not just waving our hands and pretending it's something we haven't considered.

Number two, with regard to Chris' concern about vetoing the entire ICANN budget to target a specific thing, we've already said that you could only do -- the community can only do a veto if the specific item that is concerning them has been raised in the earlier processes. So we know what a veto is for, even though it's vetoing the whole budget. We have in general said you cannot exercise a power -- when you're exercising power you can't have a single AC or SO veto that power. So that does give the mechanism that Chris is concerned about and At-Large has had the same thing. But we could add a rule saying that you need -- you cannot -- because we know which -- which line item - - it's not a line item veto but we know which line item you're complaining about. We could make sure that it cannot be exercised by the ganging up process, should we choose that's appropriate. Thank you.

THOMAS RICKERT: Greg.

GREG SHATAN: Thanks. This is Greg Shatan for the record. Going back to something being discussed a little while ago when I put my hand up was the difference or similarity overall between the -- the Board's -- the power under the Board's intervention or comment and that under our proposal, I think it seemed like there was maybe a little bit more -- a little more agreement on the similarity than was called for. I think as -- I wanted to bring back what I think Rosemary said before we had our coffee with regard to the inherent power of a member to reject a budget versus the -- by inherent that means statutory power of the member versus a power that is only granted in the bylaw in which then could be balanced against an exercise of fiduciary duty by the Board in deciding that they were not going to abide by the bylaw. So there is a -- a fundamental difference we need to come back to with regard to the power or power balance between a member and a board versus that between any other type of grouping of entities and the Board. We may decide we don't like the way that power balance is. We've certainly had comments in that regard, but there are differences, and we can't ultimately pretend that they don't exist. Thank you.

THOMAS RICKERT: Thanks, Greg. Seun.

SEUN OJEDEJI: Thank you very much. This is Seun, for the record. I just want to ask the CWG -- the CWG chairs to clarify something in relation to

the dependencies that the CWG asked for as it concerns the budget. When the CWG said they want budget, that is ICANN budget to be subject to community approval, out of those the CWG understands that does it cover IANA budget, PTI budget, and the overall ICANN budget? Because I notice that one of the things (indiscernible) said is that we have to do what the CWG is depending on us as (indiscernible). So we have to meet the requirements. So what do you understand to be their requirement in relation to that? And then when we say community approval of budget, it seems like we may never get an approval at some point. If we are actually saying that we should wait until we get a nod from the community on budget, I think it's most likely impractical. Especially in this community as ICANN.

So I think it needs to be clear that approval is struck out what (indiscernible) from the requirement. Veto can be further discussed and the mechanisms of the veto can be further discussed. But I think it provides a very big model we need to consider. Thank you.

THOMAS RICKERT: Thank you very much. Eberhard.

EBERHARD LISSE: Eberhard Lisse, for the record. My view on this is a big stick hurts much. It's difficult to lift. A small stick doesn't hurt much even if you use it often. This is all very complicated. I think if we have a way we must have one that takes a little bit of deliberation and

then does what it wants to do, basically forces ICANN to do what the community wants.

We are talking a lot about details of implementation here that I just don't see this happening. We're talking this proposal to death. Nobody understands it. Not even everybody inside this room understands it. But nobody outside of this room understands it. This is what Secretary Strickling has alluded to that our complication is overly complex in two of his block posts. We should come -- I'm all for a veto -- I'm all for a budget veto. I don't particularly care about line items. But I don't like this 10% automatic increase. If we use the budget veto it must sting. It must really force ICANN to consider.

That said, it must be of such a high burden for us to implement -- to use that stick that it's not overused. And we need to find a balance on this.

THOMAS RICKERT: Thanks, Eberhard. George.

GEORGE SADOWSKY: Thank you. George Sadowsky, for the record. And also everything I say is my own personal opinion. I'm not representing the Board in any way.

Very quickly, I know that the budgetary requirement was imposed by the CWG but I think it's reasonable to ask whether or not this is a condition for a successful transition. It seems to me that it isn't, and I'm not sure quite what -- what the -- what should happen, but it's -- it should be examined.

[Timer sounds]

Secondly, there is an issue of support for this. I hear a lot of concerns about it. I don't hear a lot of support for it. I know it's in the proposal, but I'm questioning whether -- how solid that support is. Thank you.

THOMAS RICKERT: Thanks, George. Chris. And we're going to close the queue after Chris, please.

CHRIS DISSPAIN: Thank you. Just to pick up on what George said, it is correct that there is a budget requirement of the CWG, but the budget requirement of the CWG is a requirement to protect the IANA budget. And in fact, a number of the members of the CWG are uncomfortable about -- as has already been said by Jordan -- uncomfortable about the fact that the CCWG is creating a -- a veto, et cetera.

The second point I wanted to make was that -- just to pick up on what Greg Shatan said, I want to -- I want to make a very clear statement of my own personal view that I'm extremely uncomfortable having budget decisions made by anybody ultimately that does not have a fiduciary duty. It concerns me enormously that the -- that you would have a situation where you're dealing specifically with the corporation, there are clear requirements and so on. So I'm very uncomfortable with that, and I just wanted to make that point. Thank you.

THOMAS RICKERT: Thanks, Chris. So Kavouss has raised his hand after I closed the queue. So has Cherine. I'd like to ask Jordan to take stock of what we've heard and respond to the issues, and then we might get back to the two of you.

JORDAN CARTER: Thanks. That's a really useful set of feedback. If I could just, Chris, run through and make some responses to the people individually. So the points that you raised about there being no kind of crisis if the budget isn't approved is dealt with by the fact that there is an ongoing budget that's provided for in the proposal. So if the budget is vetoed under the model, the previous year's budget continues in force. So there's no question that staff will not get paid. There's no question that ICANN won't meet its financial commitments. There's no question and no possibility in any of these models of the corporation descending into chaos. So that's definitely dealt with. I just want to put that there clearly.

Kavouss, on your point, there is a limit of two vetoes proposed already for the budget, and I haven't heard anyone suggesting we increase that limit, so I think that that's already there.

The CWG did tell us that this proposal does meet their requirements, so if we were to change it, we would need to cross-check with them as to whether it still did.

And on the kind of related points, the fiduciary duty and members rights there, Chris, we structured this power very carefully so that it didn't see the community mechanism making budget decisions. That's why it's explicitly not a line item veto

and why the only thing that this power contemplates is returning the budget to the Board, which is the decision-maker, with the fiduciary responsibilities, to make -- to reconsider its position in light of the veto and to make further budget decisions. So --

CHRIS DISSPAIN:

Why do you need enforcement? If that's the case, I don't understand the point that Holly and Rosemary were making earlier on about the difference in the enforceability mechanism. If the ultimate decision is the Board's, then I don't understand why there is a concern about the ability to enforce. Because part -- what Rosemary and Holly were saying is, direct enforcement for the membership model, indirect enforcement for the MEM. Indirect one being board spill. So that doesn't make sense with what you just said.

JORDAN CARTER:

Well, I'm not responsible for what Holly and Rosemary were saying. But I think -- but the point is that what would be enforceable in the budget power and the terms that we drafted it would be that the caretaker framework that was in place would be one that was determined in the bylaws and that would stick. So no one could take a case that said the Board has to override what's in the bylaws to give effect to their fiduciary duty. That response wouldn't be available to the community. Now, I can't see the lawyers, I can't see whether they're nodding or not. And Rosemary's got -- yeah, Rosemary is nodding to that. So maybe that's the thing we could tease out a bit more later.

The other point I'd like to raise which wasn't raised by anyone is we've said all of these community powers require a discussion in

the ICANN community forum. So with the budget, not only would the issue have to have been raised in the consultation process that leads to the budget but before a veto is exercised there has to be a community-wide discussion at which point the Board will be explaining its logic, at which point the -- the SOs or ACs that petitioned for the power to be used will be explaining their concerns. There will be -- another dialogue stage is already in this before a first veto gets exercised. So I just want you to keep that in mind.

I'll -- I'll just come finally to George's point about whether this is a condition for the transition. I think we should ask that question of all of these powers, but Work Stream 1 for this group isn't things that are required to tick boxes to allow the transition to occur. Work Stream 1, as per the charter, is to, you know, provide a situation of accountability that the community is comfortable with after the transition has occurred. That's the mandate that we were given. So there may be things that go beyond the narrow technical this box must be ticked to allow transition. This is one that's received solid support in the context of the two sets of public comments that we've got. And the concerns have not been about the principle. They've been about the operational impact and implementation of it. Thanks, Thomas.

THOMAS RICKERT:

So Kavouss and Cherine had both raised their hands. Can you keep it very brief, please? Kavouss and then Cherine.

KAVOUSS ARASTEH: Yes. As the liaison of the ICG we have mentioned that any model or any approach taken by CCWG need to meet the requirement of CWG which is mentioned in part of 106, saying that if this condition are changed, it will review the whole situation. So it is a fundamental and should not be changed. And moreover, in GAC when we agreed to the -- as a charter organization to this process, we have cross-referenced this condition. So it is essential and fundamental and cannot be changed. Thank you.

THOMAS RICKERT: Thanks, Kavouss. Cherine.

CHERINE CHALABY: Yes. So I'd like to go back to the unintended consequences, if I may be allowed. The annual budget is linked to the annual operating plan. The annual operating plan is linked to the three to five years' operating plan, a strategic plan. So vetoing the budget maybe is only a financial issue about money, but in reality it has a lot of other consequential events and that is you're really vetoing the long-term strategic plan because every year it has an operating plan and we will freeze that operating plan because you cannot implement it if the budget corresponding to it has been frozen.

Second, if you freeze the budget and under what I heard this morning, what is being proposed in a single membership model, the Board's fiduciary responsibility is being relieved and no one is really accountable for the consequences. The unintended consequences would be things like as a result of the freeze of the budget what happen if the reserve fund is depleted over time

and ICANN doesn't have sufficient funding to pursue a legal case? What happen if there are losses at the end of the year? What happen -- I can give you many examples. Who is actually responsible? Because the Board has put a budget that it feels comfortable and is accountable for and yet you've frozen the budget and frozen the operating plan. So who is accountable for the consequences of those?

THOMAS RICKERT: Jordan, would you like to respond?

JORDAN CARTER: Just briefly. I think that the disruption to the operating plan isn't an unintended consequence of a budget veto. It is the intended consequence of the budget veto. The budget veto is designed to cause a correction to something. You all know what that something is because of the fact that the veto can only be exercised on something that's been raised in the consultation, that is done before the Board approves the budget. So this is an escalating series of exchanges in this budget planning process.

If in determining the annual operating plan and the budget you get strong feedback from the community that it doesn't want something there and the Board perseveres with it, and if there's a veto, it's the Board that's caused that disruption. By ignoring the community's input.

On the point of fiduciary responsibility, if the community mechanism -- if this mechanism said, if the community vetoes the budget it then is going to write up its own budget and put its own line items in and change the spending allocations, that

would be an unworkable monstrosity but that would really disrupt the fiduciary responsibilities of the Board. I say what I said back to Chris. When a budget is vetoed and sent back, that isn't suspending Board member's fiduciary responsibility to create a workable budget. That responsibility does rest with the Board in all circumstances. That's why this is a whole of budget veto. The Board can't get around those responsibilities because they're inherent in being a Board member.

What the membership model would do in this case is say that the act of vetoing it doesn't -- you know, the Board can't set that aside by claiming it's exercising its fiduciary responsibilities.

That's why this is a whole-of-budget veto. The board can't get around those responsibilities because they're inherent in being a board member.

What the membership model would do in this case is say that the act of vetoing it doesn't -- you know, the board can't set that aside by claiming it's exercising its fiduciary responsibilities. It's a very, very, very narrow intervention, and I can't really express it any better than that.

The lawyers are better at explaining that fiduciary point than I am.

THOMAS RICKERT:

Yes. We have Mark, who hasn't spoken to this issue.

Mark, you came in after I had closed the queue as well, but nonetheless, you know, if you could keep it brief, please.

MARK CARVELL: Yes. Thank you. Mark Carvell, U.K. government. I'll try and be brief.

I just wanted to pick up on the point about community discussion, the phase that is envisaged after a period of engagement and consultations with the board which many stakeholders may have been able to do but the GAC, I can't really see that being an activity or focus of concern for the GAC in terms of, you know, the budget and how it's evolving and developing and particular lines of funding are being finessed.

But at the community forum stage, you would need quite a bit of time for that exploration of this issue of a contest over the board -- over the budget. And I know we're going to come on to talk about the community forum later in the agenda, but I just flagged that because, you know, it's an instance where community discussion will be important but many in the community will probably be coming at that issue pretty fresh. The budget issue. Thank you.

THOMAS RICKERT: Thanks, Mark. So what we're going to do with this is we're going to take the comments that we heard today in our debrief session and we will come back with a suggestion to move forward, right?

I think we can't resolve this now, or at least it would take too much time with the whole group, but we will sit back and come back during this -- today's session to the group and make a suggestion.

Jordan, let's then briefly touch upon the other community powers before we move to the community forum, please.

JORDAN CARTER: I don't think I should take your time by saying much on any of the other powers. In terms of dealing with the -- the standard bylaws, the fundamental bylaws, and the removal of individual directors and the recall of the whole board, you've all seen the public comments summary that came through, and the only -- there's been a question in terms of removing individual directors a couple of times, whether that should be the appointing body or whether it should be broader, and so that might be something that people want to pick up on.

But I think it's probably -- given the amount of time we've taken on the budget one, it's more useful for us to get any particular points that group members as a whole want to raise about any of the other powers than for me to summarize anything.

THOMAS RICKERT: Yes. Why don't we do that.

Does any one of you want to speak to a specific issue on the other community powers? Chris.

CHRIS DISSPAIN: Yeah. I just want to raise a topic and see if anybody wants to talk about it.

I -- we made some suggestions in respect to the complete board removal mechanism suggesting that once you get past a certain number, you are, in effect, removing the whole board and that therefore a higher threshold should apply to removing a number of individuals than would apply to removing a single individual, if you see what I mean. And I'm interested in what people think about that as a -- as a concept, because we put that in our proposal.

So in other words, if you -- if you say for sake of discussion you have 16 board members, you could remove 14 or 15 of those individually using the individual mechanism, which might have a threshold of, let's just say, 60% or it might be only a vote within each SO and AC, if that's the way that the agreement ends up being, consensus ends up being, and that is, in effect, removing the whole board. And if the whole board had to be removed and the threshold was, let's just say, 75%, then that is a different -- different kettle of fish.

So our suggestion was there's a tipping point where you would say you are, in effect, removing the whole board, and I'm interested in what people think about that.

THOMAS RICKERT: I suggest we hear Alan first and then we turn it over to Jordan.

ALAN GREENBERG: Sorry. I was responding to that. I would have absolutely no problem saying there's a minimum number of board members you must leave or you must have a higher threshold to go below it or invoke the whole board rule or something like that. I think that's completely reasonable as long as that threshold is significantly less than half the current board.

THOMAS RICKERT: Thanks, Alan. Jordan?

JORDAN CARTER: I'm just trying to think about how you would implement that.

So I think our proposal said that for individual SO/AC removal, you'd need to get to 75% within that SO or AC, and it said for the removal of the entire board, that it would have to be 75% of all of the available votes in the community mechanism.

So that is a -- that's a higher threshold.

I don't know how you would coordinate a variable threshold.

So if you said -- if the ccNSO is going to remove Chris and Mike because it was sick of them, and if the GNSO was going to remove their two directors, and if the ASO was going to remove its two directors, how do you -- first of all, there's a big problem if all that's happening at the same time and probably people are going to move to remove the whole board anyway, but where -- what is the practicality of this differential threshold thing? I don't quite know how you'd achieve that, so...

THOMAS RICKERT: Thanks. Jordan. Sebastien?

SEBASTIEN BACHOLLET: Yes. Thank you. Sebastien Bachollet. I am not sure that we will solve that in discussing here with this whole group, but there are some -- there were some proposals in the first draft on the table and it was never really discussed.

I just want to come back with my proposal. It is that we need to find a way that it's not a single SO or AC who decides, and that it could be done between one and X board members, and handle it that way. Because if we have trouble with one board member, then we take care of this board member. If we have trouble with

more, then we take care of more, knowing that, as you know, each year five -- there's a possibility to have, each year, five new board members, and then the question of how you have the majority of the board change in one year, it's quite easy. You don't need to have all the board spilled, because it will create --

From my point of view, if we use that, it's the end of ICANN. And we can still discuss, yes, it's a nuclear option and it will never happen. Even if we think about and we start, from my point of view, ICANN is dead. And if it's what we want, yes, let's continue to do that, and I'm all for the ban of nuclear weapons, thank you.

THOMAS RICKERT: Thanks very much, Sebastien. Qusai?

QUSAI AL-SHATTI: Thank you. I think remove -- I mean, I can understand, for example, that a specific member, for a misconduct done by him, he will be recalled. A representative of an SO or an AC who did not act on the best interest of his group may be recalled by his respective group. But removing the entire board, I mean, ICANN is responsible for the -- in its functions the day-to-day, the resilience, the stability of the Internet. The removal of the entire board, that means a vacuum in this organization and it will be a vacuum in this organization. Let's not -- this isn't a practical measure. We cannot afford, because a disagreement between a community and a board, a board will be removed and suddenly the day-to-day operation of the Internet has been affected because of vacuum in the organization.

Yet -- this is dangerous. This is a dangerous tool.

First, we introduce a sole membership organization that reduced the accountability to only the SOs and the ACs, basically, and then me as a -- as a community, two organizations or three can agree to recall their directors and suddenly I am in a position to remove the entire board because I'm in a disagreement? Not because of a misconduct of the board, not because of a breach of a bylaw, not -- not because of like something like fraud or -- it's just because of a disagreement.

Eventually, the way it is mentioned here, there is like acting on the basis of --

[Timer sounds]

-- this is a possibility to -- or -- to remove the board based on an interest, based on that the board, for example, took a decision that's not in the interest of a specific group or some -- or some communities, and orienting the organization toward the -- let's say the -- the interest of a specific group or basically hijacking the organization. It is dangerous to say removal of the entire board. I can understand that an SO or an AC want to remove their director from the board, yes, but the entire? I think this is a dangerous thing.

THOMAS RICKERT:

Thanks for that. Let me just clarify briefly before we move on with the queue that in order to invoke this community power on removing the whole board, you need a higher threshold than for the individual board removal -- director removal, as well as the voting threshold is substantially higher, and then when the

community power is invoked, we -- there is the need for every organization to name a replacement director, so that there is a caretaker board instantly, to allow for seamless operations.

I mean, that's not as good as keeping -- having continuous operations. That's understood. That's what's been called the nuclear option for some. But it was felt necessary that with a higher threshold, that the community must have the possibility to remove the board for -- if there are wrongdoings.

Next in the queue is Greg and I'd like to close the queue after George.

GREGORY SHATAN:

Thank you, Thomas. Greg Shatan for the record.

Thomas, you made two of the points I was going to make so I'll just make the last one, which is that I personally don't believe that the -- that the community, you know, would exercise this lightly. This is a -- you know, recognizably a crisis -- something that would only be done in a time of crisis. There would need to be, you know, multiple significant failures that would need to lead us to the point where removal of the entire board made sense, you know, given that it is an incredibly disruptive situation.

But it does happen from time to time. I think there are people in this room who may even be involved in organizations where it has happened, and it's happened for good reasons for the future of that organization. And I think that ultimately it comes down to maybe trust again, that word that George has supplied, which is an important thing to keep in mind. Do we trust the

community to act on such an incredibly powerful power in a way that is, you know, for the good of the Internet, for the good of the broader community, and if we don't, then our -- everything is in -- everything is in trouble.

This room is in trouble. ICANN is in trouble. The community is in trouble, if we are that untrustworthy.

So there may be issues of how to ensure that we are that trustworthy. It's nice to say "Trust us" without showing why you should, but then again, that could be said for any group that's saying, "Trust us." So we do have work left here, but I am, you know, not one that is terrified of this power. I believe it would be exercised only in times when it was truly necessary to do so. Thanks.

THOMAS RICKERT: Thanks. Greg. Sebastien?

SEBASTIEN BACHOLLET: Yes, thanks.

[Timer sounds]

THOMAS RICKERT: Thanks, Sebastien.

[Laughter]

Go ahead.

SEBASTIEN BACHOLLET: That was exactly my point. No.

But, yeah, don't forget where we are. There are already powers with the board. If one board member get into trouble, the board has facility to act and the selection body cannot re-elect the guy. It's happened sometimes. Then -- yeah, because the ladies were not selected by yet --

But -- SO/ACs except now.

And we don't -- we don't forget that there are other power existing, that we are not inventing everything and need to have something without continuing the current situation. Thank you.

THOMAS RICKERT: Thanks, Sebastien. I feel compelled to make one point.

The existence of the community power to spill the board I think is undisputable. It's been on the table in our first report. We got overwhelming community support for it. It's a CWG requirement to have this community power. So I guess what we should discuss today is whether we need to make any improvements to the process that has been spelled out that we have in the report.

And I see that the queue is getting longer and longer again, although I had closed it after -- after George, so in the essence of time, please check whether your comments are actually those that help improving or shaping the process as suggested.

George. Sorry. Kavouss is next.

KAVOUSS ARASTEH: Before I speak, are we dealing with the removal of individual board members or other?

THOMAS RICKERT: We had asked the group to speak to the community powers that they think need -- they need to speak to.

KAVOUSS ARASTEH: Okay. I will concentrate on the removal of individual board member.

From the very beginning, I was not in favor of the removal of individual members by the designating authority of that board member. It is against the collegiality duty of the entire board because the duty of the board is not only to satisfy the constituency that elected that, but to safeguard the interests of the public.

So I am in favor of the proposal of ICANN that removal of individual board members should be under the entire community power but not a designating authority. It is not constitutional and it is not -- doesn't work because one constituency may be not in favor of that but others are in favor so we should consult everybody, and that is why we were not -- this -- I was not in favor of the individual board member removal through the constituency that designated it, but to the whole community. Thank you.

THOMAS RICKERT: Thanks, Kavouss. George?

GEORGE SADOWSKY: Thank you. George Sadowsky, for the record.

I -- it is absolutely surreal that the removal of the entire board was demanded by the ICG. And the reason I say that is that if I were the IETF or I were the RIRs and things were going badly, the last thing I would do to be -- would be to spill the board. I would take my digital assets and go somewhere else, because we've worked carefully on a method -- a whole policy of separation, how the separation can be done, et cetera, and I --

THOMAS RICKERT: George, it's the CWG requirement.

GEORGE SADOWSKY: Oh, CWG.

THOMAS RICKERT: Not the ICG. CWG requirement.

GEORGE SADOWSKY: Thank you. CWG. You're right. Which obviously should be reflected in the ICG report, right? But CWG requirements.

I would take my digital assets and go elsewhere. I wouldn't spill the board. And this -- this came to me when -- when Qusai was speaking.

It's a very destabilizing event. Why should -- why should any of the three IANA customers put up with that? Why can't they go somewhere else?

So I'm not saying that it shouldn't be done, but I think it's surreal that it's a requirement from the -- from the CWG, and maybe this is something that could be re-examined. Thank you.

THOMAS RICKERT:

Well, I guess it wouldn't be for us to re-examine that. It was my understanding that there was broad support inside this group and also from the community that a board spill must be in place.

I'm not sure whether it's helpful for us to reopen that discussion that we had quite some time ago, but rather if there are wishes to tweak the process to lead to less destabilization of ICANN in such event, I think that's something we should take on board.

Chris.

CHRIS DISSPAIN:

Thank you, Thomas.

I'm with Greg here. I'm not terrified by the power at all. But I want to make it clear that my concern is that -- is that -- and this is to a degree depending on what model we choose, but my concern is that there is, in fact, zero recourse. You guys have -- and this is supporting what Greg said.

The CCWG has consistently made statements that, you know, it's not the current board that's the problem, it's the future rogue board that's the problem, et cetera, et cetera.

And I would argue it's not the future -- it's not this level of SO and ACs that's the problem. It's the future SO and ACs. The problem is you're -- you can't have it both ways. You've got to have some accountability mechanisms in place. It isn't enough to simply say, "We make up the SOs and ACs and therefore what

we say goes." You've got to be accountable. And that question does -- doesn't matter about the model. That question does need to be dealt with.

The moment you give people the power to do something as a group, the question becomes to whom are you accountable. And that question has not been answered and has not been dealt with. I'm not against the power at all, but it seems to me, as a simple example -- there's been massive pushback, there's been a lot of pushback by people in the CCWG about the concept that you would have to see some sort of cause for why you would spill the Board. Well, it's -- all we've been talking about in the last 20 minutes has been it will only be used in a crisis. In that case why not show cause. The fact there's a crisis means there's a cause. So I don't understand the resistance to putting in place -- if you want us to have checks -- us, the Board, to have checks and balances in place, but you resist any check and balance to be put in place in respect to the community. I don't understand that. We're all part of the same community. So to whom are you guys -- to whom are each of the SOs and ACs working together going to be held accountable. And it comes back to the trust point. George has made it. Greg has made it. I agree.

THOMAS RICKERT:

Chris, to your point, if you think we should add cause, I think our group has never resisted that. Give us examples of what should be put into a list of causes. I guess our group in its deliberations had said earlier that the threshold is so high that this decision can't lightly be taken and that therefore we have safeguards in place, that avoid from the community to -- for the community to

go rogue. But I see that, you know, more and more people are adding themselves to the list and at the same time we seem to be arguing about the overall existence of the power more than anything else. And we --

CHRIS DISSPAIN:

Not arguing about the overall existence of the power, just to be clear. I'm not arguing about it. I said I'm not terrified about it at all. And the Board's position has been clear. That as a principle we don't have a problem with it.

I'm just saying one thing, Thomas, seriously you just said a very important thing. You said the threshold is so high I can't understand why it would be a problem. Let me switch that around for a second. That it's equally feasible for us to say and the threshold for the Board refusing something is so high I can't see why it would be a problem. So, you know, you won't -- the -- the CCWG doesn't seem to be prepared to accept from the Board saying we'll put in a high threshold and because that threshold is so high that you would be okay with that. Your response is no, no, no, we need the ultimate power to enforce. But switching it around the other way, you're claiming exactly what you won't let us claim which is you have got such a high threshold that it doesn't matter. So where's the equity in that? There's no equity in that.

THOMAS RICKERT:

So you're speaking to the underlying issue that we're going to discuss later in SO/ACs community accountability, which

actually should be -- become some sort of shared accountability or mutual accountability. Jordan.

JORDAN CARTER:

I think, Chris, there's a fallacy of composition in the argument that you're making. The ICANN Board is the governing body of a corporation with a budget of -- what was the annual budget this year? Cherine? 100 million plus? 300 staff. Control over the root of the Internet in a very significant way, operating the IANA functions. That is the body that's being held to account by these powers. And the -- compared with that the SOs and ACs and if this proposal is implemented as it is today, have some very narrowly scoped powers by which they hold that governing body, with all of that resources and power and influence and responsibility, to account. So it isn't right to say that the SOs and ACs or the community needs to be held to account in a symmetrical fashion. It's just -- it's a non-starter. It's an illogical proposition.

What does need to -- what we do need to assure ourselves of and what has been proposed in the -- the CCWG's proposal is keeping the SO and AC framework in touch with the Internet community, open to new participation, is very important. But if you're looking for some -- you know, if you're looking for a way for the Board to hold the community SO and ACs to account as a future in the proposal I don't understand what you mean. If you're looking for causes to be described in terms of exercising the community powers, personally I'm pretty relaxed about that. But I think that constantly raising who's the community accountable to is --

[Timer sounds]

-- is kind of a weird concept here. Because it's ICANN with the power, ICANN with the role, ICANN with the responsibility, ICANN that needs to be held to account.

CHRIS DISSPAIN: Well, in that case, Jordan, I think we can say we have a fundamental disagreement about the way that this model works.

THOMAS RICKERT: I'm just checking now. You know, after I closed the queue, six people -- seven people have added themselves to the queue. So if we don't want to discuss AoC, if we don't want lunch, so -- please keep it brief. You are not forced to exhaust the two minutes. Tijani.

TIJANI BEN JAMAA: Thank you, Thomas. You remember my position from the beginning was to merge those two -- those two powers. Spill the Board and remove individual Board members. It was first for simplicity. Second, because I objected to the removal of the Board members by the appointing bodies and what I wanted it to be by the whole community and also because I don't understand removing Board members without reason. So if we merge them, if we accept those principle that the community is the one who remove individual Board members, the community can remove 1 or 15. So there is a possibility to remove the whole Board, if there is a really -- really catastrophe. A real problem.

But don't forget that if we spill the whole Board, it will send a very bad message, not to ICANN -- to the ICANNers only but also to the people outside ICANN. It will be the failure of the multistakeholder model. Thank you.

THOMAS RICKERT:

Thanks, but I think we need to agree at this stage that the community power is there. There is consensus on it. Let's -- please discuss the processes. You know, this really takes us back six to nine months in our discussions. We can start it all over again. I mean, if you want that, that's okay. But then we -- we should kiss the transition good-bye probably. Robin.

ROBIN GROSS:

Thank you. This is Robin Gross, for the record. I wanted to speak on the issue of individual Board recall which strikes me as one of the most fundamental and one of the most basic tools of means of holding people accountable that we have. The California corporations code is set up such that you appoint your directors, you can remove your directors. That's a pretty -- that is standard. It really isn't like we're trying to interject some great environment of lack of collegiality. I mean, this is the way the world works. You have to perform up to snuff or you are removed. And so I think it's really important that we hold on to -- that we do not open up this issue again that was decided many months ago. I mean, you know, I understand the Board doesn't want to lose their seats, but we have a lot of work to do today so we should probably try to focus discussion on not reopening up these issues and trying to talk us out of it and rather trying to come up with the processes that are best -- that are most fair

and best means of achieving the goals that we've already set ourselves out there for. Thank you.

THOMAS RICKERT: Thanks, Robin. (saying name) you were not in the Adobe but you raised your hand.

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Thank you. I just want to continue the discussion on the issue that Chris raised. Who is ICANN accountable for? ICANN is not only accountable to its community, actually according to the Affirmation of Commitment it's also accountable to the DOC. Actually it is accountable to every single user of the Internet. There are three billion internet user today. There is a whole social economic aspect of the Internet they are also accountable for and there are other players in that. And it is more serious accountability, too. So reducing the accountability of the ICANN Board only to the ICANN community is a limitation. And who is in agreement of the powers of the committee to (indiscernible) the Board. There are some members of the community wants in that direction, but there is not a consensus in that. So the fact is having the sole membership model and reducing the accountability only to the ICANN community this is -- this is not right.

THOMAS RICKERT: But I guess that -- there's a misunderstanding there. We have acknowledged that we're going to work on this SO/AC accountability. The community does have redress with IRP. Aggrieved parties do have redress. But if you look at the public comment review tool after the first public comment period there

was overwhelming comment for the Board spill. We had interventions from Board members as well as from Fadi confirming that there's no resistance in the Board for the community power as such, and I'd like to encourage us all to focus on how this process, that we should accept as a fact to be in place, can be approved. Kavouss.

KAVOUSS ARASTEH: I said what I wanted to say in the chat. You should allow us to discuss there is no problem that reopening, if we cannot reopen any discussion while we are here. Take the common -- the proposal and put them together and say we are here to discuss the issue. Removal of individual Board member was not fully agreed because it is unconstitutional. Thank you.

THOMAS RICKERT: Kavouss, we're here to analyze the comments, we're here to refine our proposal, but I think we're not here to start the discussion from scratch and fundamentally question the community powers that have been established by this group more than half a year back. Cherine?

CHERINE CHALABY: I personally have no problem at all with the removal of individual board members. The concern I have is the process that you've chosen by which to remove it. And that has been touched on by Tijani and by Kavouss earlier, about the organization that has placed the individual has the power to remove the individual almost without cause. And in my view this

is going to create three unintended consequences which are going to be really harmful to the organization.

The first one is going to create a very dysfunctional board because, in fact, you will be creating two classes of board members. Those that will act almost in the sole interest of the constituency that has elected them and those that will be free to act in the collective interest of all stakeholders. The second of the unintended consequences, it will weaken the governance of ICANN generally because the Board deliberation and decision would be at risk of being driven to a large extent by subjective goals and personal compromise.

And the third one, in the long term it would create a negative change in Board member behavior because the threat of removal without significant justification in my view runs the risk of having individual board members feel the loss of their seat if they do not adhere to the wishes of the organization from which they come. This could turn the Board into a representative body or a Parliament, i.e., a place where opposing interests clash and are reconciled rather than the present situation which all members are obligated to act as a body in the collective interest of all the organizations. Thank you.

THOMAS RICKERT: Thanks, Cherine. George.

GEORGE SADOWSKY: George Sadowsky, for the record. The Board has said in its comments that it accepts the concept of spilling the Board and removal of individual directors, and I agree with appropriate

justification this is -- this is an okay thing. I would -- I would support it.

I wanted to comment on what Jordan said a few minutes ago. He said the proposal is giving the community only narrowly scoped powers. Narrowly scoped powers. You have the power to fire us and you have the power to dissolve the organization under the current proposal. I don't consider that a narrowly scoped power. I don't even consider it a balance of power. I consider it a reversal of the locus of power in the community. Thank you.

THOMAS RICKERT:

Fiona.

FIONA ASONGA:

This is Fiona Asonga, for the record. I think when it comes to the issue of removing individual board members or the entire board the biggest challenge there is in how we want to go about it. Because there is a loophole that allows appointing AC or SO to just remove the board member. We should be clear that there has to be justification. And then even when we are having that transition period of when the board -- individual board member or if the entire board has been removed, I think it's important that you have in the process a receipting mechanism which means within each AC and SO there would have to be a process where the appointing AC or SO receipts that seat as an imagined -- like an imagined seat procedure of sorts. That gives the organization the stability to -- that it needs to be able to continue its operations. We, however, need to be cognizant of

the fact that if -- if -- okay. I'm thinking about the best way to put it. Basically I think if the -- there is too often the removal of board members and receipting and reappointing and all that process is repeated a bit too often, then we're abusing the mechanism. And when there is abuse of the mechanism there is a risk that sections of this what we are calling the ICANN community will seek for other ways to ensure that -- that the -- their needs as Internet users and Internet operators running businesses will need to be addressed. Basically what I'm saying is, there is a --

[Timer sounds]

-- risk for some of us from the African content, for example, to go to our governments and tell them this ICANN thing is not working and we want something else to work with. So what we need to do is to be able to look at -- whether we would like or not, Thomas, we need to look at the process and to make sure that process is simple and clear enough to be understood. Because if we don't -- if we internally are not understanding the process, then there is a problem. We will fight internally, we will eat ourselves and everyone from outside who comes to help us, swallow each other. We need to put our -- our thoughts together and just give it a bit more time and really make sure that we are at power with the process.

What George had mentioned, the idea that the numbers community is make sure it has kept all its policies and everything out of ICANN. We do -- a lot of -- all our work is out of ICANN except where we need global consensus. What is there to stop us from moving with our numbers issues out to a different entity with IETF and put our numbers outside and continue

running our operations? We need to be -- there is that risk that is likely to happen if we don't get our act together as an entire ICANN community. So let's give it thought and really make sure that we are able to be simple, clear, and accommodate everybody.

THOMAS RICKERT:

Thanks, Fiona. It's now 12:30, so we're due to have lunch now. So we will have to discuss the community forum and the AoC after lunch. But nonetheless, I think there were a lot of valuable points that were made. The leadership team will try to come up with suggestions how to -- how we can operationalize this. However, I think, having listened to this -- to the discussion for the last hour or so on the community powers, the big difficulties that we heard a lot about vague concerns, uneasiness with the process, fear about destabilizing, reputation of ICANN to the outside world, that people might go elsewhere. So if we want to address this, let's discuss concrete proposals that we can test in the -- in the room and see whether we can fix the concerns. And I haven't heard too much about that. And I think when we -- when we reconvene after lunch, let's try to discuss very concrete measures.

So when we're talking about uneasiness with removal for no cause, come up with a list of issues that should be for cause. And let's put them in front of the group and see whether it gets traction. Or for -- if you have issues with individual board member removal by the designating organizations, we could ask for a second organization to second that. Right? Whatever. Let's be concrete. Let's discuss concrete suggestions, alterations to the escalation paths that we've suggested, and

let's not limit ourselves or confine ourselves to vague criticism. Because I think we really need to try to improve the proposal that we have.

Jordan, at rapporteur, you were in the queue. I leave the final remarks to you.

JORDAN CARTER:

I'll just try and be brief. One of the points that as an existential point for this is that I think people have assumed that it's legitimate to say the global Internet community is out there. All the people who use the Internet and if they want to have an input into ICANN's very narrow slice of making the Internet work, they can come and be involved through the ICANN SO and AC system. So that -- that's how you get involved in domain name policymaking at the global level. You might be a user, you might be a non-commercial, you might be a registry, whatever.

If that linkage is broken, then we can't solve ICANN's accountability through any ICANN internal process. There needs to be some external source of that accountability. But the whole point of this has been to end the external accountability, like to end the NTIA contract. So, you know, if the whole basis of the SO/AC model is broken and that isn't a foundation for community involvement and accountability, then we might as well go to the beach. It's a sunny day out there, you know. So because what we don't have time to do is invent an entirely new infrastructure or system outside ICANN which is going to hold it to account.

That's really the only point I wanted to mull. The other point I want to make as a rapporteur is all of the arguments that have been raised today were raised in Buenos Aires, they were raised in Paris, they were raised in Istanbul, they were raised in Frankfurt, and at some point we either have to crystallize and stop re-litigating decisions that we've already made or we need to go home as well. So I think we just need to think at lunch about how we advance, you know, towards a kind of final proposal or whether we're not going to.

THOMAS RICKERT: Thanks very much. And we're going to reconvene in an hour. Thank you.

LEON SANCHEZ: Just a couple of notes. We will be reconvening in an hour. Lunch will be where we had the cocktail yesterday, in the terrace. And there will be people in the room, so if you want to leave your things here, we've been told that it is okay. And one hour includes round trip to the lunch venue and back, so let's go.

[LUNCH BREAK]

THOMAS RICKERT:

So staff, can we get the recording started, please? So I'd like to ask everyone to be seated. We're going to reconvene.

I hope you had a pleasant lunch, and for the remote participants, sorry for going into overtime with our break. And we hope that you also had some time to relax, so that we are now all energized to continue the discussion.

And let me just open this up by saying that those who know me may have gotten the impression that I was not really happy with how this last session went, and let me just say that this is far from the truth.

I guess anger and frustration is a much better description for my feelings.

[Laughter]

And the -- I'd like to share this with you not to complain, but just to get us all focused on why we met here today and why we're going to meet tomorrow.

We had two public comment periods. We had work results that we got huge support on in the first public comment period. We had consensus from the community in many, many areas. And what we saw this morning is that individuals -- primarily, those that were not in the CCWG discussions from the beginning -- were bringing arguments that have been discussed in the CCWG months and months ago.

That is not to scare you off making arguments -- right? -- so please do contribute to this discussion, but what I think we need to avoid is reopening discussions on issues that have been

agreed upon not only by this group, but with input from the wider community, after thoughtful analysis of all the public comments we received.

And just because people didn't get their way, we had --

We didn't have full consensus on many items, but we had rough consensus.

For those that didn't get their way the first time around, now to try to get certain things reopened I think will not help us. Also, it will not help us to rediscuss CWG dependencies.

If we try to discuss CWG requirements, that is okay, but let's all be very clear. We're not going to make it if we do that.

At this point, we can't afford to go back to CWG and ICG to rediscuss what they said we need to deliver on. We can't afford to go back to them and say, "Well, let's redo this approval by the chartering organizations for the CWG approval." It will derail the whole process.

And this is why we try to encourage everyone to speak on substance, to take what we presented to the community and take community feedback in order to improve what we had.

And what we heard is a lot of anxieties, fears, uncertainty, and that doesn't really help us put on paper how we need to improve the processes, the escalation paths that we described.

So let me give an example. You know, I've given this some thought over lunch. When we discussed dismissal of board members or recall of the entire board, there was a lot of talk about, you know, "Who are these guys in the community

throwing people out without any cause?" What we didn't really hear is what we need to do in order to take away that concern.

So let me make a concrete suggestion.

What about this: If an SO or AC plans to remove their director, let them make a public statement about this, provide a rationale. Not based on a catalog of causes, but they need to explain why they were unhappy with that person. Let's bring that to the community forum. Let's give that person the opportunity to respond publicly to the allegations. And then there can be a discussion.

And if this process is not followed, we can open the IRP to the aggrieved board member and have tested whether process was followed in the dismissal process.

You know, so you would have an additional accountability because the community can't just secretly get rid of someone without explaining things. There must be a rationale, it must be documented, there's a right of defense.

So we can easily tweak the process to accommodate that.

Would that shed some light on the issue for some that had concerns on this?

So I see George is nodding.

I saw Tijani nodding a little bit earlier.

Alan is frowning, which -- Alan, fire away.

ALAN GREENBERG: Sorry. I haven't figured out how to get back in Adobe yet.
Isn't what you describe what's in our proposal?

THOMAS RICKERT: But we need to make it more explicit, then. I think the right of defense is maybe not clear enough in there, that the -- the director concerned must have the ability to say publicly, "This was not true" or -- you know.

ALAN GREENBERG: I think that's already there also.

THOMAS RICKERT: Let's bring it out, then.

ALAN GREENBERG: But if -- you went on to say they would be able to appeal it, essentially, and if -- if the ALAC were to say, "We want to remove our board member because we are simply -- on a regular basis have disagreements in philosophy and how we look at things," that has to be a valid reason. It doesn't have to be justifiable. You know, simply a different mind-set and it's not something you can prove in court. And as long as it's within those rules, I'm happy. And I think that's already in the document we have.

THOMAS RICKERT: We need to emphasize and institutionalize that, if need be.
And on your point, it wouldn't be --

The board member, the aggrieved board member couldn't use the IRP to challenge your decision, but if, let's say, the ALAC was not using the public forum to have this discussion out there, and if it doesn't provide a rationale, then the IRP could say that the process was violated.

And I think that's something that we -- you know, could help the SO/AC accountability on this community power.

So I had Kavouss and Fiona and Tijani.

KAVOUSS ARASTEH:

Dear Thomas, we all have full trust on you, on your kindness, competence, neutrality, and so on and so forth.

You said many things, but you did not mention that we have received 81 pages -- although it is cut-and-paste from our proposal -- from ICANN, and we have to consider that.

If we don't consider that and we ignore that, that proposal will go to the NTIA and the NTIA will be faced with two alternative proposals. One of them is based on experience of ICANN, 17 years of work, adjusting themselves to all requirements in the best possible way that they can. The other one is ours which is based on full theory, hundred percent theory. We put theory together one after the other in categories from 1 to on 100.

So let us to consider and to see where we can have a possibility to move toward each other, none of the two issues coming from the sky. We have to discuss them and I think there is room to have some sort of combination of both, have something which also satisfies ICANN, with their 17 years of experience.

So let us not take it in that way that you have mentioned. Let us work toward each other. We have come into this meeting with the hope that we have an output of this meeting.

If we stick to what we have, just visiting that because of the two public comments, we will get nowhere. So let us have something constructive and objective. Thank you.

THOMAS RICKERT:

And I think I will -- I hope I didn't say anything to the effect of your fears, but certainly we have to look at ways to improve and reconcile the differences, but let's not move back to square one.

So I see that Fiona and Tijani have put their hands up in the Adobe. Now it's difficult to find out the sequence so I'm following the sequence in the Adobe, if you permit me to. Avri is next.

AVRI DORIA:

Thank you. Avri speaking.

On this issue, when thinking about the sacking of the board -- I don't like "spilling" -- but anyway, one of the things that we've compared it to several times, and several people have brought up, is the notion of employment law. And I think that in the conversations, we're starting to get close to, one of the fears that's been brought up, too, is it will be arbitrary, it will be just because of one vote that they took that displeased people and that would be enough to start the action.

And I can understand a certain amount of insecurity about that.

Now, when there was a conversation there, though the word was not used, I know that when I was a manager that had to deal with the notion of sacking somebody, I had to be able to show a history and a pattern.

And so it wasn't just a reason, in other words, but there was basically a -- for example, when Alan was saying, he said "We have a long history of not being able to agree, that the positions are always counter to our positions," et cetera, that there's a pattern, that there's been conversations.

So maybe if we're looking for an intermediate point between there being a list of approved firing offenses and there being just, "Hey, we don't like them anymore," that basically people have to show a reason with a -- that is based upon a pattern or something like that. Thanks.

THOMAS RICKERT:

Thanks, Avri.

Next in line is Chris.

CHRIS DISSPAIN:

Thank you, Thomas.

So I agree with you. I think it's clear that in over -- in principal terms, there is consensus from the CCWG and the community, in general the comments that have come in in respect to the mechanisms for removing board members.

I think the problem -- part of the problem is that the detail depends, to some extent, on how you do it.

So if I understand it correctly, the current proposal, which I think has had some pushback, is that it's not the actual SO or AC's right to do it. They have to go to the rest of the community and get agreement from them under a certain threshold.

Is that correct or is that not correct?

Because there's a thing in the comments about going to the community forum. Is that -- is that just purely so that they get a chance -- that the director gets a chance to stand up and speak or...

>> (Off microphone.)

CHRIS DISSPAIN:

Right. So in effect, then, the situation is that each SO and AC can, of their own, recall a board member. Fine.

So the next question then becomes: All right. And that's on the basis of what? A simple majority?

Does the GNSO split its -- split its right in two, so that the contracting parties house has the right to remove its director and the non-contracting parties house has the right to remove its director?

Those things are all important in looking at -- I've got no problem with the principle, but my problem is when do we get to the discussion about how it's going to happen. Is it going to -- are you going to allow for different thresholds for different SOs and ACs?

So do you understand what I'm saying? I want to be clear that we are clear, because I'm not sure that we are.

And just to finish, on the cause thing, I think I don't agree with Alan in the sense that you could simply say, "We don't get on." I think you'd have to -- I think you would have to -- I'm not suggesting there needs to be a list and it's got to be, you know, "Here's proof," et cetera, but I am suggesting, as you said, I think, Thomas, that there needs to be a clear explanation of what -- what is the cause of it, because if there isn't, how can the director use the community forum or any other mechanism, for that matter, to, quote, defend themselves, unquote?

THOMAS RICKERT: Thanks, Chris. And I think that a familiar face wants to answer that. Mathieu, are you with us?

MATHIEU WEILL: Can you hear me, Thomas?

THOMAS RICKERT: Yes, we can hear you. Welcome.

MATHIEU WEILL: Okay. I have a lot of echo, but that's okay.

Hello, everyone. This is Mathieu Weill speaking. I'm glad I can hear you and it's good to have such a fruitful dialogue going on.

Chris, I think most of the questions you've asked find their answer in the current CCWG report. The process is giving the

director a right to respond, and as a consequence, I think it was definitely intentioned that the cause for or at least the motives were exposed, and I think I fully agree with one of the points that was raised by Chris that we need to get into the level of details of how the various SO and ACs make their decisions.

But to get to that level of detail, I expect we would need first to confirm that this is something that everyone is comfortable working with and that it's not going to be work wasted because we would take another route.

But I would think it would be useful for our group to get to proposals on this, as long as we can confirm that it's because we are in agreement that the rest of the proposal is agreed on.

Thank you.

THOMAS RICKERT: Thanks very much, Mathieu.

Avri, is that an old hand? Okay.

Seun?

SEUN OJEDEJI: Yeah. This is Seun, for the record.

I think I've been posting my comments on the chat. I need to clarify something from Thomas in terms of the individual board removal and how it affects the community forum.

You're saying, okay, a board -- an SO or AC initiates -- I think we need to go through the flow so I will know what this looks like.

An SO or AC initiates the process to remove a board member that was appointed by the SO or AC.

Then at one point the community forum is convened.

And then perhaps the board member is also in the room to defend him- or herself.

If the community at that point feels that or determines that what the board has said, as against what the respective SO or AC that initiated the process has said, is not in the interest of the community -- that is, if the community feels that the SO or AC is removing this board based on the interest of the particular SO or AC -- does it mean that the SO or AC will still continue, irrespective of the process?

So what is the purpose of the community forum? Is it just for, "This is what we want to do for information, bye-bye"? Thank you.

THOMAS RICKERT:

Thanks, Seun. It's a matter of transparency, to prevent secret discussions and secret decisions from being made and to force the SO or AC to provide a rationale for the removal.

And I think that would be an excellent example of providing for more accountability of the respective communities because if they have to justify their decision publicly and on record, they will likely not take such decisions lightly.

Next in line is Fiona.

FIONA ASONGA:

Just for the purposes of being clear, I think it is important that we recognize that a lot of the things that we have been raising in the proposal, we are the ones who have been drafting them. We understand them.

I don't know how many of you have tried to go and present that proposal to someone who has never been to an ICANN meeting and is a key decision-maker and wants to understand what is happening.

Then you'll realize that there's a lot in the proposal, yes, but it is not clear.

We need to make it simple and clear.

When the issues we are talking about, removing the board or spilling them -- individual members or spilling the entire board, yes, there may be consensus, but if those -- if the step-by-step guideline of how that will happen is not clear, for someone who's not been part of drafting, the document looks extremely complicated.

I have done that with my minister of ICT. I've attempted to do it to the ministers of ICT within the East African region. The question is: Why is the document so complicated?

What happens?

The questions that have been raised now in terms of the process, that -- those are things that maybe could be in the annex of the document. If that process is not clear, if there are gaps, or if the process is so complicated, there is a risk that a lot

of people who should otherwise be with us on this document are not on the same footing.

I'm not raising it because I'm trying to take people back, but I'm just asking can we please look at the proposal in view of all the comments we have received and see how we can simplify what we have put together so that it is clear for entities that don't sit in this space, that are not part of the ICANN process, that do not understand the different constituencies within ICANN, to understand that, yes, this is what it is moving forward and you're welcome to be part of this? Thank you.

THOMAS RICKERT:

Thanks, Fiona. And just to be clear, during last week's call, we've discussed exactly that point, and the group was very clear that we need to work on substance first and then on messaging.

So, you know, simplicity of argumentation, ideally simplicity of the process, is something that we aspire to do, but I think we need to get agreement on the general ideas first in order to be able to message things so that everybody can easily understand.

Tijani?

TIJANI BEN JEMAA:

Thank you, Thomas.

You said, Thomas, that some members of the group had a minority position about some subjects and now they come and they try to raise it again and this will not help.

I understand, because you consider that we had a consensus about it.

I want to remind you that this consensus was met among the very large group, which is against the charter. The charter says the consensus should be among the members of the group, who are 20-something.

Suppose, for example, At-Large has a position that they are the only part that are defending, and if they want to have their position in the report, they can bring 100 people, since it is open, this group, and you will feel the traction to the other way and you will put it in the report. I think this is captured. Thank you.

THOMAS RICKERT: Thanks, Tijani. Nigel?

NIGEL ROBERTS: It's on now, I guess. Thank you.

I think we need some more clarity about the differing roles of board members and how this is affected in the removal process. The representative function where the board members representing an SO in the executive function where they're running the corporation. Now, a board member is a volunteer. Might get paid expenses or an honorarium. But they're not employed in the sense of a staff member. I must admit I was quite worried when I started hearing about employment law. Legitimacy for a board in a nonprofit derives from the members. Now we have some difficulty in defining who the members are in the case of ICANN as we heard earlier. I don't believe there can

be any objective cause for removal of a board member except a really simple one, that there's been a threshold number of the members that he or she represents have affirmatively requested that removal. Again, I can't imagine if we have a long, long list of, you know, the board member looked at me funny so he needs to be removed. No, I -- just doesn't work. And during the process the community or the member should be required to put forward a reason, motivation for why the removal is requested. It's self-evident. Otherwise how would you get sufficient support for the proposition. Obviously there has to be due process, natural justice. A board member potentially subject to recall must be given the opportunity to protest removal and to be heard by the members. But you can't delegate the decision-making to a third party such as an IRP. Otherwise, all that will happen is the affected board member will involve the corporation in a process that will run as long as .xxx or -- did or as .africa seems set to run. Please bear this in mind.

THOMAS RICKERT:

Thanks, Nigel. Just a point of clarification. The proposal was that the IRP can be invoked for questions of process. So if the SO or AC chooses to not use the community forum to provide a rationale that can be taken, not the decision as such. And this -- the suggestion to use the IRP for that purpose was, by the way, also supported by (saying name) who's one of our BC advisers. Alan Greenberg.

ALAN GREENBERG:

Thank you very much. As I think I've made it clear, I support the concept of an AC/SO removing their own directly. I can certainly

live with it being a community decision, if that's the way it goes. I have real worries about identifying causes, the director defending him or herself, the potential for ultimate libel or slander suits, the possibility of taking ICANN to court. I mean, yes, indeed, if someone is dismissed from a director position this -- this could impact the rest of their life, depending on what the reasons we say are. And I find it really problematic, and I suspect we would never, ever use it if we put enough ifs, buts, and ands in to make it so potentially dangerous for going through that process. So I really worry about that. And I look at the suggestions the Board made and, you know, they're listing things like committed fraud, didn't follow the result -- the recommendations of the MEM. Well, those are reasons for the Board to dismiss someone themselves. That isn't the community -- that isn't the community dissatisfaction with them. I think if we need to have long laundry lists of justifications for why we're dismissing someone, we should equally justify why we're appointing them. Thank you.

THOMAS RICKERT:

Thanks, Alan. And the queue is closed after Cherine. We need to move to the next topic then. Par.

PAR BRUMARK:

Yes. Well, I don't really -- we can spend our time because there can be hundreds of reasons for removing someone, and it's not unlike a public limited company where there are different infractions. So there can be -- but, of course, reasons must be presented and due process has to -- but I don't see the

difference between this and a limited company. Public limited company.

THOMAS RICKERT: Thanks, Par. Kavouss.

KAVOUSS ARASTEH: Thank you. I think we are discussing many, many things at the same time. I come back to the individual board member. Once again, I reiterate that, it is many, many other areas. It is mentioned whenever we have board, they have collegial responsibility to perform. So their action should have the safety or safeguard of the public interest. I propose the following three times at the group, that in exercise of their duties the member of the Board shall not act in a way representing the entity they have elected them, nor the region but put it the following way, as a constituent of international public trust. This is the collegial activities. Otherwise they don't call them boards. We say individual members. Board means that together. Whenever Steve goes with the resolution and asks one of his colleagues to move in the motion the resolution, he asks whether there is any difficulty or problem. Why he ask that questions? Because they're collegial. So we want now with this proposal, CCWG breaking that collegial activities. How? Thank you.

THOMAS RICKERT: Thanks, Kavouss. Cherine.

CHERINE CHALABY: I 100% support what Kavouss says. A Board member has responsibility to act in the collective interest of all stakeholders, not the single interest of a single stakeholder and therefore we have to avoid the situation where the dismissal of a board member changes the behavior of that board member. What you're still proposing is that the organization that is putting that board member on board has the sole power to remove that board member. I believe to me there is -- that is wrong. That is capture. It should be a community decision. I'm happy with that organization putting the petition but then the decision has to be a community decision.

The second thing which is a problem I see is that you are creating two classes of citizens. Is the treatment the same for NomCom members or not? So I would like to have that process of removing a board member to be a single process applying to all board members. All board members are equal citizens. They're the same class. There isn't a distinction between different ones. Thank you.

THOMAS RICKERT: Thanks, Cherine. Sebastien, you had raised your hand but you were not in the Adobe so please go ahead.

SEBASTIEN BACHOLLET: Yes, thank you. I wanted to raise a different issue. I have the impression that we have to be very careful about what we want to do when we want to dismiss a board member. I am not sure that we want to turn our community forum into -- it seems like it's a translation from my knowing in French, (indiscernible) that

(speaking non-English language) in French. And I am not sure it's what we would like to go and where we would like to do. We need to be very serious about what we want to do with a board member, we want to -- him or her to leave the board, do we want him to be in front of 1,000 people to say somebody will explain why you need to leave the board and he will try to explain why he doesn't want to leave the board? I -- I really think that we are coming back to a period that I would like not to live again. Thank you.

THOMAS RICKERT:

Thanks very much. I think with that we should end the discussion on this point. We will take on board what we've heard. We will come back with a suggestion for a way forward based on what we've heard now. So let's move to the community forum now and Jordan and his team, they've worked on some issues or some areas that should be reflected in the concept of a community forum, so over to you.

JORDAN CARTER:

Thanks, Thomas. Hello, beautiful people. Here we go again. This will be a different conversation to the last one, I hope. You've got as a part of your reading pack a kind of document that has some of the discussion that working party 1 has been having on the community forum. And I've plucked out of it a few key issues to focus the discussion on. But I think through all of the discussion that the CCWG has had in Paris and BA and here, cited mutual accountability is really important. And it's most difficult with the kangaroo court that was just done. I can imagine that in some cases the idea of kind of appearing before

a community group to defend your conduct might not be the most appealing thing to do. So -- but with bylaws changes with the budget power and so on, it's been agreed that having people around the table to discuss exercising these powers before they are used, before decisions are made, is really important as a matter of principle. And the feedback that came back in the public comments was, we need more detail. We need to understand more about what this forum is, how it would work. Another point that came back was the notion that one of the advisers floated about a public accountability forum. That hasn't been fleshed out by anyone, but maybe it could be something that's grafted on to the -- this ICANN community forum.

And so all we were hoping to get out of what might be a brief discussion here, it might not, is any further kind of concrete suggestions about areas that need to be formalized in respect to the forum, and if you just scroll down a bit on this screen to those key points there, we've taken the -- the discussion, the imperative discussion is red. There's been some discussion about how much formalization of the output of that discussion should happen. So if the forum is having a debate about whether to veto a change to the bylaws in respect of some item, should the discussion be summarized in writing by a neutral rapporteur and then circulated around the SOs/ACs to be discussed. There are arguments both ways on that.

There was also a kind of -- the idea of this forum so far as drafted was that you would have to try to get some guaranteed representation from each of the SOs and ACs and the staff and the board and so on but that it would be open to broad

observation and participation as well. Is that still something that people agree with? Specifically -- specificities about the level of detail that's required. And something else that has come up in the last few days is the time frames in which this forum would operate. There's some -- you know, the default that's been provided in the community power as part of this report is a 15-day discussion phase. Just over two weeks. That follows a 15-day petition phase. So usually if there's a debate or an argument that's happening that might lead to the powers being exercised, people will be grumbling about that, talking about that. At some point the tension will get to the point where there's a petition. There's a 15-day window for the petition thing to happen. And once there is a petition, there's a 15-day discussion period.

Now, for some ICANN stakeholders, saying anything in a 15-day period, even with -- when they know it's coming, is not a thing that can happen. Some governmental representatives have suggested that that's just a totally unrealistic time frame. And that you need a much longer time frame. I don't know. 90 days, something like that. If you have a 90-day discussion period before any of these powers are exercised compared to a 15-day one, you're obviously slowing down a whole bunch of processes and stuff. So there needs to be a bit of a conversation about timeliness here.

But overall, we've detected support for the forum idea and a desire for more clarity. These key points highlight some of the key issues. And the basic way -- hopefully this is a harvesting of ideas session or a raising of other points that haven't been mentioned as key.

THOMAS RICKERT: Thanks very much, Jordan. So those who have -- who have their hands raised from the previous session, please do take them down. Let's now hear views, suggestions for, you know, how we would like to shape the community forum. Chris. I think you're the first one.

CHRIS DISSPAIN: Jordan, thank you. And I think there's been a fair -- clearly a fair bit of work going on here, which is good. Just a couple of thoughts and questions. This seems to me to be -- the intention of this is that it's not -- is the intention of this that it's consistent or is it ad hoc? It doesn't -- it doesn't -- my understanding is it's an issue-driven process. And is it intended to make a clear mandate of what the issues are that can come to the community forum or is it intended that an SO -- assuming it's a single SO or AC that can bring something can decide to bring something, even if it doesn't fit within the issues.

JORDAN CARTER: Good questions, Chris. Thanks. The idea is that it would be a -- well, this is the detail we need to flesh out. The idea that I've had in mind is that it's a known body of people but that it wouldn't meet unless a procedure was happening that required it to. So it wouldn't be the kind of group that would have a monthly meeting and there would be a call for agenda items and if people just wanted to have a whinge about something they just put it on the agenda. That's not what -- how I've been contemplating it anyhow. Does that deal with both questions then?

CHRIS DISSPAIN: Yeah, it does, but that leads to a supplementary question which is in the sense of -- actually this question applies whether it's a standing body or an ad hoc body. Are you intending that the -- that the process for appointing people to this body would be a mandated process? Or are you intending that it would be a process up to each SO and AC to figure out for themselves? And given -- given that it's only a discussion body, it is only a discussion body, as I understand it, it's not going to vote or anything, are you going to be -- I suppose what I'm saying, is if it's merely a discussion body, then isn't -- is it not possible to have a -- simply have a process whereby at a -- the community has it at an ICANN meeting or something? Is there a reason why it has to be an actual body? I'm not against it. I'm just not clear.

JORDAN CARTER: Yeah, the reason for that is if it's a thing that has to be done in the exercise of the community powers, no one has suggested so far that these powers should only be exercised in a time frame that let's the discussion happen at an ICANN meeting.

CHRIS DISSPAIN: Right.

JORDAN CARTER: So that's why it needs to be able to come together in between.

CHRIS DISSPAIN: I'm fine, but I just want to flag then for that reason that there would need to be discussions on funding, funding mechanisms and on the way -- assuming -- unless you're telling me that it's

only going to meet virtually, you need to be clear about funding mechanisms, you need to be clear about representation, how many people. You know, ICANN might be comfortable funding a meeting if it's, you know, a total of 12 people. It may not be quite so comfortable if it's a total of 60 people. We need to be clear about that sort of thing. And then the other point, of course, is of course if it's going to meet face-to-face that means it would be ripe for an audience because you're not suggesting they're going to be meeting in a closed room. And so things need to be fleshed out, I think.

THOMAS RICKERT: Thanks, Chris. We have Kavouss, Ray, Steve, and then Sam.

KAVOUSS ARASTEH: Yes. I think with respect to the forum it may be perhaps a little bit of misunderstanding between colleagues. The forum which first was called ICANN community assembly but because of the connotations of the assembly changed to the forum is really a flow of discussions and nothing else. Does not make any decision but provides the rooms to further discuss the issue before going to decision-making, which is the third step. As we know, we have three steps, petitions, forum, and decision. So that was good, and I have not seen any opposition of the Board with respect to the forum in an explicit manner. However, in the matter that they propose MEM, there is no room in how this forum will be implemented. Because of the MEM issue group before going to the decision, which is a standing panel, whether in that MEM issue group there is a room for discussions, whether you call them forum or not. But the issue is to have the

possibility that the people discuss the issue to analyze everything before going to decision. And I request the board member to clarify whether in that MEM there is such a room of discussions, whether in the name of forum or any other name providing possibility for all SO and AC to further analyze the situation before going to the decision-making. Thank you.

THOMAS RICKERT: Thanks, Kavouss. Ray.

RAY PLZAK: Thank you. Ray Plzak, for the record. So understanding you correctly, Jordan, you're saying a standing panel that is only called when necessary. So I would agree to that. I would also agree to the fact that each SO/AC could choose members by their own means of choosing. I also would call to question is there going to be some consideration for people selected at large, not from the At-Large but at large but some kind of NomCom or something? Would there be terms? Would there be term limits? Those kinds of things are very, very important. Otherwise you have a little small select body that lasts forever.

Also, the discussion before community powers are exercised is, that means that this group functions much like a grand jury, in that it returns indictments, or is it more to the point of, "Hey, whoever's in charge of this whole thing, you need to take a look at this?" There's a distinct difference between those two options.

So I would like to have those things brought to the fore and discussed, and maybe not necessarily taking the time today to do it but I think they are very important considerations.

THOMAS RICKERT: Thanks, Ray. And just to be clear, because there's a longer and longer queue forming, we allocated 15 minutes to this just to get some guidance as to how we should further flesh this out, you know, so --

RAY PLZAK: And that's why I said don't discuss it now.

THOMAS RICKERT: Yeah. So -- and I'm really going to close the queue after Mark, and try to be as concise as possible. Steve.

STEVE DelBIANCO: Thank you. Steve DelBianco, CSG.

Work Party 1, our subgroup, was convened by Jordan over the past couple of weeks to flesh this out and I don't think calling it a body does it justice and it may lead folks like Ray to conclude lots of potential mischief that the body could do.

It's an event driven by the most noble of sentiments to the requirement that before we vote on something -- "we" being the ACs and SOs or the MEM issue group; this works in both cases -- before we would vote on something or an MEM issue group drafts a resolution for each ACs and SOs to consider, there would

want to be a conversation with consultation, legal advice, clarity, and consistency.

You have to have that or each of the underlying ACs and SOs could be considering a resolution or voting on a power with completely different understanding of what it means and what it can accomplish.

So you're right, Chris, there is a need for some staff support, there is some need for some legal help, just like the law firms that have helped the CCWG, but it really is no different than a cross-community working group that's come together to decide whether to exercise a budget veto, or come together as to whether to exercise a spilling of the board, or come together as to whether to invoke a community IRP.

And I got -- I'm seeing grimaces from Jordan but the community forum and the impression that a lot of us had on that call was an opportunity to force us to be consistent and clear before we took the steps of launching an effort on a community power like blocking a bylaw, spilling the board, or an IRP.

And in that regard, there is no notion of worrying about term limits or grand juries because it simply comes together, either virtually or in person, to exercise the powers the bylaws have given to the community. Thank you.

THOMAS RICKERT: Very briefly.

JORDAN CARTER: Just really briefly.

I was grimacing because it sounded like you were giving it more power than it had. So yes, it's a discussion forum to make sure that the community understands each other's perspectives about exercising one of these powers before decisions are made. There's no voting. The only reason you'd appoint people to it is to make sure that your SO or AC's perspective was shared and to make sure that you had a way to hear what other people's perspectives were. So that's what this is about. Not decision-making, not voting, not being a grand jury, not being any sort of set of high priests or anything.

THOMAS RICKERT:

Thanks very much. And let's all remember that providing for transparency is also a facet of accountability. So you've been asking for SO/AC accountability. We're offering something and it's sort of de-escalated to an implementation detail, and I think it's a very important aspect of what we're trying to achieve.

Sam?

SAMANTHA EISNER:

Thank you. This is Samantha Eisner, for the record.

So I just have two questions for clarification.

First, the community forum, as I understand it, would fit -- if there's a petition/discussion/decision phase that's laid out, the community forum falls within the discussion phase?

And then if we were to move with the sole member model, how does the -- how does the discussion in the community forum, which could include groups that are not part of the member

group, how -- how do those interplay and what are the obligations of the -- those participating in the member to consider the opinions or inputs of those who are not part of the member and taking their decision? Is there any requirements on, you know, if it's an advisory role -- you know, if the SSAC raises a specific security-related issue with a proposed action or the GAC really identifies a specific public policy related issue, you know, is there some sort of requirement? How do those interplay? That's the part that I'm not understanding about the forum.

THOMAS RICKERT: Thanks, Sam. I suggest we collect the other speakers' input and then Jordan will attempt an answer.

Greg?

GREGORY SHATAN: Thanks. Greg Shatan, for the record.

I think it's, you know, important that we go back and read 7.3. It seems like we're having a lot of these conversations without reference to the texts, so it may not be surprising that we're going in circles quite a bit.

You know, 7.3, you know, does not expressly say this will be a standing body, and that -- so that's an open point.

It also says that it will be open to the full diverse -- participation from the full diverse of the ICANN community, so it seems like this is not intended to be limited merely to members. There's also no particular statement that this is going to be a live face-

to-face meeting group, as opposed to something that would exist remotely or virtually.

So it seems like there are open points that are suddenly being presumed without being fully worked through.

So I think that, for instance, if a community forum is only going to be convened every couple of years, it may never be convened. The idea of having a preselected panel of people kind of sitting around like moles may not be the right approach. They should rather be, you know, picked at the time. And I think the -- you know, so there are a number of things here that I think are more open than they would appear to be if you read the text, and I don't think they've, you know, been worked through by the groups that, you know, in fact, included myself, so I apologize for that, but before this.

So what's reflected is very much a work in progress. It's really -- if this were a cake, at best we'd have it in the mixing bowl. Maybe the ingredients are still even on the counter, but they are certainly not in the oven, much less even half baked. Thank you.

THOMAS RICKERT:

So thanks for taking us to your kitchen for a moment.

[Laughter]

Jorge.

JORGE CANCIO:

Thank you. Jorge Cancio, GAC rep for Switzerland, for the record.

I made some comments during this discussion in Working Party 1, and I think that the goals of the community forum are, in a way, described in what we have in the second report, which is, among other things, to allow for a discussion, a conversation, share information, and reach a better understanding and better informed decisions and to reach well-considered conclusions.

Those are the goals.

And I think, to be fair to the different parts of the community, that we need a process.

So the process, I think, should have at least three aspects or layers.

First, a mutual information phase where we share information, we put the facts on the table from each other's perspective.

Then we have a discussion phase, which is not throwing arguments at each other but really with a subsequent possibility of interacting among all the SOs and ACs and open to participants and observers, anybody interested in the decision at stake.

And then it would be good that this process is facilitated by a neutral party, by an independent objective party who makes a record, who even could write a kind of summary of what has been discussed, and that after all this discussion --

[Timer sounds]

-- we strive for consensus in the interest of the multistakeholder model.

And I think that that would be the way to really operationalize the community forum. Thank you.

THOMAS RICKERT: Thanks very much. George?

GEORGE SADOWSKY: Thank you.

Two points.

First of all, we've -- there's a lot of discussion about the board comments here and about the proposal. The board is one of about 80 or 90 respondents to the public comments, and it would be helpful if we could hear what other comments there were, if there were threads that seemed to be popular in terms of representation of ideas, and that goes for this topic as well as others.

The second thing is, I want to refer to Fiona's previous comment.

We're getting clarification here of a lot of things, and that's good, but at the same time, I can't help but feel that the complexity continues to increase, and it's complex enough.

Fiona's commented on the lack of ability to have other people understand what's going on. In addition, we have a suggestion, a strong suggestion, from NTIA saying keep things simple and understandable.

And that goes back to why we're here. The impetus for this entire process was the transition. Let's not forget that. And

complexity -- as complexity increases, it does not help, I believe, the probability of the transition going through.

Thank you.

THOMAS RICKERT: Thanks, George. We have Bruce, Mark, and then Jordan will respond to the open questions.

BRUCE TONKIN: Thank you, Thomas. This is Bruce Tonkin.

I think the community forum is really -- we need to understand our key criteria for it, and I think the key criteria would be -- and I think you've got that right in your doc Point 3, is that whatever forum you have, you want to have broad participation and you want it to be open and you want the outcomes or the documentation of that to be transparent.

A fairly obvious thing that meets that requirement is the three ICANN meetings a year that we have.

So they're physical meetings, they're transcribed, you know, there's a lot of material and support for those meetings.

So that -- it's almost a no-brainer that an ICANN public meeting meets this requirement.

I think the challenge is to work out how can we work efficiently between those meetings.

I think as Jordan and others raised, if you did have an issue where you wanted to get the community together, how would you do it quickly?

And I think you really just have to have a set of tools that are already in place to do that.

So you have some sort of time box, chat forum, that can occur between meetings and it's like there's a chat that runs for one week, it's moderated, you know, it -- as others have mentioned, it's got some structure to it, like we're talking about, a particular topic, you frame the issue, and then you allow people to participate via on-line chat for a week and then someone then writes up the responses to that.

So I think your real challenge is how do you meet between an ICANN public meeting and make sure we choose a tool and we test that tool prior to ever having to use it in a stressful situation.

THOMAS RICKERT: Thanks, Bruce. Mark?

MARK CARVELL: Yes. Thank you. Mark Carvell, U.K. rep on the GAC.

Some of my points have been made earlier. I won't go over them.

I just have two additional points, I think.

First of all, this is going to be a process. It's not -- we don't see this as a discussion forum. It's part of operationalizing the powers.

And the advisory committees, as well as the SOs, will need to make recommendations. So that logistically is an important factor and I'm one of those GAC reps who have advocated a much longer period for this process successfully to work out.

And the question I have is: What are the consequences if, for example, the GAC makes a recommendation to the forum on public interest grounds which is at variance with recommendations from others participating in a forum? What are the consequences of that?

If there is a neutral party overseeing this process, that's quite a challenge for that party. And is it possible, therefore, for the neutral party to say, "Put the brakes on everything, we don't go ahead with rolling out the vote for the power in such a situation"? So that's a question. Thank you.

THOMAS RICKERT:

Thank you very much Mark. And as I announced earlier, with your intervention we are going to close the queue. There are open questions from Sam, so I'd like to ask Jordan to respond to those as well as to take stock of what we heard, and then we will again recap on the results or the findings of our discussion later today when we -- when we close.

Just for everyone to remember, the MEM issue group is also a place where things need to be discussed.

So just, you know, let's not discuss which model is preferable, but in both concepts, there needs to be a place where things are being discussed in the public for everybody to follow.

Jordan, over to you.

JORDAN CARTER:

I'd like to say that's been a helpful suggestion which has surfaced quite a lot a lot more suggestions about how we can develop some detail here, so thank you for that.

Sam, on your question about how the forum interplays with a single member, one analogy that might help is that the way that -- and it doesn't always happen these days, I don't think, but used to, there was a public board meeting at the end of -- at the end of each ICANN meeting and before that was the public forum, and inevitably some of the issues that the board was going to decide on would have been topics in the public forum.

There's a discussion, the decision-makers are listening to that discussion, they're being informed by it, they're taking their perspectives into account, and then in the end, they go away and make the decision.

So I don't think that there is any -- I don't think we could build any sort of objective, "You must demonstrate that you've paid attention to all of the suggestions that were made in the discussion." I think that would kind of defeat the purpose of it.

But that's how I see the kind of -- the discussion in this forum then being taken into account and informing the decisions across the community.

Because what we're trying to avoid -- because the decisions in the community mechanisms, single member, are made within each AC and SO, we're trying to avoid those decisions being

made in vacuums, in silos, without people understanding each other's perspectives.

So that's where this fits in the kind of CMSM picture.

And I don't really have any other -- I don't think there were any other particular open questions that I needed to address at this point.

In terms of taking stock, Thomas, yes, support for the idea of there being discussion is an important part of exercising these powers. So that clear ongoing desire for more detail on the one hand, and on the other hand simplicity. The only thing I'd say to that is that when you're in the middle of legislating, it looks messy, when you're in the middle of making a sausage, it's looks ugly. We do have to get simple but we have to know what we're going to get simple about and I think that's what we're doing in a bit of this. Especially this, which was relatively undeveloped.

And so I think that there's enough fodder there now for WP1 to take this away and turn it into something much more concrete for you to look at.

THOMAS RICKERT:

Thanks very much, Jordan. Thanks, everyone, for your valuable contributions.

And while we're asking Steve to come to our table, I'll hand over to Leon to chair the next session and very -- thank you very much, Jordan.

LEON SANCHEZ: Thank you very much, everyone.

So we've had also some comments on the AoC incorporation into the bylaws. I think that Steve has gone through, if not all, many of the comments that have been received, and we would very much like to hear what you can tell us about this review. Steve.

STEVE DeIBIANCO: Thank you, Leon.

If staff could bring up the second draft proposal. This is Section 9, which runs only from 7 -- Pages 72 to 82, and we started off by explaining why ICANN's commitments under the affirmation should be brought into the ICANN bylaws, and that arose from Stress Test 14. Stress Test 14 said let's clearly recognize that the affirmation could be cancelled by either party with 120 days notice, and that the affirmation was a bilateral agreement between the U.S. government and ICANN. As such, it was a ripe target for those who wanted to reduce the U.S. from having any unique role in ICANN.

So we undertook, and there has never been any dissent to this notion of bringing the Affirmation of Commitments commitments into the bylaws, and so we did that and collected a number of comments in the first round.

The Work Party 1 subgroup on Affirmation of Commitments incorporated those into our second draft proposal, and we made one important addition, which is the recommendation -- it's Paragraph 507 where we recommend that there be a mutual agreement process whereby the U.S. government and ICANN

terminate the Affirmation of Commitments after all of the appropriate commitments have been brought into the bylaws.

We would want to do that without disrupting any reviews that were already in process, obviously, but the idea is to take this last remaining bilateral unique U.S. role and take it off the table, and that's -- that's the objective there.

Let me turn to the public comments.

There were 18 commenters. They show up on the public comment tool under the AoC tab that staff put together for us.

But there were also several more related to the Affirmation of Commitments that showed up under the PC tool under fundamental bylaws.

Let me explain why.

The CCWG proposed diving into the Affirmation of Commitments, which has really nine sections to it, and pulling several of them -- which are commitments ICANN and pulling them into the core values -- the mission and core values of ICANN.

The ones we proposed bringing in were Paragraphs 3, 4, and 8 from the core values, but the IPC, the intellectual property constituency, noted that we have probably lost one of those commitments. It has to do with the AoC Commitment Number 7. And that was a commitment of ICANN to honor transparent and accountable budgeting processes, providing advanced notice to facilitate stakeholder engagement in policy and decision-making, et cetera.

It's a commitment to a bottom-up process and transparency that may or may not be reflected in the core values and bylaws that we are currently proposing.

So we'll take that on board from the IPC and make sure that that commitment made it into the bylaws as well.

Now, there were several comments on Affirmation of Commitments, Paragraph 8, Item B. Let me just read that to you. It was, "ICANN affirms its commitments to remain a not-for-profit corporation headquartered in the USA with offices around the world to meet the needs of a global community." So that was in the affirmation and it's a commitment that ICANN made and in keeping with our spirit, we wanted to bring over commitments to the bylaws.

Now, what we did in the CCWG was analyze that, and it's on Page 36 of our second proposal. We analyzed it very carefully, devoted an entire page and several calls to it, to try to figure out whether it needed to become a fundamental bylaw or not.

The conclusion that CCWG reached was that it did not need to be and there were two reasons. The proposal we had suggested that a two thirds vote of the community mechanism, a single member, would be needed to change ICANN's articles of incorporation and a lot of you know that the articles already state that ICANN's a California nonprofit corporation. So there's one element of control that's almost identical to that which would be there if it were a fundamental bylaw.

Second, article 18 of ICANN's current bylaws states, "The principal office for the transaction and the business of ICANN

shall be in the county of Los Angeles, state of California." So given that it's already a bylaw and already in the articles of incorporation, the CCWG concluded it did not need to be moved into a fundamental. Now, there were three commenters in the public comment tool who noted that article 18 should still be a fundamental bylaw and there were three commenters that said that it should not. So we don't have a clear consensus either way on that, which means the CCWG recommendation probably stands.

Now, several folks have worried that we put too much emphasis, when it comes to these Affirmation of Commitments reviews, too much emphasis on the ATRT because as I noted earlier the affirmation has 3, 4, 7, 8, which are commitments by ICANN but paragraph 9 contains four significant reviews. What we usually call the AoC, the Affirmation of Commitments reviews. And several commenters, ALAC in particular, noted that the ATRT has got an awful lot on its plate and it might be too much asking them to also recommend the sunset amendment or creation of new reviews and to amend reviews about which they know nothing. Right? The ATRT might not know anything about the WHOIS review. So it might make more sense to look at amending reviews to come from the actual review teams themselves and that's something we want to take on board.

Now the commitments of the reviews do go into the bylaws, and a few want those commitments to be mapped into the mission and core values. I'll work closely with Becky to see if there are any commitments that didn't make it over. But we -- when we met in Paris, we explicitly decided as a group not to recommend that the commitment statements be pulled out of the full

reviews and dumped directly into fundamental or core values. We said that it would be too much to change -- it would be too much of a standard to have to require a fundamental bylaw type of approval if we simply wanted to honor the request of the security, stability, and resiliency review team to change the way the review's run. So that was done for expediency purposes. But we'll do a detailed comparison of that.

I did want to mention that the Board itself did not support one of the recommendations which was in the -- in the review team on consumer trust, competition, and consumer choice. We had said that that review team's recommendation should be implemented before the next round of new gTLDs were open. And the Board explicitly felt that that was not a good recommendation, suggesting it could be a barrier to entry for those who might want to get a new TLD, and that's on page 80. There was no one else who made the same comment that the Board did, but because we're meeting with the Board I just thought it was appropriate to call that out.

The intellectual property constituency said that -- this was predictable -- members of the CSG, the non-contract party house would be concerned that limiting the number of people on a review team to just three members for any given AC and SO, that would mean that many constituencies in the GNSO are not going to be members of a review team. They could be among the participants that are in the room, they could weigh in. But putting a limit of three would, in fact, mean that some constituencies won't be present. We knew that when the CCWG made the recommendation. I'm simply noting for you that IPC and some others have commented on that.

Now the Board makes some really good points about standardizing the review process. In other words, aspiring to say let's standardize the administrivia around review, without getting into the specifics at that point. I don't think it's necessary that the specifics be laid out. But I think it's a great plan for ICANN staff and management to try to come up with ways to make these reviews run better.

Let me next turn to the WHOIS directly services review. All of you know that's the fourth of the four AoC reviews. We've only done one so far, and there's another one teed up to be begin very soon. And while it says in the Affirmation of Commitments that it's a WHOIS review, we had long ago said well, let's make sure we call it a WHOIS/directory services review because who knows if WHOIS will still be around. It might be named something different. But that didn't go far enough in the views of Steve Crocker and other members of the board and staff who said wait a minute, there's some things that the Affirmation of Commitments required in the WHOIS review that could be dangerous or destructive or at the very least are inappropriate to carry into the future. And that sort of teed something up. And I waited with bated breath for the Board's new language on WHOIS and I was incredibly relieved when Bruce Tonkin circulated it on September 1. It was very close to the current language, and I feel, and the B.C. at least commented on this, we felt it was a very appropriate improvement of the AoC language and we put that in the B.C.'s comments. I'll note that none of the other public commenters addressed the Board's suggested language for WHOIS, and I think that's just because it came in late. It came in on September 1, and by that time everyone else was working toward a September 12 deadline. But we felt it was

completely appropriate, other than the one line that Bruce had at the bottom of his email suggesting how you measure the five-year cycle time on the WHOIS review. The CCWG had carefully worked this out, Alan and Avri and I and many others talked about it, that the cycle time on the five-year window should be from the date the previous review was convened. And that was chosen on purpose, to guarantee that a new review would be initiated at least every five years. The Board's formulation could result in a review every six or seven years, since the date of Board action could be as much as two years after review was convened. I'd welcome a chance, Bruce, to talk with you about that and see if you see our logic on that, and then we end up being completely consistent on the five-year cycle time.

Let me close with a recap by saying that this morning we discussed a little bit about whether the ATRTs of the future should be able to handle the stuff that goes in Work Stream 2. Well, to the extent that a Work Stream 2 item is a requirement of this transition, it -- it may not work to just put it into the ATRT. I understand that. And we covered that this morning. Because there would be no obligation for the Board to implement every single recommendation that flowed out of an ATRT. So to the extent some things need to be obligatory, you may need an interim bylaw. The recommendations that the CCWG made, they echo what Steve Crocker said this morning. We concluded that the Board could not be obligated to implement each and every recommendation that flowed from each and every Affirmation of Commitments review team. The Board's decision against implementation, however, would be subject to reconsideration and an IRP.

Now, in the CWG stewardship co-chair's comments, this is the co-chair's comments on the second draft proposal, they confirmed that the mechanism I just described, the challenge of the Board's decision not to implement, that that mechanism is adequate to ensure the implementation of the IANA functional review recommendations.

So from this point forward the members of work party 1 and the sub-team, which includes myself, Avri, Alan, and many others in the room, will hold calls to respond to these Affirmation of Commitments reviews comments to work towards what the real goal of today is, to work towards our next draft report.

So with that, Leon, I'll turn it back over to you to manage the queue, if we have comments.

LEON SANCHEZ:

Thank you very much for this very detailed report and -- and walk through the comments, Steve. And I see we have many hands in the Adobe Connect room and I am not sure which are new hands or old hands but I think that the queue begins with Chris Disspain, if I'm not mistaken. And if I am, I apologize for skipping anyone, but we'll go to Chris.

CHRIS DISSPAIN:

Thank you. Thank you, Steve. That was very thorough. I just have one point I'd like to bring. I'm not sure -- let me try and see. I think there is a difference between what the Affirmation of Commitments says regarding jurisdiction and what the article says. And the key distinction is the word "remain." In the AoC it says, ICANN will remain, and the articles don't say that. It says it

is. So I'm just flagging it on the basis that I don't know if it's going to get picked up, I don't know if anybody's going to want to run with it, but it's there. And I think if we're -- if we're not doing it, if we're -- if we're not taking it in, then we need to have an answer for why we're not doing that and what the consequences of that may be. Because that is a -- a change, I think. Thanks.

STEVE DeBIANCO:

Leon had given me leeway here to quickly respond. And all of page 36 on our second draft report speaks to that issue. We zone in on that. And you're right, the word "remain," not only was it Affirmation of Commitments 8B, but Fadi and others have said so in front of Congress, and of course we're going to stay -- let's just put all of that aside. It can't change without changing the articles of incorporation. Because the articles in the corporation, well, they say the word "is" in California. For it not to be there, for the headquarters not to be in California, forces a change to the articles. So the CCWG, trying to keep things simple, suggested that they're equivalent. That the promise to remain that was in 8B is equivalent to the combination of article 18 in the bylaws which can be blocked by the community and the Articles of Incorporation which must be affirmatively approved by the community. And I believe the Board is consistent with the notion of the fundamental bylaws and the Articles of Incorporation being subject to community approval. So I hope that we don't get hung up on that word. I appreciate you pointing it out. I hope that won't be the hangup.

The comments that came in saying we ought to make it fundamental, they weren't hinging off the word "remain." They

were just saying we want to do everything we can to make sure this can't be changed easily

LEON SANCHEZ: Thank you very much, Steve. I just want to check with Kavouss, see if that's a new hand or old hand, Kavouss? It's an old hand. Then we'll go to Alan Greenberg.

ALAN GREENBERG: Thank you. Two points. The first one may be in the humor category or maybe not.

>> We need some. Please.

LEON SANCHEZ: Okay, try to be funny, Alan.

[Laughter]

ALAN GREENBERG: I hope my timer's stopping. The whole concept of a California corporation incorporated in California with articles in California changing the bylaws to move somewhere else, the concept saying we're no longer headquartered in California, we're now a Swiss corporation in a California bylaws doesn't make a lot of sense. So the whole thing really is show and tell. If we're going to move jurisdictions, we're going to have to reincorporate somewhere else. So the whole thing is a little bit, I find, humorous, but other people do consider it seriously.

For the record, you mentioned that I was part of the group that talked about the five-year cycle. I was. I disagreed, however, with the -- with the current result. The -- we have shown -- we have shown ourselves unable to complete these things in the cycle that we're talking about right now, the last WHOIS review took a year and a half in itself. By the time it got reviewed and by the Board, it left virtually no time to do implementations in the kind of cycle we're in right now. So I strongly supported the position that the internal staff group had taken at one point in saying the five-year cycle starts from the time the results are presented. But so be it.

LEON SANCHEZ:

Thank you very much, Alan. Do you want to -- do you have any reactions? Next in the queue I have Greg Shatan.

GREG SHATAN:

Thanks. It's Greg Shatan, for the record. I agree with Alan. If ICANN were to move to another jurisdiction, it would take a lot more than changing, you know, one article in its Articles of Incorporation and a line in its bylaws. It would take a complete, you know, change in domicile and structure, redrafting of a whole bunch of stuff. So it's -- it's not easy. These are not transplantable objects. They really need to be recreated in a different place. I'm referring to corporations.

It's certainly done, especially from one state to another in the U.S. and sometimes you switch over. And, you know, within the U.S. it might be easy enough to change from a California corporation to, say, a Delaware corporation, although, you

know, easy is -- the devil is in the details. But I do think it does point out the issue that what we have -- and this is the point Chris raised, we only have a current statement of fact. We don't have a commitment not to change. The friction to change would be extremely high, as Alan points out. But we don't have a commitment. And somebody might run with this. Yeah, I think it's virtually the only commitment stated in the AoC, maybe the only commitment stated in the AoC that it's not being transmitted as a commitment into the -- into the bylaws. So I -- I wonder whether that will cause some heartache if someone picks that up as -- and I'm not, you know, congressional Congress watcher, I'm not a lobbyist or anything like that. I wonder if it will get, you know, picked up and someone will say why out of all the commitments is this the only one you didn't put in. I'm curious.

LEON SANCHEZ: Thanks, Greg. Steve.

STEVE DeBIANCO: And the answer will be because it was opposed by a significant -- majority of governments in the first round of comments and in the second round of comments we had a 3-3. 3 in favor of making it fundamental on article 18 and 3 against it. Since we are running a community process here, we are really trying to generate what is the community consensus, Greg. And as far as someone else picking it up, we definitely have that risk. Not just with this line, particularly because it came up at the hearing that Fadi did, but there are other places where it could come up as well.

Ironically, this might be the one area where we have the strongest -- it's not just the friction but as explained on 36 there's a belts and suspenders on the U.S. location in terms of the articles of incorporation and article 18 in the bylaws. So it's - - it's more than just friction. And yet you're right, you never know politically what will be the things that people could focus on.

LEON SANCHEZ: Thanks, Steve. Next on the queue I have Nigel Roberts.

NIGEL ROBERTS: I'll make this very quick. Just to follow on from what Greg said, it's perfectly possible to re-domicile a corporation across even to another country. Our country has special legislation just to encourage that. But the practice is here I think that what we're looking at is the perception that we can somehow build in a reassurance to those people who want, as it currently says in the affirmation, the corporation to remain incorporated where it is. And I'm not sure that's actually quite possible because the corporation always has the possibility to wind itself up. And if what we currently call ICANN now wants to move to Tuvalu or wherever, it could wind up the corporation and form a new one out there. I mean, the practicality of that are almost incomprehensible. That's almost never going to happen. But I don't see how you can build in a kind of fundamental bylaw that says in perpetuity the corporation would always continue to exist because that goes against perpetuities and so on. You just can't give that guarantee.

LEON SANCHEZ: Thanks, Nigel. Steve.

STEVE DeIBIANCO: I'm no lawyer, never written a bylaw in my life, but if the word "remain" has special meaning versus the words we already have, like "shall" and "is," we have the word "shall" and "is" all over the bylaws and the Articles of Incorporation. Those have the implication of continuing on into the future until they are changed. If the word "remain" is an essential addition to that, well, then we better put the word "remain" in front of every verb in the Articles of Incorporation and bylaws. ICANN shall be a bottom-up multistakeholder corporation. So should it be shall remain? Right? It doesn't make sense to me to give special assurance to the word "remain" when our articles and bylaws already use words like "shall" and "is" and they provide the friction, as Greg said, the friction that requires community approval in the case of the articles and community veto in the case of the bylaws and that should be sufficient. With all of the big problems we have in front of us, I certainly hope that trying to carry the word "remain" into the bylaws doesn't become a sticking point for us.

LEON SANCHEZ: Thank you very much, Steve. Next in the queue I have Alan Greenberg.

ALAN GREENBERG: Thank you. Since if we actually did move we probably would reincorporate somewhere else and this corporation would remain in California. Maybe that's playing a trick with words.

I guess if we think -- or get the message that this is going to be a sticking point in Congress or wherever, then it doesn't cost us a lot to put it in, but, you know, I think this is -- it should be a very pragmatic decision. Because I don't think it has any substance difference.

LEON SANCHEZ: Thank you very much, Alan. Finally, the -- the queue is closed with Kavouss. Kavouss.

KAVOUSS ARASTEH: Yes. What I wanted to say was said already by Steve, that whenever we have the term "shall" it means it is mandatory. So sufficient to have that one.

Now, the question whether put it in the fundamental bylaw or in the standard bylaw, I think it was discussed and it was felt that it may not be required to be in fundamental bylaw because it's coming from the Affirmation of Commitment between the U.S. government and the ICANN. But if the community later on finally decided fundamental bylaw, we can do that. For the time being, we leave it as it is. Thank you.

LEON SANCHEZ: Thank you very much, Kavouss. So I see -- but I feel like this issue on the Affirmation of Commitments, from my point of view, has overall agreement, and I think this is something that we can feel positive about. And I -- I see that there is no gap to bridge between us and -- well, not us and the Board but between the community --

STEVE DeLBIANCO: The community and the draft.

LEON SANCHEZ: Exactly, and the draft. Let's keep it that way.

So thank you very much, Steve. And on our next agenda item, we will be addressing -- we will be addressing the appeals mechanism, and for that, I would love to have Becky here, but we don't have her, and she will be joining us remotely.

So Becky, are you still with us?

BECKY BURR: I am. Hello, everybody, and apologies for my inability to get to Los Angeles. My doctor said no pressurized cabins until I get on a plane to go to Dublin, so...

I believe I sent one slide, and it looks like the staff is trying to figure out how to put it up.

Okay. Just in terms of on the independent review and the request for reconsideration issues, I think that there was, as we have seen in the previous comment period, strong support pretty much across the board for an enhanced and independent review process.

There were some themes that I think -- you know, substantive issues that were raised. Quite a number of people commenting said, you know, the details of this are very, very important and one, you know, what's the process for going forward, when is the working group, you know, sitting down to start working out

details and operational rules, what does that mean for timing and implementation of the fully enhanced IRP.

We got some interesting and somewhat conflicting input on the scope of the IRP.

In the -- following the first round of -- following the first draft of the proposal, there was strong support for making -- for limiting the reach of the -- the scope of the independent review to determining whether or not something -- an action by ICANN was or was not consistent with ICANN's governing documents, articles of incorporation and the bylaws.

Also, as a -- as a vehicle for hearing and resolving issues raised by single members related to their rights under -- to the rights of members under the California statute.

And the third area which we proposed, allowing the independent review process to function was as a reconciler of conflicting decisions by expert panels.

We had, in this round, a couple of comments saying that it should be, you know, constitutional within -- focusing on compliance with the articles and bylaws only.

A couple of -- one commenter, in particular, suggested that in addition to this constitutional inquiry, the independent review would -- should be permitted to look at whether a decision was fundamentally irrational, as well.

Now, the board did suggest that a fundamentally irrational standard might be something that was usefully applied in the

request for review -- or the request for reconsideration context, not, I don't believe, in the independent review role.

And then one or more people thought that -- or I guess the board, in particular, thought that conflicting decisions by expert panels should be resolved in a process that was the product of whatever process that set up those expert panels.

So for example, if there was a -- you know, when there is a new round of new gTLDs, presumably there would be some expert panels, and presumably we would be smart enough now to know that we have to have a mechanism for reconciling conflicting decisions of those panels.

So there are kind of three different takes on the scope that are out there, although, by and large, I think that the support was for the scope that is in the second draft proposal.

There were a couple of questions about funding, including whether the funding would -- the obligation to fund the panel, including when it was sitting, would impose too great a burden on ICANN and make -- it not only

Some commenters who had made this comment continued to question the impact that the ICANN funding would have on the independence of the panel itself, and the board, in its comments, proposed that the cost -- that there be a distinction in what burden of cost ICANN bore, depending on whether the review mechanism was addressing a community-raised concern so -- in the proposal, the community, IRP or -- and that sort of in an ordinary commercial dispute where there was a materially harmed party, that the current allocation would be retained as it

is now, which is generally split between the parties but with the panel having the ability to award costs to one side or the other.

We continued -- some of the people who argued that the standard of review for the IRP should be abuse of discretion repeated that point. I did not read the board's comments to have that objection, but there were a couple of people who continued to --- all of these things are --- things that we discussed in great detail in the runup to the second proposal.

A commenter in the first review period suggested that there should be a requirement to participate in the relevant PDP so that, you know, somebody who wanted to use this process could not -- could not game the system.

Can you hear me better now?

LEON SANCHEZ:

Yes, we can hear you.

BECKY BURR: Okay. That people should not be able to sit on the sidelines and then -- and come up with new objections in the aftermath of the PDP. That, again, was something that we had discussed at great length in the working group.

And then finally, there continues to be some concern expressed by at least two governments that for some reason the IRP would not be usable by governments and certainly would be usable by a government that wasn't materially harmed or would be -- in the case of the interlocutory sort of action. And certainly, you know, in the single member model under consideration, the GAC could be part of the communities who are.

So those are really the issues that I think are on the table, but I don't think that anything in the comment --

And let me just say one more thing about the board's comments.

As I read the board's comments -- and the board, I'm sure, will be -- feel free to expand on those -- they're sort of separating the community IRP from the other IRP. It's not at all clear to me why you would have different panels to do that, and I think it would probably be inefficient to do that, but I -- the other sort of part of the comments that I took away from the board's comments was that, you know, maybe with respect to a community IRP, there might need to be some additional process.

I think that all of that goes back to what we acknowledged in the report, which was, you know, there is a need for sitting down and doing hard work to hammer out the details and rules or procedures, to ensure that this process works but it doesn't -- can't be used in abusive ways to prevent progress within ICANN and is not subject to abuse or to -- is not so easy to use that it becomes a major stumbling block in getting anything done.

LEON SANCHEZ:

Thank you very much, Becky. This is Leon Sanchez.

And I see we already have a hand up. Chris Disspain.

CHRIS DISSPAIN:

Just -- thank you very much. And thanks, Becky. I hope you're -- I hope you're doing okay.

I just wanted to respond, if I may, Leon, to the question about the board's split with the IRP and the MEM.

LEON SANCHEZ: Please do.

CHRIS DISSPAIN: So I think -- I think there's nothing specifically in it. If you -- if one wanted to, one could bring them back. I think the key for us was simply that (a) we wanted to demonstrate that it was a -- there were separate standards in the sense of costs and so on, and (b) I think we wanted to draw a bright line that showed that there was a specific process for the community-based use of an arbitration rather than sort of the singular use of an arbitration. But as a fundamental principle, I don't think there's any problem if -- if we go down this road with actually calling it the IRP, et cetera. You don't have to call it the MEM. But I think we -- certainly for illustrative purposes, we were trying to show the difference. It may be that it's actually turned out to be more confusing, in which case I apologize for that.

But -- but it's not intended to -- to be it has to be called that or anything like that. Thanks.

LEON SANCHEZ: Thank you very much, Chris.

BECKY BURR: Leon, could I --

LEON SANCHEZ: Yes, Becky, please go ahead.

BECKY BURR: I want to add one more point that I think was important and which was a point raised by several people about whether the IRP would be available in the -- in the event that, for example, there was a view that the single member, for example, was attempting to impose an outcome that was inconsistent with the bylaws obligations.

And that view -- that question, that is one thing that I don't think we did discuss in the runup.

LEON SANCHEZ: Thank you very much, Becky.

Do you want to add something, Chris? No? Okay.

So next in the queue is Kavouss.

KAVOUSS ARASTEH: Yes. I see in the ICANN suggestions or proposal they mention that they want to -- a standard of review including rolling back to the standard of review to the standard that was in place pre-April 2013 and so on and so forth.

In fact, this has some -- not inconsistency, but difference between the proposal of ICANN and the CCWG, and we would like to have some explanation the reason for that, and also an emphasis on one action that board mentioned with declaring whether the board has acted consistently with the provisions of the articles and so on and so forth.

That means one, two, three, four, five, and 10 times. So why the word "consistently" is there. Why this is not whether the board has acted in -- in -- against the provisions of the articles of incorporation. Why the term "consistently" is there.

So -- but first question, why we go to the pre-2013 April procedures and why the "consistently" is there. Thank you.

LEON SANCHEZ: Thank you very much, Kavouss.

Next in the queue I have Steve DelBianco.

STEVE DelBIANCO: Thank you. And hi, Becky. You weren't part of this morning's discussion when Holly and Rosemary talked about the sort of interplay between the board's fiduciary duties to the corporation versus what a member could do to override those fiduciary duties, so I ask the question to you because the BC is very keen to have these IRPs' decisions be binding.

And in your opinion, does it matter -- for a decision to be binding, does it matter whether we are a membership organization and that a membership standing entity brought the IRP, or can all that just be handled by the holdings and the agreement to abide by arbitration? Thank you.

LEON SANCHEZ: Thanks, Steve. Becky?

BECKY BARR: So Leon, should I respond?

LEON SANCHEZ: Yes, please.

BECKY BARR: So obviously, I've read the Sidley/Adler memo very carefully and this question was a question that I've raised.

I have said consistently that the membership model allows shared responsibility for making decisions relevant to certain aspects that fall within the board's fiduciary obligations. For example, budget, strategic planning, and all of those things.

But to me, that's not the -- that is not the community overriding the board's findings of its fiduciary obligations, but it gives affirmative authority to the community with respect to making decisions in those areas.

I think that the membership model that therefore provides with respect to those statutory membership powers, the membership model certainly has fewer questions about enforceability, and I don't think I saw in -- I mean, what I took away from the papers that I reviewed, both the ICANN board input and our attorneys' input, is that there are at least questions.

Having said that, I'm not an expert on California law and I'm not going to propose to act as one, but I do think that at least -- that there are at least open questions on this point.

LEON SANCHEZ:

Thank you very much, Becky. And you raise a very important point and I'd like to suggest we focus on these questions and we try to bridge the gap here.

I am aware that there are a couple of details that make a big difference. There's more details -- small details that make a big difference between what we have been proposing as our -- as our draft document stands and what we've been listening from other members of the ICANN community, including the board, so what I would suggest is to focus to -- into what extent we can accommodate or put the different pieces of the puzzle so we can feed both the needs -- or the concerns that we have identified as a group but also address the comments that we have received from the wider community.

So I think that this will be food for thought so we can continue our discussion and we can find a way forward into trying to actually deliver a viable solution that not only binds those subject to the IRP but also I'm thinking of maybe broadening the scope.

I remember that we have a proposal that stated that the IRP would be suitable for fundamental bylaws and I think that one thing that we have heard is that we shouldn't be narrowing the scope into fundamental bylaws but we should also be including regular bylaws and maybe articles of incorporation.

So I think that's an area of opportunity that we have that I think it's very easy to bridge the gap there --

[Timer sounds]

-- so -- okay. My time is over.

So I'll turn now to Thomas.

THOMAS RICKERT:

Yes. Thank you very much.

And before we move to the -- to the section on principles, you will have seen that I went out briefly with Larry.

Larry has been with us the whole day. We've discussed earlier this morning where we would squeeze him in to say a few words, and now we find out that he has to leave in like 20 minutes' time, so we will hear from Larry now and then we will continue with the queue and with the discussion on principles.

Larry, why don't you come to -- you know, don't be afraid. We won't bite.

[Laughter]

LARRY STRICKLING:

Well, thank you, Thomas and Leon.

Yeah, I've been trying to decide whether to come up and say anything or not, but the issue was forced by the fact that I'm leaving in 15 minutes, so if I was going to say something, it had to be now.

First off -- and I want to reemphasize what I put in the blog a couple of days ago -- this is hard work. You folks are making history and nobody should get discouraged or frustrated about things.

I mean, if this were easy, it would have been done long ago by other people, but for whatever reason, this is the group that's come together to try to solve these issues and I hope -- and I can tell every one of you takes this responsibility very, very seriously and that's good and that's important.

But let me ask you this: You came together for two days, today and tomorrow, and I'm not quite sure what everybody's expectations were would get accomplished, but how many of you right now feel really great about all the progress you've made today? Raise your hand.

[Laughter]

Okay. But there's a lesson there, I think, for all of us. And maybe -- you know, I -- and by the way, when I put these blogs out with advice or thoughts, it's there for you to take or not. It's not a direction. In no way am I trying to drive you to a particular process. But I feel as much as the rest of you the importance of making progress and trying to come to conclusion. And if the fact that nobody raised their hand would suggest that the discussions today, while important and every time people come together and talk it's good, but are we really organized, are we really progressing in a way that brings the group to bridging the gaps and reaching consensus. And if we're not, then maybe folks ought to reassess, what is it about the discussion today that is just letting people continue to churn around the issues but isn't getting us to resolution.

Your chairs are doing a wonderful job, and I -- I intend not the slightest bit of criticism of the job they're doing because they've taken on a nearly impossible task. But I think what I'm

suggesting is it's the responsibility of this whole room to come back and say do we have a process that we're following today that is going to actually let us bridge our gaps and reach agreement? Because -- and I don't think anybody should harbor any illusions you're going to reach agreement on everything by the end of the day tomorrow. But if you could at least polish off a couple of these issues and build -- kind of practice the techniques and kind of get everybody comfortable with this is what it takes to come to final resolution as opposed to listening to the comments and taking it offline for -- you know, to put another draft in front of people, that would then perhaps help you tomorrow afternoon to lay out the process for Dublin when you'll have more people, more voices, more interest, which hopefully will lead to a fuller discussion but will also lead to a more chaotic discussion just because you'll have more people. But I think that's important because these are the most central issues to this organization that have been faced in years. And having more people being part of the discussion is important. But if you don't feel that we've got a process that we're following, then it's on all of us, all of you, to sit back and say okay, how do we actually re-engineer this and have discussions that actually lead to resolution and lead to conclusion and lead to progress. And, you know, if there's a way we can help, we're glad to. But at the end of the day, as I said in the blog, the whole point of this is the community's being asked to step up and play the stewardship role. So you shouldn't need the United States being the steward of this discussion either. And so there are growing pains. It's part of the process to -- as everybody matures and understands what's involved in making this work in

the future. But, you know, we'll continue to help and support any way we can.

I constantly get asked, well, is any particular idea a non-starter. And I will repeat what I said in Argentina. At this point, we do not have a view that any particular approach is absolutely okay or is absolutely not okay. But what I can tell you is that the -- that the work that we need to see, the thoroughness, the detail, and I put this in the blog, it is not there yet. So that I don't feel comfortable even taking what we saw in these reports and trying to opine on them because there are too many open questions about are some of these ideas potentially destabilizing? Have people thought through how this would actually be operationalized and put the protections in place to prevent that from happening if you go with any of these models? And as I said before, given the time we're dealing with, simpler is better. You have to meet the needs of the community. I'm not suggesting you shouldn't. You have to meet our criteria, but if you have different ways to approach it, the one that allows us to go forward with the least amount of churn, change, confusion, misunderstandings that will occur in the future, the better. Because that's what we're trying to accomplish here.

So I'm trying to turn it into a pep talk, but maybe it's not sounding that way. But in any event, I -- this is -- I mean, I've never been associated with as large a group of people acting in good faith as we've got here. And I think we just need to think through a process that helps everybody rise to the occasion and deliver a final plan here in a time frame that let's us complete the transition by next September.

So with that, I'm -- I'm out of here. Good luck. And we'll see you in Ireland. Bye.

[Applause]

THOMAS RICKERT:

So before we continue with our discussion, with respect to the overarching plan or the approach for this day, let me just refresh your memory that we sort of had an idea. We had a proposal on how we would go about with this. You know, we've identified these areas where we think we have consensus, where we have disagreement, and those that need more work. And we're going to look at that list again. After this discussion. To check whether we can move bits from right to left, to see whether we have consensus. We are taking stock of what we're discussing, so we're going to propose to you updated versions of the different topics for you to confirm later today and tomorrow so that we hopefully can move things from the right to the left-hand side.

Likewise, we're trying to get confirmation on the requirements. That's the basis for our work, meeting the requirements. At the same time, trying to understand what the concerns are, Board concerns, community concerns. And I think we're going to see in the next session or two that this approach will help us bridge the gaps. If we understand the concerns, whichever way they've been framed and comments on the papers, we understand the underlying concerns, if we can address the concerns, remove the concerns, I think we're making big steps forward. That is not to say that we will leave the room and -- in a big Kumbaya thing, but we might still sit around the fireplace tonight and sing together. But this is to understand where the concerns lie in

order to address the concerns, and that will save us the trouble of fighting over models. Right? So that was the intention. I think we got derailed to a certain extent by people standing firm by their -- by their positions and trying to make their points. But we're trying -- still trying to amalgamate the common areas out of that and hopefully by the end of tomorrow we will all say that it wasn't a waste of time to come here. And that more hands will be raised. Thanks, everyone. Back over to you, Leon.

LEON SANCHEZ: Thank you very much, Thomas. So going back to the queue, I have Alan Greenberg.

ALAN GREENBERG: Thank you very much. I'm going to spend the first few parts -- seconds of my time regarding -- regarding Larry and what he said. One of the things in his blog that -- he likes making cryptic comments. One of the things that was not cryptic was we have to come to a single agreement. Period. To do that people are going to have to compromise and lower their standards on individual things in exchange for other things. I know we said it's not negotiating, but it is negotiating. I haven't seen a lot of that yet, and that's disappointing. I just note that.

Back to the IRP. Becky, we added in this version the -- the ability of the IRP to look at conflicting panel decisions. And the Board has suggested maybe that should go to another panel, not IRP. But if it does stay in the IRP there really needs to be outcomes associated with that kind of IRP that we sort of forgot to put in

this version. I don't think I heard you mention that, and I just wanted to reiterate it if it had somehow skipped by. Thank you.

LEON SANCHEZ: Thank you, Alan. Becky.

BECKY BURR: As I just stated in the chat I -- I'm sorry, I didn't hit push. I definitely agree with Alan that the details on how those decisions would be reached and what they would be the parameters around that are definitely something that needs work.

LEON SANCHEZ: Thank you very much, Becky. Follow-up by Alan.

ALAN GREENBERG: That's true. I was just looking at the fact that the outcomes that we have for the IRP are all did they follow bylaws or not whereas in this case, this is a completely different kind of outcome and we just need to enumerate that and identify it as a valid outcome. Thank you.

BECKY BURR: Right.

LEON SANCHEZ: Thank you, Alan. Thank you, Becky. I'm closing the queue with Kieren McCarthy, and next in the queue I have Chris Disspain.

CHRIS DISSPAIN: Thank you. I just very briefly wanted to address again the point of the separation of the MEM from the IRP. And I just want to raise one more point. Again, it could be dealt with under the same heading of an IRP, but I thought it was important to bring it to the conversation which is one of the things the Board talked about was that we felt that general commercial arbitration judges may have a very -- have a different skill set than evaluating the fiduciary responsibilities of a not-for-profit or governance skill set. So what we thought was you might want a different skill set for your governance arbitration in respect to the community powers than you would for a commercial one. And that that could easily be done under the same heading of an IRP but you might need to have a separate standing panel or alternatively a standing panel that has a split in a different -- in the different experiences that you might need for different types of arbitration. So that's another reason why we looked at it.

LEON SANCHEZ: Thanks, Chris. Thomas.

THOMAS RICKERT: I'm just saying, we could have exactly the same process with different standing panels, I think that's a great idea. You know, can we just confirm this? Any objections?

LEON SANCHEZ: Any objections to this? Okay, I see Eberhard Lisse -- could you repeat it?

THOMAS RICKERT: I was just picking up on Chris' suggestion that we need different skill sets for arbitrators for governance related staff or fiduciary duties rather than other areas or issues that are being brought in front of the IRP. And I -- I was attempting to make a quick win on this and trying to seek the group's agreement that we use the same process but that we establish two separate standing panels that would be called upon when this or that set of questions is asked.

LEON SANCHEZ: Okay. I see some reactions, but I would rather keep the order that we have in the queue, so I'll go to Kieren McCarthy, and from there we'll listen to Greg and Kavouss and that is where I am closing the queue, with Kavouss.

KIEREN McCARTHY: Hello. So I wanted to use Larry Strickling's intervention. I wanted to say more or less the same thing but I didn't think anyone would listen to me because I don't work for the NTIA. We are running this meeting very, very inefficiently. There's a lot of people here who have a lot of knowledge about ICANN from all the different groups, and 99% of the time they are sat listening to other people or staring at laptops because we've got this process of people giving presentations and people asking for the microphone and then there being a queue and having a couple of minutes here and then the next person responding for a couple -- it's very, very inefficient, given the amount of time that we have.

I'm pretty sure if you did something else, broke out into groups or identified specific items and got different people from different groups to sit around and thrash out the ideas and then come back, you'd really make a lot more out of the fact that all of the people in this room know quite a lot about how this all works and you've got to thrash through the ideas and find out where the disagreements are and where agreements can be made.

I think on the -- we should be discussing the fact that the model is the big argument. There's no point ignoring it. It is the big argument. To my mind, having seen what the lawyer said, I think it's inevitable there needs to be some kind of member, but obviously the Board are deeply concerned for various reasons, and then we have to find out why they are concerned and then come up with systems for making it work. But it's not going to work in this process where you sit there and it taking so long and most people staring at their laptops. We're going to run out of time. So I just wanted to make that point.

LEON SANCHEZ: Thank you very much, Kieren. Next on the queue I have Greg Shatan.

GREG SHATAN: Thanks, Greg Shatan, for the record. Just quickly to respond to the question. I do agree that the same processes could be used. I'm not certain I would agree that the MEM and the IRP necessarily need different panels. I don't think that the IRP is a standard commercial arbitration either and indeed I think the

issues considered by the MEM and the IRP rather sit along a spectrum rather than being in different pockets. So I think that the -- the distinction between the MEM and the IRP may be rather technical as opposed to, you know, so as substantial as that might be, I think that's probably a implementation level question about whether to mount two panels rather than one or to split the panels or to say that some of the panelists are panelists for both but some are only panelists for one. But overall I think the idea of trying to have as few processes as possible and use what we've got is a good idea. Thanks.

LEON SANCHEZ: Thank you very much, Greg. I remember we had Kavouss after Greg. I don't know if you want to say something, Kavouss.

KAVOUSS ARASTEH: Yeah, sorry, I lost connection to the Internet. When I raised my hand that means please put me in the queue.

LEON SANCHEZ: You are next.

KAVOUSS ARASTEH: Not override everybody. The issue of two different panel, is it meant that the MEM issue group outcome will be submitted to that standing panel which is different from IRP or we have -- we are discussing other things? If that is the case, I agree, that should be two different because one is dealing to discuss the outcome of the MEM issue group, whether you call them a standing panel or whatever, but it is entirely different from the appeal process and from the IRP. So I need some confirmation

and I raise a question about the standard of review and I seek some answer to that. Why we have to -- if we're back to the pre-2013 April as is mentioned in the ICANN proposal. So just need a clarification. Doesn't mean I object, but I need clarification. Thank you.

LEON SANCHEZ: Thank you very much, Kavouss. And I think that Becky might want to comment on this. Becky, would you like to comment on this?

BECKY BURR: No, I'm -- I'm trying -- I'm sorry, I didn't hear all of Kavouss' comment. Hold on one second.

Oh, the 2013 review.

I think that the 2013 standard largely was a substantive standard of whether ICANN was, in fact, abiding by its bylaws or not, as opposed to the more procedural and did ICANN -- did the ICANN board have good faith with respect to it.

So my understanding is that the -- the -- that there are a lot of bells and whistles on -- that would need to be answered about what it means to just revert to the 2013 standard.

For example, I understood that the board agreed that the standard of review would be de novo.

Prior to 2013, certainly that was not the position that ICANN legal had taken in independent reviews.

That was the position that IRP panels had felt was the appropriate reading of the language, but that was under dispute.

So we would need to understand that.

We would also need to understand, I think the board comments expressed general comfort with the concepts, mission commitments and core values, noting, however, that, you know, the actual bylaws language was extremely important, a point on which I certainly agree.

But to me, that -- you know, what does it mean to return to the 2013 standard has -- there is a question associated with, you know, what does that mean with respect to the text of the mission commitments and core values language which feeds into it and which, as currently proposed, would be different than the language that was before the IRP in 2013 as it happens.

And then having said that, I don't think that the standard that we have proposed is fundamentally different than the 2013 standard, so I am viewing the board's comments with a very open mind, and at some level you could read those comments as a sort of, you know, if you believe that it is going to take a long time to implement all of the details of the IRP, that what they're really talking about is an interim standard that adopts some of the pieces including the substantive review piece of this.

Now, I will defer to the board commenters on that particular piece, but to me, that is something that can be worked out and resolved pretty easily in a conversation.

LEON SANCHEZ: Thank you very much, Becky.

I think we will continue the discussion off line and we still have two more people in the queue and after we listen to them, we will be going into our break, so Sebastien Bachollet is next.

SEBASTIEN BACHOLLET: Thank you very much. Just to be short, within the IRP panel we have said that diversity must apply and diversity is also on capability on doing one or the other of the issues we are talking about, and I am not sure that we need two panels. We just need to be sure that we have within the panel the right competency. Thank you.

LEON SANCHEZ: Thank you very much, Sebastien.

Next on the queue, I have Eberhard Lisse.

EBERHARD LISSE: Eberhard Lisse from .na. I think it's time for something completely different.

So far, we have been sitting around here since eight hours and have achieved virtually -- no, exactly nothing.

I propose, therefore, that we tomorrow change our approach totally, change the agenda, and focus on a single topic and get it done.

If we finish this before 4:00, maybe start another one and get -- and deal with this until conclusion on the telephone -- on the mailing list and on the telephone calls.

This approach, as Mr. Strickling has said and as Kieren has said and as I believe I have been chatting with a few colleagues, is simply not working. I have some issues with the way the chairs are conducting this. The opinions from the chairs are much too prominent, instead of just focusing on moderating the meeting, but we have been through this in the past. It doesn't really matter, but we haven't achieved anything today, and I think we should use the time in the coffee break and maybe tonight to think about how we can do -- what we can do salvage this.

I do not agree with the report, as you very well know, but I'm not trying to sabotage it. We need to find a way out of this and get it done so that we can put up a proposal that achieves broad, if not full, consensus and that the chartering organizations and groups can sign off on.

At the moment, I do not see this happening. Not in Dublin, not at any time real soon.

LEON SANCHEZ:

Thank you very much, Eberhard. And we'll definitely keep a thought to what you have said and many others have said.

So now I will invite you to go into our break and we'll come back to continue with agenda item on principles.

So we'll break for 15 minutes. We'll reconvene in 15 minutes. Thank you.

[BREAK]

LEON SANCHEZ: This is a two-minute warning. We will reconvene in two minutes. So if you kindly step into the room and begin taking your seats.

BECKY BURR: Leon?

LEON SANCHEZ: Yes, Becky.

BECKY BURR: I just wanted to do an audio check. Does this sound okay?

LEON SANCHEZ: I'm sorry, Becky, I wasn't able to get what you were saying.

BECKY BURR: I just wanted to do an audio check. I've changed headsets.

LEON SANCHEZ: Okay. Yeah, we do listen to you now.

BECKY BURR: Okay. Thank you.

LEON SANCHEZ: Thank you very much everyone for taking your seats. We will now reconvene. Okay. We are now reconvening. I see that some of you want to continue standing. That's okay, of course, but if you want to take your seat, that's also welcome.

So we paused. Our previous agenda item was the appeals mechanism. We had a very fruitful discussion of that, and we will be thinking in more creative ways to advance discussion and make progress for our sessions tomorrow, and now we will continue with the next agenda item, which is the principles, and I believe Becky is already on the line, so I will turn to Becky to begin with the principles agenda item.

Becky?

BECKY BURR:

Thank you, Leon. I am going to focus on what I believe is the most substantive issue of disagreement or concern with respect to the mission commitments and core values.

And as members and participants will recall, we included a very specific provision in the mission statement that said ICANN's mission did not include regulation of services that use the Internet's unique identifiers.

Both in response to the first comment period and the second comment period, a number of commentators, including the board, said that it was -- expressed concern that the limitation on regulation about the use of services -- or the regulation of services would undermine in some way or in some way jeopardize ICANN's ability to enforce its contractual requirements imposed on registries and registrars.

And the group spent quite a lot time in between the first proposal and the second proposal discussing this, and there was strong consensus that to the extent that, for example, an applicant was affirmatively offering as part of a new gTLD

obligation, was committing to undertake certain obligations, even though those obligations were not strictly within ICANN's mission statement, so in the form of commitments or rules about how the gTLD would be used or public interest commitments, for example, that those -- that did not constitute regulation; that would be interpreted under contractual principles.

A number of --

So we did not modify the language in the second proposal.

A number of people came back and reiterated their concern.

A number of other people came back and reiterate- -- and expressed concern about our discussion in the report regarding the difference between regulation and contracting.

And so I think we have an important and, I believe, pretty thorny issue here.

I think that the current language clearly says that voluntarily negotiate- -- clearly permits ICANN full enforcement of voluntarily committed contractual obligations with registries and registrars.

The question becomes when you move out of the sort of voluntary commitment.

So let's -- let me give an example.

In the ICM application for .XXX, ICM affirmatively said that it would verify every registrant name and address, that it would affirmatively verify those, that it would not permit anyone under

18 to register a domain name in .XXX, that it would have -- that it would provide certain protections for intellectual property owners that went above and beyond what ICANN required.

Those were all voluntary commitments that came in as part of ICM's application and that were reflected in ICM's contract with ICANN and that, I think, all of us would say were voluntarily negotiated, they were not a form of regulation.

The question is: What if ICANN was to unilaterally impose, in a registry or registrar agreement, an obligation that registrars engage in affirmative content regulation or undertake certain kinds of limitations depending on the nature of the domain name being registered?

If that was something that was in the registrar accreditation agreement.

Some people seem to be saying that if it's in the registrar accreditation agreement, ICANN has the right and obligation to enforce it, even if it amounts to regulation that is outside of ICANN's mission statement.

Now, I think that the problem that we have is crafting something that effectively captures the fact that contracts and regulation are different, but that an attempt to use the registrar accreditation agreement or the registry agreement to route around the mission statement is not fair game.

I think that's the issue on the table for us. I think that there are two clear camps here. I'm not sure that anybody would be quite as blunt as I am being about what the issues are, but after, you know, quite a lot of time about trying to sort of finesse this issue,

I think that this is an issue we need to put on the table, we need to have some help from -- we need to make sure that there is a meeting of minds on this point that contracts are enforceable but ICANN can't use contracts to route around -- you know, ICANN cannot, you know, impose contracts unilaterally to route around the mission statement limitations, and see if we can come up with some language to capture that.

So that's the -- from my mind, that's the big issue on the table.

LEON SANCHEZ:

I wasn't -- sorry. Thank you very much for this, Becky. I have some hands up and I'm not sure if some of them might be old hands or new hands, but Kieren, is that a new hand or an old hand? It's an old hand?

Okay. Greg, is that a new hand or an old hand?

GREGORY SHATAN:

New hand.

LEON SANCHEZ:

Go ahead, please.

GREGORY SHATAN:

Thanks. Greg Shatan, for the record.

First, I have fundamental problems with the way that the problem was stated, the idea that the contractual compliance or contractual enforcement would be used to finesse around regulation.

I just don't see it that way at all.

Obviously reasonable people can differ, but I think that leaves open, you know, massive ways of trying to limit contractual compliance, contractual enforcement of a language that was agreed. I think overall there are a lot of pitfalls in this particular area. We have no definition of regulation. Regulation is a rule that's imposed by an authority. Are consensus policies not a form of regulation? Why not. And if we're talking about content, are domain names themselves content or are we only talking about the content of Web sites. So is the UDRP in violation of this particular section. And if we look at the stress tests that are attached to these sessions, they actually seem to say that strong enforcement of the contracts is regulation. Which is, you know, the opposite of what it says in the text and how Becky, you know, interpreted it. So both 29 and 30 lead us, you know, deeply into the weeds, in terms of how to interpret this.

So I think that we need to -- definitely need to come up with a conversation about what contract -- what it means to enforce, you know, particular sections of the contract and I think we were talking about section 318 of the RAA here but the -- the registrar agreement. The way to do it is not to try to come up with broad high level statements but really to have to get down in the weeds with it. And that to my mind is not something that a bylaws is suitable for. Thank you.

LEON SANCHEZ:

Thank you very much, Greg. Thomas, you want to say something about that, right?

THOMAS RICKERT: Yeah, I guess we are in agreement on the principle that bylaw changes that we're suggesting do not limit ICANN's ability of enforcing contracts. The question is, does this group have suggestions on how we can make that more robust? Do we have concrete suggestions to remove this concern?

LEON SANCHEZ: Thank you very much, Thomas. Anybody wants to answer the question? Steve.

STEVE DelBIANCO: Thanks, Steve DelBianco with commercial stakeholders group. Both the B.C. and IPC brought this up in a big way in the second round of comments. Because during the first round of discussion we tried to get generally comfortable with assurances from Becky that contractual compliance wouldn't be considered regulation. And were okay with that at the time. But two folks who submitted comments in the first round, Danielle Kehl and David Post of New America Foundation, they specifically requested two new stress tests. And the stress test team is here to serve. So we added stress test 29 and 30. Folks who objected to the stress test might be objecting to the way we analyzed it, but we didn't have any right to say no, we're just going to ignore you. And the stress test identified the crux of this issue. We honestly don't know what an IRP panel would do if it was given the standard of review of the limited admissions statement and the stress test presented at 29 and 30 a challenge on the RAA. We also said there was a second problem that Becky hasn't gotten to yet, but I'm sure that she will. And that is what about a contract provision, even if it's in a PIC spec, that came from a

top-down source. GAC safeguards coming out of Beijing. For instance, a court ruling from another nation. In other words, a top-down that didn't come up through the bottom-up process that's made its way into a contract. That is another part of the bylaws that form the standard of review for an independent review panel. So you'll see on page 112 where stress test 29 is analyzed, the stress test team did its job by suggesting that an IRP might or could potentially find that both were a problem for enforcement of a PIC spec or enforcement of an RAA. The top-down nature as well as the limitation on scope. And the stress test had its intended effect because it generated a lot of interest and attention, and people commented on it because if that's the effect of it, well then we do need to tighten the language that's in the IRP so that it respects contract enforcement.

LEON SANCHEZ:

Thank you very much for this, Steve. Becky wanted to put something in the chat box but I believe that she's having problems putting it there, so Becky, would you like to add something to what Steve had just said?

BECKY BURR:

I just want, for purposes of making this conversation most productive, I think we should stipulate that anything within the picket fence which is IPC 1, is -- is consistent by definition with ICANN's mission statement and that therefore we need to find a way if there's any question about that to make sure that that is not called into question. But if we start talking about things like is the UDRP, you know, within ICANN's mission or not, we're -- we are going to have a less productive conversation than we

should have. So I would like to propose that we all agree that if it's in the picket fence, it's within ICANN's mission by definition. If we need to find words to clarify that, that's fine. But for purposes of this particular debate, we need to get into the weeds in a -- in a more -- you know, in a less general way and we need to put aside the sort of things that we can agree on. And Greg is asking me if we can assume that everyone knows what the picket fence is. And the answer to that is, no.

The picket fence is essentially a reference to the mission statement that refers to things that are reasonably necessary or that reasonably require or benefit from or substantially benefit from overall coordination in the interest of security and stability, and there is a much more elaborate statement about that in the registry and the registrar agreement and it is a consensus policy that is on the consensus policy page that goes into specific detail and talks specifically about disputes about domain name registration and specifically gets that trademark and those kinds of issues. So I would like to strongly, you know, like to talk about -- like really talk about the hard questions here as opposed to, you know, the more rhetorical things.

LEON SANCHEZ: Thank you very much, Becky. Next in the queue I have Mark Carvell.

MARK CARVELL: Thanks, Leon. Mark Carvell, U.K. government. This was an issue that we picked up in the U.K. government's response to the second draft. We felt that the text relating to mission and

commitments didn't adequately reflect the commitment of ICANN and the community to the public interest. And we've got an explicit commitment by ICANN to act in the public interest. And when the community comes up with specific concerns, for example, relating to particular kinds of new gTLDs and from that flows provisions and elements in contractual arrangements which then ICANN oversees and enforces consistent with its public interest responsibilities, that indicates that this is part of its mission, part of the organization's mission to fulfill that. And we didn't feel it was adequately reflected in the text. And we just simply see the logic of the public interest, ICANN's commitment to that, being reflected in the particular paragraphs of this part of the draft report.

So I agree with Becky that, you know, further work needs to be done to get the kind of text that does that adequately right, and that will be, I think, supported by everybody in the community. And I haven't discussed it with GAC colleagues, but I think that will resonate well with the GAC. Thank you.

[Timer sounds]

LEON SANCHEZ: Thank you very much, Mark. On the queue I have Louise. Louise? You might be on mute. Okay. So we're having trouble listen to go Louise. I'll go to Alan Greenberg.

ALAN GREENBERG: Thank you very much. I agree with Becky that this is going to need more work. I really have worries, partly akin to what Mark was talking about about how an IRP in the future will evaluate

the public interest in a given issue -- in a given issue with regard to some of the other -- you know, the other commitments. I don't think picket fence is the magic solution. For instance, PICs are really contractual commitments, clearly important, and yet are not within the picket fence. So I -- I really think we need to be very, very careful what we put in and make sure that a future IRP is not going to misinterpret what we meant by something, no matter how clear our thinking is today.

LEON SANCHEZ:

Thank you very much, Alan. So the queue is now closed, and I thank Becky for taking us through this. There's, of course, the need to continue the discussion, not only in these -- at this end of whether contractual compliance could derive in ICANN going out of its mission but also I think we have a couple of more issues that need to be further discussed. And I invite you to continue the discussion offline so we can, of course, advance the discussion on other topics today. So I think that our next agenda item is coming to decision making, and for that I would like to invite Jordan. Is that Jordan, right? Community decision-making process? Yes. Okay. So Thomas, would you like to add something? Or I'll hand it to you.

THOMAS RICKERT:

Okay. Thank you very much, Leon. And I guess this is the part of the discussion that some of you have been eagerly awaiting and that is, how does the community make decisions. And let me preface this a little bit because we called it model in voting but let's not instantly jump to the model because I think what we've understood from the discussions earlier is that the Board, as

well as other commenters, do not necessarily have issues with the model but with -- but the underlying issue is how does the community come to invoking powers, how does the community come to decisions? And there is a perceived mismatch of the representation of SOs and ACs on the Board and in what you find in our voting scheme at the moment. So there's the fear that, you know, four groups only or five groups only can make important decisions and that the rest of the community, if you wish, can be ignored. And there is a perceived fear of capture. There is a perceived fear of lack of accountability of the community or actually an actual fear, maybe it's not just a perceived fear. And I think that regardless of whether you have an MEM or sole designator model or the single membership model, we need to discuss how the community comes to decisions. How does the community form a view on whether or not a community power should be exercised? We have broad agreement that we need certain community powers, but I think what I didn't read in the Board's proposal as well as in the comments is a solution to fix this. So in the Board's pro -- Board's papers, there is talk about certain powers need to be invoked by one or two SO/ACs and there mustn't be more than one objection, but that sort of equals counting noses, right? So even the Board's suggestion is not merely focusing on consensus, but it's sort of qualifying consensus by introducing thresholds and objection rights.

And we -- we, you know, having followed this discussion from the very beginning, we sort of took the opposite approach and said well, maybe consensus is too vague a term and therefore we wanted to enshrine community consensus in a voting pattern, to ensure that we have sufficient community support

for invoking or exercising certain community powers. And I think that this is the issue. If you look at the public comment and review tool you will find that we had a total of 8 out of 88 or so commenters saying they disagree with the single membership model. Three of them, I think, were individuals that said they don't like it. The majority of the concerns lies in the underlying voting scheme. And so I think that the way we should structure this discussion is to discuss how the community can come to decisions, what we need to do to have sufficient SO/AC accountability, to have this concept of mutual accountability as we called it earlier, and then as a second step, look at the legal vehicle to get the enforceability done. Because I think I haven't read any comment so far that would provide a solution for this.

So if you -- and this very much corresponds to the Board's concerns that we've analyzed this morning. So I would like to open it up for discussion with this group. And maybe the starting point could be -- and you can pick which aspect of this you would like to speak to, but what do you think is needed to have sufficient SO/AC accountability? Are there any concrete measures that you suggest so that we can trust the community to be sufficiently accountable? That's one aspect. The other aspect is, how do you think we need to reflect the community's views in a decision-making process. So do you have ideas on whether it should be voting, whether it should be consensus, who should be considered. There were comments that said we were not inclusive enough with the organizations that are getting voting rights under our scheme. So this is, you know -- maybe some of you would like to take the first crack at it. There is a queue forming. I'm not sure whether these are old or new hands. But Louise, fire away. Is that --

Must be old.

THOMAS RICKERT: Must be an old hand. Kavouss, is that a new hand? Go on.

KAVOUSS ARASTEH: Thank you. I hope I can do it in two minutes but it may be difficult to do it. I think the reason that ICANN proposed MEM was, in my view, I may misunderstood, not to follow the process of voting, which involve to give to ACs in particular or SOs a power of decision-making in an explicit manner. They were silent in some area, even though they refer to the resolution, but they did not mention that whether the resolution or how the resolution should be adopted. Perhaps they meant that delivered to each SO, and if they involve AC too, which I hope they do, to the course of action and procedure that is currently being used in that SO and ACs how to come to decisions. But from legal point of view, a decision could be made by unanimity, could be made by full consensus. That means although some people, they don't agree with the proposal but they do not formally express their objections. Or some sort of you call them qualified consensus. IETF called them soft consensus, and other people have other motions or other definitions and some people going to the hum issues. That means few people they coordinate before they're meeting that as soon as I start you also start and they hum and they finish the issue.

CCWG upped for the --

[Timer sounds]

So that is the issue. Start from the voting. When you start from the voting that you already exclude any unanimity, you exclude any sort of consensus and you go to the voting. And by going to the voting you distribute among all ACs and SOs and give them the authority or power or rights to exercise that right as appropriate, if they want or if they so desired. Some of them, they did not decide yet and some of them they want to do that.

So we could seek more clarification from ICANN with respect to MEM. In many areas they are silent. For instance, they have not mentioned how the MEM issue group come to the sort of conclusions in order to submit the issue to the standing panel. How the standing panel decide on the matter. And how SO, and if they include AC in future, would have the resolution, whether the resolution should be by consensus, whether the resolution should be by some other things. But these are the issue. But all of them are exist. Sometimes you cannot have consensus in some area because election of the president of the country is not by consensus. It requires 100% voting procedures. But some other areas, the first they try consensus. If it is not possible to have unanimity. But by consensus it is the obligations or skill of the chairman to -- or chair to convince the people that the consensus be emerged. It would be difficult but sometimes it -- it happens. But it depends on the situation.

So I think the consensus is a good way of procedure unless it doesn't work and we have to go to the voting, which some people they don't like the voting.

So you should start from that it is part of the MEM, it's part of the sole membership, but is not the whole model but is a part of the model.

So we have to discuss the issue that perhaps we should seek some clarification from ICANN with respect to the MEM how they make the decision-making at various levels.

There are three levels --

THOMAS RICKERT: Kavouss, sorry. I think you are speaking for four minutes now. We would like to hear more views, so can you please finish --

KAVOUSS ARASTEH: Okay. Yes, I will finish in a second.

-- the SOs in the MEM group and in the standing panel, how the decision-making should be made, thank you.

THOMAS RICKERT: Yes. And I think I tried to encourage everyone not to discuss options but a preference, and I understand, Kavouss, that your preference lies in consensus rather than voting, so let's move on with the queue.

Next in line is Alan.

ALAN GREENBERG: Thank you very much.

ICANN loves the term "consensus." We love it so much we have a near infinite number of definitions for it. Virtually every group uses a different definition.

The GAC, for instance, says consensus is if some people want it and no one objects.

If we use that term -- if we use that definition in the models we're looking at, anyone -- anyone with a partial vote would have the ability to veto community action. Don't think we want that.

The ALAC says we try to make decisions by consensus but anyone can request a vote. A vote on -- except in a few special cases -- is 50%, is greater than 50%, but if we make a decision by consensus, we're looking for at least 80%.

So consensus means to us most people. Not everyone, but a large number of them.

It's a far more stringent test than just voting, which is, as I said, 50 plus 1.

So the GNSO has a half a dozen definitions of consensus. The ccNSO uses a different one from any of those.

THOMAS RICKERT: Which one would you like?

ALAN GREENBERG: Okay. I don't think we can use "consensus." It's going to mean too many things to too many different people. I think voting, I think actually giving metrics that we can measure and have no misunderstanding, is the only way to go forward, given that we have so many definitions of consensus that are being used within this community.

I'm not happy with that solution, but I don't see any way forward.

THOMAS RICKERT: Okay. But then the subsequent question would be -- and this is one that we've been struggling with quite a bit -- who should have a vote and how many votes should the individual groups have.

I'm not expecting an answer --

ALAN GREENBERG: I give you another two minutes on that.

THOMAS RICKERT: You can put yourself back in the queue. Kieren?

KIEREN McCARTHY: Hi. So on voting, to get to the single member idea, I thought when I first heard single member idea, I thought it was a great idea. It would work. And then I was appalled when I saw the energy and the effort put into people jostling around how many votes they would get and there's four here and there's five there, and I think the problem is the reality is there's a very, very small number of people from each SO and AC that end up in these positions over and over again.

And I think probably -- although I don't know -- that probably part of the board's concern is effectively you would end up with another board of people and they get to decide critical issues, which is effectively the same small group of people who decide

very important things again. That's the reality that we've seen over and over again in ICANN.

So I think that a possible solution is that this group doesn't decide how votes are done and who decides what and how many seats there are. I think this group could say each SO and AC gets a vote and it's up to them to figure out what that vote is, and in that way you leave it to the groups to figure out their own methods of what is consensus and how we've reached it. Give each one a single vote. It's up to them. And you use those votes to make decisions.

THOMAS RICKERT: Quick follow-up question, Kieren. RSSAC and SSAC would also get one? Same as the GNSO? Same as ccNSO?

KIEREN McCARTHY: I don't see why not. We're talking -- what we're talking about here in these sort of extreme powers is we're talking about very big issues, and I think when you're talking about the supporting organizations and the advisory committees, these are all of the arms of ICANN, so they should be able to all get together and say, "We don't like this." That should be the mechanism. And if, you know, you put some limit on it, five out of seven of them say, "This has gone wrong," that's a lot of people saying, "This has gone wrong." But it's just an idea. But give everyone a single vote and let those groups figure it out for themselves, rather than this group try and make sense of all of the different groups. I just don't think it's pragmatic.

THOMAS RICKERT: Thanks for that. Steve?

STEVE DelBIANCO: Steve DelBianco with the CSG. And my opinions aren't relevant. It's really the groups that are represented in the commercial stakeholders group, and the three questions about who votes, how do they vote -- equal or weighted -- and is it binary or split. I can give you the preference -- that's what you're asking for -- with respect to that.

As far as who votes, most of the commercial stakeholders group believe that everyone would have an opportunity to vote. Although in the most recent comment, the internet service providers did think that perhaps the GAC should not have a vote.

On the question of how to vote, all three of the groups in the CSG were supportive of the weights that were indicated in the most recent comment. That was a five-by-five with two for the SSAC and RSSAC.

And then finally, on binary voting, which is, I guess, what the GAC is talking about -- sorry, the board is talking about in the MEM, a binary vote, in the sense that each AC and SO goes back and answers the question "yes" or "no."

Through their own means of voting or consensus arrival, as Alan was describing, ALAC would come back and say we are a "yes" or we're a "no" on exercising that power. So that's what I mean by binary.

The alternative to that is to be able to split the preference of one's vote.

In the case of the GNSO, we have dramatically different constituencies in there, so it's likely that our groups would favor split preference, so that, say, three of the five votes, in the case of a five-vote weighting, might go for and two of the five votes would go against, and then that gets stirred into the pot of the other votes.

So the granularity you get with a split preference is obviously preferable to CSG, which is the BC, the IPC, and the ISPs.

So I hope that helps to indicate a preference on that but also to frame the question. A lot of it is by who, how in terms of weighting and how in terms of binary versus split. Thank you.

THOMAS RICKERT: Thanks very much, Steve.

Bruce is next.

BRUCE TONKIN: Thanks, Thomas. I just wanted to separate two different types of voting that you seem to be discussing here.

So one is arbitration. So in the board's model, the arbitration process, we've basically said that any supporting organization or advisory committee can raise a petition, and that's through their own consensus process, so they do consensus however it's defined in that group.

And then we've just said that there would be some minimum number of SOs to initiate the action.

Now, this group could decide the minimum is one. I mean, that would be the simplest thing. So effectively that collapses to any individual SO or any individual AC could initiate arbitration. That's probably the simplest way to go.

Then the other thing that you want to measure a degree of consensus is, say, bylaws changes, and you've got minor bylaws changes versus fundamental bylaws changes.

Again, I think you just keep it pretty simple, like it's one vote each, you need at least six of the seven to do a fundamental bylaws change and maybe at least four of the seven to do another bylaws change.

But in each case, the way the board was thinking is that on a particular issue, not all SOs or ACs care or even want to be involved, and so we're trying to design our processes so that if it is the GNSO and the ALAC, you know, that would be enough for them to initiate a dispute process if they want to.

It doesn't -- I don't think SSAC or RSSAC probably even cares about some of the issues that the GNSO and ALAC might.

So instead of trying to combine this all into some single member that thinks the same way, we're actually trying to distribute it and say, well, the relevant SO and AC forms an MEM issue group to lodge arbitration, and then for bylaws changes, you just agree with the right number is, whether it's four of the seven or six of the seven or seven of the seven, but they just have one vote each in that context.

THOMAS RICKERT: Thanks, Bruce. Jordan?

JORDAN CARTER: Thanks, Thomas. I just wanted to come back to what I think we were trying to do with the model that is in the second draft proposal, and everyone accepts, I think, that to exercise any of these powers there should be a high degree of consensus, so that's why even in the voting model there's a high threshold of votes that you need to accumulate to be able to exercise any of them.

But why did we have any vote concept at all? And there were two reasons. One was to give differential influence to different groups.

So that's one reason you need some kind of weighing process.

If you gave the same amount of say to each of the SOs and ACs, then you don't need voting for that reason.

The other one was to let people be more granular than yes or no. And so the feeling was that within a particular SO or AC, there may be different thoughts about whether to exercise a power.

So within the GNSO, it seemed unlikely that you could always rely on there being a reasonable yea or nay for the entirety of the GNSO. So by allowing individual votes or splits, you could more honestly represent the general consensus views within the ICANN community below the SO/AC level.

So in the ccNSO, for example, or the GAC, you might choose a regional basis, and in the GNSO, you might choose the houses.

Like -- but it doesn't matter what. The point is that it would be delegated to the SOs and ACs to choose that, to make some decisions about it, and then to exercise their choices.

So if you don't think that going anything below the top level of the SOs and ACs is important, and if you don't think that you need any distinction in the weights between groups, then you probably don't need a voting mechanism, and you can probably just count up the decisions of the SOs and ACs.

I regard -- I think that would be a very substantive change to the proposal and would require another round of public feedback.

[Timer sounds]

JORDAN CARTER: Well timed.

THOMAS RICKERT: That was almost perfect timing.

[Laughter]

Now, since Jordan was sharing with us the thinking of the sub-team working on that, can we just -- you know, this is by no means a vote but just to sense the atmosphere in the room, do you think we need something more granular for the SOs and ACs rather than having one voice per group? Those who think we need something more granular than --

>> (Off microphone.)

THOMAS RICKERT: Not necessarily split, but just not to have -- you know, like Kieren said, one vote per organization, but multiple votes in order to allow for a more granular --

>> (Off microphone.)

THOMAS RICKERT: Yeah. It can be a split but it would depend on the group, whether they allow for a split or not.

So do you think it needs to be more granular than one vote per organization? Those who like -- think it needs to be more granular just give me a show of hands.

More granular --

>> (Off microphone.)

THOMAS RICKERT: Than one.

Okay. Who thinks that one per organization is the way to go?

ALAN GREENBERG: Just for clarity, one per organization you cannot split into fractions.

THOMAS RICKERT: Yes. One. One. We can't divide one.

>> (Off microphone.)

THOMAS RICKERT: Binary. Yes or no per organization.

I think that, you know, at least in this room many more people want it to be more granular than having it binary. That was just for information.

Let's move on with Robin now.

ROBIN GROSS: Hi. This is Robin Gross, for the record.

So I just wanted to raise a couple of the issues that the noncommercial users had brought into some of the public comments and we wanted to raise here because they're very important to our stakeholder group, and one has to do with what could be seen as sort of, I guess, double-dipping, if you will, of, for example, the GAC being able to have a vote and then also having that special privileged advice that must be dealt with.

So that's a major concern for a number of us is trying to deal with that double-dipping type of allocation that seems to have come from our proposal.

I think another point we have to consider on this issue is that, you know, a lot of these orgs were not set up for the purposes of expressing -- of exercising these kinds of powers.

When we set up the GAC, did we really think that this is some -- an organization that should have a veto right over ICANN's budget? I don't think so.

I think also looking at some of the RSSAC and SSAC and appointees -- members who were appointed by the board, giving

them the power to recall the board, again, it doesn't really make much sense in terms of if you think about what they were set up to do and how they are appointed, and so giving them the power to be the check might -- it just doesn't make sense in a lot of ways.

And I think also another concern that we had has to do with the vote allocation. Our proposal said four votes for each, the SOs and the ACs, and I'm concerned about how this can -- empowers the ACs over -- over the SOs right now. It's a -- sort of a shifting of the existing power balance within ICANN away from the SOs and towards the -- the ACs, and that's a -- that change is not -- is a major concern for us --

[Timer sounds]

-- and it isn't what we think we were here to do. It isn't the work of this accountability group to sort of rebalance the power interests within ICANN, so it seems a bit out of scope for us to use this opportunity to empower some groups within the SOs much more than relative to others. Thank you.

THOMAS RICKERT: Thanks very much, Robin.

Chris?

CHRIS DISSPAIN: So I agree with Robin about -- in her description of changing the balance of power and that's my fundamental problem with this voting process.

The most important thing that we do in ICANN in the SOs is make policy, and in the vast majority of cases we do that by consensus.

We build consensus in the ccNSO -- we build consensus in the ccNSO, we have a bylaw requirement that says we have to involve and enroll the GAC in our policy. We build consensus with the GAC, and in my experience of running policy development processes, real ones and sort of slightly not real ones such as the IDN fast track, it was crucial. And if we had had to go to voting, the chances we would have never got it done. We could never have actually brought everybody together to come to an agreement.

The problem with a threshold of 66% is that 34% could be vehemently opposed. If the ICANN board was faced with that situation, forgetting enforcement rights, just faced with a situation of the community saying 66% of people said yes to something and 34% of people said no, just to -- just to smart your head and say, well, 66% of people say yes and not take any account of the 34% who might be vehemently opposed would be, in essence, the wrong thing to do. The right thing to do would be to bring everybody together and see if you couldn't -- you could break off the corners and get to a level of consensus.

So I don't have a specific solution right now. I'm happy to work with a group of people on one. But I'm very concerned about the fracturing of the community that will take place if we go to a voting model. I'm very concerned about lifting -- changing the power base. The possibility that we could have the ASO absent from a vote and a GNSO, ccNSO, ALAC vote being the only thing - the only three SOs involved is a real problem for me.

Thank you.

[Timer sounds]

THOMAS RICKERT: Thanks, Chris. Seun?

SEUN OJEDEJI: Thank you. This is Seun, for the record.

I won't say anything about voting. I think a lot has been said already about that.

I just want to answer one of your questions that you asked, Thomas, and that is the aspect of how do -- how do we get the community forum powers used.

I think we need to get a basic principle and agree on the principle that there is no power -- there is no community power that would be exercised without certain thresholds across the AC and SOs.

Right now, this proposal does not reflect that and I think that's a fundamental requirement or principle that we need to have, and if we agree on that, then we can actually see how we can allocate the votes, if necessary. Thank you.

THOMAS RICKERT: Okay, Seun. I think there's a misunderstanding. The community forum is a place where discussion takes place in the public. The decisions are being made in the -- in the individual SOs and ACs after the discussion has been held publicly in the community

forum, and then, you know, according to our report, the votes are cast and a decision is either made -- a decision is made, which is either carried or not.

But --

SEUN OJEDEJI:

Sorry. Okay. Maybe community forum is not the word. I'm trying to remember how you phrased the question in the first place. But my point is that any exercise of the community powers needs to be done by the entire SOs and ACs, because for instance, removal of individual board member, for instance, at the moment as it stands now, it's a process that gets triggered by an SO and gets completed by an SO or AC that's appointed.

So I think we need to get past that phase where we say one community can actually remove or exercise a power because it does not actually put the sense of multistakeholderism into practice because it just looks like we're creating -- we're creating a basis for war within the community in the near future. Thank you.

THOMAS RICKERT:

Seun, just for me to understand this correctly, you're saying that all SOs and ACs must participate in the process or are you saying that everybody's consent is required for a community power to be exercised? Do we need unanimity?

SEUN OJEDEJI:

Yeah, we need unanimous -- no, no, no. We need a certain level of consensus, whether it is by rough or whatever, maybe by

voting threshold that we're going to be discussing across the SOs and ACs before any community power can be exercised. That's my point.

THOMAS RICKERT: Okay. So that's exactly what we have in the proposal at the moment.

So next is Avri.

JORDAN CARTER: Thomas, just to clarify, except for the removal of individual directors.

SEUN OJEDEJI: That is my point.

JORDAN CARTER: I think Seun is saying that should be applied to all of the powers, including that one. Is that right, Seun?

SEUN OJEDEJI: Exactly. Thank you very much.

AVRI DORIA: Thank you, Avri speaking. I ended up taking a minority position from my stakeholder group, and I actually find myself in probable disagreement with many here. I do not see this as a restructuring of the power base or the power distribution. I think that when you look at ICANN in a relatively abstract

manner, you see that we have divine -- defined all of these -- these organizations, SOs and ACs, in a particular balance so that they all have a different -- a different notion that they're representing in the overall. But none of them is more equal than any of the others. And when we're talking about these issues, we're not talking about any of the point issues that are the responsibilities of the SOs. We're more talking about the general community and if anything else, that's more the -- the province of the advisory committees than the SOs. So I think any notion that gets us into this group is more important than the other, so I tend to believe that it really should be equal.

Now, in terms of the GAC, is it double-dipping, I actually got to the point -- and this is me contradicting things that I said months ago, that it isn't double-dipping. That in an abstract sense, when I look at the recommendations of an SO, I look at the advice, the different processes that advice come in, the Board can turn any of them down following a certain position. So again, I do not see it as a double-dipping. I see it as, we all have various abilities and we can all be overruled at some point. So I don't see it as a rebalancing. I think the parity of all of the organizations is necessary. And I think a supermajority vote would not fracture the organization.

[Timer sounds]

THOMAS RICKERT:

Thanks very much, Avri. My Adobe crashed so I need to look here. Sebastien is next.

SEBASTIEN BACHOLLET: Thank you. I agree with Avri. I would like us to try to find a solution, simple as possible, involving everybody in each groups. I realize always Steve DelBianco about granularity and the explanation given by Jordan. And it's important that we are organized by stakeholders but they are not the only way to see the world. The world can be seen in different ways, the region, the language, the whatever, all the diversity items you want to take. And we need to allow this possibility of diversity, not in putting everybody if you are an end user you need to vote as all the end user in all the other groups.

And the vote must be the end of a process to reach the broader consensus possible. That means that the process in the discussion must allow to try to find the biggest broadest consensus. And at the end, if we -- if the organization needs to vote, it's at last result. And I hope that it will be done by each and every group in this organization. Thank you.

THOMAS RICKERT: Thanks very much, Sebastien. So Alan was in the queue and you were kicked out, I guess. So Alan would be next.

ALAN GREENBERG: Sorry. I've got a whole number of things, and I'll make them all really quick. With respect to double-dipping, from my perspective, the GNSO gets to set -- recommend policy to the Board, the Board has to look at, they set -- they send directors to the Board, and now they're going to be voting. That's triple dipping. So depending on how you look at it, the dipping is varying depending on what your role is. Right now the ALAC is

half dipping by the same standard. So I really don't like that discussion.

It's not particularly surprising that when you asked for hands most of the people in this room put up granularity hands. Most of the people here are representing small parts of the organization. They want to maintain their voice. Makes complete sense.

One of the reasons the ALAC has supported all along less community power and less enforceability is we believe the Board is the only group that is charged with balancing the various priorities of the organization. Whether it's GAC advice versus GNSO recommendations, whether it's public interest versus something else, none of the rest of the groups have that charge. And so I think it -- it's always going to be problematic if we start adding up votes and treating them all equal or in whatever weight we say. That seems to be the only option we have, however, if we are going to give direct power to the community. Thank you.

THOMAS RICKERT: Thanks very much, Alan. Suzanne.

SUZANNE RADELL: Thank you, Thomas. I actually just took my hand down but that's all right I'll take just a second. It was actually a knee-jerk response to a couple of comments made about, you know, why don't we try regional breakdown, why don't we try this, why don't we try that. I do think we are all better served if we respect the fact that all of the SOs and ACs use completely different

methodologies and we should leave the methodologies to each SO and AC. One size definitely does not fit all. And I just wanted to reinforce that. Thank you.

THOMAS RICKERT: Thanks very much, Suzanne. Eric.

ERIC BRUNNER-WILLIAMS: Thank you very much. Responding to Kieren's one vote per SO suggestion and the follow-up question by Thomas on SSAC and RSSAC, I want to point out that the missions of the SSAC and I suppose that of the RSSAC are quite specific and limited to issues that directly affect their ambits, that would be security and stability for SSAC and other root servers for RSSAC.

The SSAC itself has made its position clear in SSAC 71 which is available to you all. Thank you very much.

THOMAS RICKERT: Thanks very much. Brett.

BRETT SCHAEFER: Thank you. Getting back to the GAC issue, I don't believe that this is an issue of double-dipping versus not double-dipping. I believe that this is an issue of whether or not the GAC has an expanded authority with this voting privilege than what it has currently. And I don't think that's disputable. What we have here is a GAC that has privileged ability to send advice to the Board and to compel the Board to negotiate with it. In this they will have that, and then they will also have the voting privileges

under this single member entity that we're proposing here. And I think that this might run afoul of the NTIA criteria in terms of replacing NTIA with a government letter or a government -- intergovernmental organizational solution in that governments have an authority outside of this room that nobody else in this ICANN world has. Whether you're GNSO, whether you're the business constituency, whether you're anybody else. And with this enhanced authority under the model, the voting model and through the privileged advice I think that would be a substantial increase in the authority of the GAC, vis-a-vis ICANN. And I believe that they should be forced to choose. If they want to maintain their privilege advisory role, then the GAC should be enabled to do that. But they should not be able to vote at that same time. If they want to vote as a part of this process, then they should be surrendering their privileged advisory role. Thank you.

THOMAS RICKERT: Thanks very much. Sam.

SAMANTHA EISNER: Sure, this is Samantha Eisner, and I'm speaking right now in my capacity as a member of the CCWG. I have stated before in my capacity as a member that I don't support the single member model, but I think you can take my contribution regardless of the model that you choose.

I echo the comments of Avri and of Alan that -- and others about the -- the equality among SOs and ACs when we're looking at the different powers that we're agreeing that the community should

hold, whatever mechanism we use to give the community these powers. The SOs each have very specific policy-related responsibilities within ICANN. The ACs each have very specific advisory roles within ICANN. None of the groups within ICANN currently have specified roles within the ICANN operational work that the CCWG is looking to bring in power. So I think it's really important that we remind ourselves that and we're -- we're changing the way each of these organizations work within the model.

I know that there are open questions about the GAC and how -- how it could fit in other advisory roles, but I think that it's important to remember that a single group that might have a policy basis within the organization around a certain, you know, names or numbers doesn't give it a special role within operations. This is creating something new across the organization.

I wanted to respond also to a comment that Thomas made in response to Seun where Seun said that he thought if it went to voting that the voting would have to be across all SOs and ACs. And Thomas, I heard you say that that's exactly what the model put on the table by the CCWG does. I disagree with that. The model put forward by the CCWG gives the opportunity for all SOs and ACs --

[Timer sounds]

-- to choose to come in. However, it does not require all of them to participate and it actually could exclude some of them based on specific timings of whether or not they choose to be part of

the member or not. I think that's a very clear distinction that needs to be made.

THOMAS RICKERT: Thanks, Sam. Jordan.

JORDAN CARTER: Thanks. Just personal views on two things to add into the debate. One is that when I hear people saying that the composition of the -- the accountability tools decision maker should be the same as in the Board, I get a bit nervous. If you've ever looked at national legislatures that have a main legislating chamber and a review chamber, review bodies are never comprised the same way or through the same system as the bodies that they're reviewing or holding to account. The reason for that is simple. If you've got two groups of people composed the same way with the same mandate and they don't agree, then you've created a logjam at the core of your model. So as a matter of principle, I don't think it does rebalance power in the ICANN model if the accountability tools have decisions made by a broader or a differently composed group. In fact, I think it's essential that it be different. So that's why I thought that the five by five and two by two was useful.

The other point is that this is a narrow set of accountability tools that are being talked about, decisions-wise here. And, you know, giving the GAC a say in whether those tools are used or not does not turn ICANN into a government-led organization. I cannot make that link. I cannot make the link of having an advisory group like any other advisory group participating there,

turning this into a governmental-led organization. And it just doesn't sustain. It isn't a logical claim to make in my mind. So I just wanted to put that on the table.

THOMAS RICKERT: Thanks, Jordan. Anne.

ANNE AIKMAN-SCALESE: Thank you, Thomas. Anne Aikman-Scalese with the IPC. And first comment is, I really want to express my appreciation for how the chairs have handled this meeting today and the review of public comments has been quite thorough. And I think progress is being made, and I thank you very much.

With respect to this particular issue, on the suggestion that the recommended model from the CCWG would fracture the organization and prevent it from developing consensus, which is the way it has been working heretofore, I see the new recommended structure as, in fact, encouraging consensus. Because what we've had in the past is the GAC rendering advice and then separately the GNSO making its recommendations and then separately others commenting and writing letters to the Board.

To me the structure that's proposed is one where there can be a discussion by all of the SOs and ACs within the community and potential for resolving differences prior to those differences reaching the Board and the Board having to resolve them while the community remains, you know, upset, one SO and AC with another, for who has the most power. I think it's an opportunity

for collaboration and consensus across the community, rather than something that will be fracturing to the organization.

Lastly, with respect to the subject of quote, unquote double-dipping, again, on the principle that this model encourages collaboration and consensus building within the community, I do not think the GAC would be double-dipping at all by coming into this process. I think they would just be coming in earlier. The community in general has been somewhat frustrated with the pace of receipt of GAC advice, and this will, in fact, encourage more active participation if the GAC is present within this process that's been described and recommended by the CCWG. Thank you.

[Timer sounds]

THOMAS RICKERT: Thanks very much, Anne. And that was perfect timing as well. Greg.

GREG SHATAN: Thanks, Greg Shatan, for the record. I think that the -- the ACs do pose a challenge in a sense. I wouldn't use the term "double-dipping," but there is certainly a question with regard their nature and scope and whether it makes sense in any particular instance, for any SO or AC that has earlier influenced or made a decision that is now being voted on again, you know, what the nature of their participation should be. So it may not even be limited -- I think the GAC tends to raise the question most directly because the GAC advice seems to have a very broad remit at this point in ICANN's history. So there is a chance that

they could, you know, come in twice on the same issue, at different points, whether it would be earlier or later. But I think that could also potentially be true of GNSO policy recommendations if there then becomes an issue raised later that's an outgrowth of those policy recommendations.

I think what we really need to look at is how the balance of the community is carried forward and whether we can really work through this issue. Because it is -- as Sam says, it's a repurposing in a way of all of the organizations, and so we really need to look at getting stakeholders to the table and to come up with -- with a decision and come up with a decision. I think Anne says a collaborative decision. We have to figure out how one meshes collaboration and voting. And I only have 12 seconds, so I don't have the answer for that. Thank you.

THOMAS RICKERT:

I would give you ten more seconds if you gave us an answer.

[Laughter]

So Qusai.

QUSAI AL-SHATTI:

Let me echo the comment of my dear colleague Suzanne who said keep it to the organizations to decide how they would vote.

I think the current model, whether we have a consensus and (indiscernible) position of an organization is much better for the process of let's say public policies or -- that is currently adopted within the ICANN. The voting system or the voting approach as it is mentioned in the accountability report here, I think it would

raise more complication rather than would support such a process. Especially when we say that is -- we are supporting this decision 2 out of 5 or 1.75, is it support 1 -- is it support 2 or against 3? And rather than discussing the policy itself and having a consensus with the credible support, suddenly the voting itself became an issue. So actually this lays a complication rather than pushing or moving things forward.

Again, that is -- let's suppose that the support organizations and the ACs all supported the SOs -- the public -- specific policy but they chose -- the voting was 2, 2, 2, 2, 2, and if we counted these votes, they're still not the majority (indiscernible). So what would be the case here? So the voting as it is here would raise more complication --

[Timer sounds]

-- rather than support. Thank you.

THOMAS RICKERT: Thank you for that. We have Kavouss, Chris, Jonathan, and after that, we're going to try to take stock.

KAVOUSS ARASTEH: Thank you, Thomas.

I didn't pronounce in favor or against consensus. You concluded that. That was not my proposal, number one.

Number two, you have to look into the two models that we have, MEM and sole member, and we have to see where are the areas that we have to decide.

The first area in both is the -- at the level of the SOs or SO and ACs. We call them petition. ICANN call them level of SOs and ACs.

Why not leave it to the procedures in force in those SOs and ACs today? We don't decide on that.

Second level, I leave it for a minute and go to the third level, and that is the panel, standing panel of ICANN, and they have mentioned that simple majority, we have mentioned in our panel simple majority, so we are together.

The only issue remains the MEM issue group and our sole member. Why not we leave it to those to decide on the way that they have to make decisions?

Similarity with that would be in ICG we had discussions very, very extensively. Finally we come to the conclusion that we have to document it and we prepare the document describing how the decision should be made and that is well documented.

So why not we go to that way as one option. Thank you.

THOMAS RICKERT:

Thanks, Kavouss.

Chris?

CHRIS DISSPAIN:

So Jordan said that this is the -- what we're talking about is a narrow set of accountability tools, and that's true, but they're the most powerful tools that this organization or the community and this organization will have, changing the bylaws, blocking

bylaw changes, spilling the board. These are incredibly powerful. So the fact that they happen to be narrow and about accountability doesn't change the fact that they're incredibly important.

Let me run one possible scenario for you.

The difficulty with putting in bright lines and boundaries around participation and mechanisms and voting is that you end up with some really challenging problems.

Let's say the SSAC says, "No, we're not going to play." Say the RSSAC says, "No, we're not going to play." Say the GAC remains as an advisory committee. And let's assume for the moment that the ASO decides that it's only going to involve itself in this mechanism in respect to matters that have to do with numbers.

That leaves the ccNSO, the GNSO, and the ALAC as your pool for dealing with incredibly important decisions. You've got -- if you go to the five votes each, you've got 15 votes. 66% is in effect two, so you've blocked one.

I would argue that that is -- that sort of incredibly specific boundary with strict voting is just not going to work in what is an incredibly difficult community to manage from the point of view of having industry -- even the GNSO just on its own, industry with on one side IP. It's just -- the concept of having it based around -- I've got no problem with the decisions. I've got no problem with triggering the powers. But I think we need to find a way to trigger those powers irrespective of the model that's built around a consensus base.

Using the tools we already have may be one way to do it, the way that the SOs and ACs already operate within their own boundaries, which is acceptable --

[Timer sounds]

-- acceptable to everybody in their own AC and SO and then bringing that up to a consensus-based view at the top. It's not a -- that's not anything like a fleshed-out answer, but I'm very clear that I have really big concerns about the voting. Thanks.

THOMAS RICKERT: Thanks, Chris. I agree that it's not fleshed out.

[Laughter]

I couldn't resist. Sorry.

Jonathan?

JONATHAN ZUCK: I apologize. Jonathan Zuck, for the record. I apologize in advance that my thoughts aren't completely fleshed out either, but it's sort of a combination of something Chris raised earlier, that Alan said, and that Greg said, which is kind of comparing and contrasting scenarios in which either the community -- and I'm not trying to exclude the board when I say "the community," but we're talking about the non-board community and the board and how they would handle dissension and votes and differences of opinion and define consensus.

And as Alan said, I believe that in order to empower the community, you're going to have to have to find a way to

measure consensus; that the lack of measurement has been a convenience in a way but it has also led to a kind of laziness on the part of the community that has brought far too many decisions, substantive decisions to the board, than it ought to, and that more of those decisions should have been turned back the way that Chris described, in fact, with his 66/34% example.

And so I completely agree with that.

But what's innate in that discussion -- and I want to try very hard not to place a value judgment on it, but to raise the question.

What's innate in that discussion is a type of paternalism that says if the community can't get it right, we need the board to bring up the interests of the group that got left out. We need them to rise to some higher level and solve that problem. And the board votes in order to execute its power now, and there are people that are on the board that might be -- feel very strongly that a decision the board is taking isn't the right decision, and yet the community's not in a position to champion the interests of those poor board members that were left out in a vote.

So it really does boil down --

[Timer sounds]

-- to a fundamental question of when these big issues, as Chris described, are being discussed, is the board more capable of handling rising above the din or is the non-board community more capable of doing that?

That's the fundamental question that's being discussed, and all this discussion of models are just reflections of different interpretations of that reality.

THOMAS RICKERT: Thanks, Jonathan. I think one thing has become very clear in this discussion.

Few people said what they want. Rather, they said what they didn't want.

Some said what they want, but there doesn't seem to be a unanimous view in this group on how we can determine what the community wants.

So listening to what's been said, let me try and share, you know, an idea that builds on a lot of things that have been said.

We want to keep things simple, so I think it would be good to build on something that we already know.

In the GNSO, for example, the policies are being made in working groups based on consensus. The consensus determination is done by a working group chair.

There's a process through which the consensus determination can be challenged because the person determining consensus has some sort of power.

So we need to make sure that, you know, the person determining the consensus can't be bribed and stuff like that.

So that -- you know, in the GNSO, that process can be challenged.

Has the consensus determination been correct or not.

And then -- and this is something that people tend to forget -- we do make policy by consensus but the GNSO Council votes, and they don't vote on the substance of the policy but they vote on whether the process has been followed.

And maybe this is something that we can copy for this exercise.

So if we have an issue with voting and balancing votes and attributing votes to parts of the community, why not forget about that, use consensus, have the SO/AC leaders or appointees jointly do the consensus call after, let's say, hearing all the views from the community, and they can make a judgment, taking into account how big the group chiming in was, what the importance, so to speak, of this group is.

Because in consensus calls, we don't count noses but we want to determine how much support for certain areas there is in the community.

So you could have something based on consensus. You wouldn't need to attribute votes. You would have SO/AC leaders or appointees of this group checking whether -- whether -- or what the consensus level in the community is. And you could even have a challenge process in case people think that the consensus determination wasn't correct.

So we would have a combination of the consensus plus validating the consensus, and if you wanted to, you could even add a voting thing on whether the process was followed or not.

So that would sort of be a hybrid thing between voting and consensus.

What are your views? Do you think, you know, by thinking that through further, we could maybe bridge the gap between the views?

CHRIS DISSPAIN: I think it's quite late in the day to answer that question.

[Laughter]

THOMAS RICKERT: So Cherine has raised his hand, and then Alan.

CHERINE CHALABY: Well, you just trumped me by talking sense now in what you just said.

But I think what I --

THOMAS RICKERT: Thanks so much, Cherine. Much appreciated.

CHERINE CHALABY: No. I raised my hand at the time when Chris said what he said and Jonathan said, and I really felt I am totally in line with the two points that they both bring to the board -- to this group.

So you seem to -- you've listened and you made the suggestion, so I'm going to stop here and we should absorb what you just

said and try and make sense of it, but I think like everybody said, it's a bit too late to respond to it at this hour, so...

THOMAS RICKERT: Alan?

ALAN GREENBERG: Two comments.

Jonathan said is the board the only group capable of making subtle distinctions. I don't think so, but they're the only one charged with it. The others have particular -- the people may have the capabilities, but the group is charged with doing something different.

So I think one has to be careful what question you ask.

In terms of what you just proposed, having the people -- if the consensus rules -- if you end up with ACs and SOs taking strong positions differing from each other, you're putting their chairs in a rather difficult position, and I don't think -- you know, I think that goes back to Jordan's -- the group making the decision, the upper chamber is the same structure and they're almost bound - - or at least would be in a rather difficult position if they didn't follow what the advice was of their group.

And lastly, on the GNSO, normally in GNSO workgroups, they decide things by unanimity. Yes, we have all the levels of consensus, but almost always there is grudgingly enforced unanimity. Sometimes forcing things down to the lowest common denominator, sometimes not.

On the rare cases where there are judgment calls -- and you are perhaps painfully aware of the one I'm thinking of, the --

[Laughter]

THOMAS RICKERT: Still trying to overcome the trauma.

ALAN GREENBERG: I understand. That went to the GNSO and the GNSO, by vote, decided which ones to pass on and which ones not to.

So...

THOMAS RICKERT: Just before we continue the queue, to avoid misunderstandings because there seems to be some confusion about what I -- what I suggested, I'm not saying that the task for those determining the consensus level is easy, but we have that in our working groups, we have that in all cross-community working groups. So that's the concept that we'll see more and more and I think we should maybe be brave and just trust the cross-community -- or the community, as such, to make such determinations, because that adds to accountability.

If co-chairs from different parts of the community have to make a judgment jointly -- and this traumatizing PDP experience that you're referring to, I was chairing the IGO/INGO PDP working group but the interesting thing was -- and that could maybe also serve as a role model here -- we did -- we came up with policy recommendations, we reached rough consensus in the working

group on them, it went to the GNSO Council, and even those that severely opposed the policy recommendations voted in favor of the recommendations because they said due process was followed.

And I think this is what -- what could be an idea for this exercise. There can be friction on whether community power should be exercised or not, but the co-chairs could jointly determine whether the process, whether the consensus determination was okay or not.

And with that, let's move further on in the queue and I'm not suggesting we should be discussing this proposal only. This was just to stimulate discussion and maybe come out of the deadlock that we seem to be in.

Greg.

GREGORY SHATAN:

Thanks. Greg Shatan, for the record.

First, Alan, you and I must have been on different working groups because I found -- and I don't think that's actually the case -- because I found that rough consensus rather than unanimity is what rules the day, and actually within the GNSO our standing committee on improvements is anomalous because it requires full consensus to move forward, and indeed we have five levels of consensus and may have even created a sixth of consensus against, in part, because of one of the working groups that I participated in and maybe that we participated in.

But in any case, I think that this gives us great food for thought, and in fact, if I had taken the 10 seconds you offered me and had your brain in my head, I would have thought of the same thing because I think it actually does answer the question of how do you combine collaboration and voting, and the answer, in a sense, is the consensus process. It really is a combination. It is a hybrid. It is -- it -- and in fact, I think that if the single member operates more like a working group, maybe even this working group -- although I shudder, maybe, to think of this as the paradigm, but more often than not I think we actually are functional -- then I think that actually, you know, goes toward the issue of making fewer changes and, you know, calms some of the concerns about are we becoming a voting organization, is consensus being pushed to the rear.

If we can operate, even as we make our most critical decisions, in a basis on consensus rather than based on voting power and winning and losing, then I think we can possibly bridge this gap and come up with something where we can achieve maybe even what Alan hopes for, which is unanimity. Thank you.

THOMAS RICKERT:

Thanks, Greg. I can't resist just commenting on one thing you said. You said if you had my brain in your head. I think today you don't want my brain in your head.

[Laughter]

Next in line is Sebastien.

SEBASTIEN BACHOLLET: Thank you.

My first reaction to your proposal, Thomas, is if everybody's looking that if the process was well followed, who will do the job, at the end, if we set up a new organization to decide if the process were followed, if we have the IAB to do that and if we have the board to do that, it's maybe a little bit too much. And in this organization we say we don't want votes, but in which organization we don't vote? In At-Large, ALAC, they vote. In board, there is vote.

In GNSO, there is vote. And maybe we can stop a little bit about talking vote is a bad thing because everybody is using it. Thank you.

THOMAS RICKERT: Thanks, Sebastien.

Chris?

CHRIS DISSPAIN: Just to say that -- two things.

One, I think your suggestion is definitely worth pursuing and considering.

It would be fantastic if we could find a way of doing that and fleshing some of that stuff out.

Maybe in a small -- a smaller group to bring back? I don't know. But that's just a suggestion.

And the other thing I wanted to say is I typed it into the chatroom in respect to Jonathan's comment. I agree with that, with what he said, and I -- in some respects, I think in the current situation -- and I do not suggest that this always works or maybe even ever has, but I would say the current role of the board is to - is to facilitate the community to come to consensus. So it's not to come in at the end and say, "We will now decide." It's actually to facilitate where there is a split community. In this particular thing that we call ICANN, different from almost any other organization, the role of the board is to help facilitate the community to consensus. Thanks.

THOMAS RICKERT:

Thanks, Chris.

We have a little less than 45 minutes to go. I understand that Nigel asked for the human rights topic not to be discussed at the end of the day when everybody's exhausted, so I would suggest that -- and it's with his agreement that we do this first thing in the morning tomorrow, and we will make sure that no one is -- is asleep tomorrow, but I think that we might even take a little bit more time on this discussion because I think we need to get some ideas on how to improve SO/AC accountability sufficiently for us to feel okay with giving responsibility to this community.

Because that seems to be an underlying concern with the board as well as with other commenters.

So I think that with voting versus consensus, we can't go much further, but we should have a sub-team or maybe there's going to be a huddle somewhere tonight over a beer where people

want to think more about this, so let's end this discussion on the voting versus consensus but let's talk a little bit about SO/AC accountability.

And let's not just say it's needed, but I'd like to get -- go out of this room and have an action list, an inventory of what we think is needed to have sufficient SO/AC accountability to be able to give -- or to feel comfortable to give powers to this community.

Remember, our group came to the conclusion with a lot of community support that the U.S. government backstop should be replaced by an empowered community, so I think there's consensus on that notion, that the community should have powers.

Nobody said it shouldn't.

But there doesn't seem to be sufficient trust in the way the community is currently set up to give it this responsibility, so what is needed?

Let's just collect -- and you don't have to explain this at length, but let's collect some of the measures or tools that we need to put in place in order to get a sufficient level of trust in the community.

So who wants to go first?

I see Steve was the -- you know, you've been so fast, you would have done a good job with Digital Archery, I trust.

STEVE DeBIANCO: I've got a lot of arrows in the back, so probably.

Steve DelBianco with the CSG. So Thomas the direct answer to your question on community accountability was something the stress test team attempted to tackle in stress test 33 which was requested by Larry Strickling back in June. And this is on page 116. We proposed three accountability measures to answer NTIA's stress test which was the participants that an AC or SO might attempt to capture that AC or SO by arranging to be overrepresented in a working group in the election of officers or voting on a decision. And as a consequence undermine the whole credibility and accountability of the stakeholder community. We outlined three measures in proposed accountability. The first is that ICANN's bylaws already require periodic reviews of each AC and SO. That's like the GNSO review we've just concluded. In those reviews that is where protections against internal capture are typically recommended for adoption and changing the bylaws based charter of each of those ACs and SOs, so that's the first.

The second is that the ACs and SOs can unilaterally revise their charters and operating procedures if they see that there's a need to protect against internal capture that threaten from within. However, that particular capture scenario could be inhibited, right? Because if somebody has successfully captured GNSO, they could block the bylaws change that would have fixed the charter. And then finally, if a captured AC or SO sent advice or policy to the Board or voted in the community mechanism, then any of the other disenfranchised ACs and SOs, or entities that were within the captured AC, could then challenge the Board's decision to follow that tainted advice using a reconsideration or an IRP. And they would cite the fact that there was no proper accountability of the AC or SOs views. So I think these are three

measures, and they're on page 116 of the stress test section. Thank you.

THOMAS RICKERT: Thank you very much, Steve. Alan.

ALAN GREENBERG: Thank you. I think part of the question is if you look at the discussions we've had on AC/SO versus accountability one of the undecided issues is, is it supposed to be accountable to those people who choose to participate or to the wider groups that they represent? You know, so to pick on IPC, do they represent just the IPC members who are voting members of the IPC or intellectual property lawyers in general. The same with the business community which has a very tiny percentage of actual businesses participating in ICANN. The same with ISPs. And we've never actually come down on what that answer is. And the people who think that when the NTIA said we have to be -- we have to be accountable to the Internet stakeholders, many of those people took that to be a community far wider than ICANN. And we've never really addressed that fully. And if you look at At-Large, which is perhaps one of the more awkward ones, because we have a huge community out there, but at that point how close do we get to the 2000 elections in ICANN where you have a huge community but that community might well be captured and you can't even tell. And there's certainly not necessarily well-informed of the details of what we're looking at here. So we're stuck between a rock and a hard place. We generally don't represent the communities outside, but when we do, we're not sure to what extent they're really capable of

making the decisions that we want them to make. I don't have any answers but there's some real difficult questions.

THOMAS RICKERT: Thanks for that. And just to let everybody know that (saying name) Schulte, one of our advisers, has made reference to the sections in our report, paragraph 467 and 500 which spell out the preliminary ideas of the SO/AC accountability that's important, but obviously according to the commenters that doesn't go far enough. So I think we need to add to that to come to a satisfy level. Robin.

ROBIN GROSS: Thank you, Thomas. This is Robin Gross, for the record. So I just wanted to talk about this concept of trust that we keep hearing over and over. I think it is a bit misplaced, frankly. I mean, trust is an emotion. A very subjective emotion. We don't need emotions. We need processes in place that will help to make sure the -- the organization functions properly. So I think it's -- it's somewhat taking us in the wrong direction to say how do we build trust because I think that that's just a subjective emotion that is the wrong measuring stick. I think we need processes that actually meet our goals and objectives and that should perhaps be a little bit of a higher priority than trust. Thank you.

THOMAS RICKERT: Thanks, Robin. Mathieu.

MATHIEU WEILL: Yes, this is Mathieu Weill speaking. Can you hear me all right?

THOMAS RICKERT: Yes, we can.

MATHIEU WEILL: Thank you very much. So I think it's -- what I'm trying to do here is give a quick overview of what we've done so far in terms of SO/AC accountability and what I've heard in the recent discussions. And we've heard a lot about SO/AC accountability. Sometimes directly. Sometimes indirectly. Because it's basically at the core of many of the concerns and issues that we've been discussing since this morning.

So number one, there are existing mechanisms for accountability within the existing SO and ACs. They may not be the same for all, but there are some. Number two, our report as (saying name) has reminded us, does actually recommend two things. One is that the regular SO/AC reviews that are undertaken every three years, their scope be extended to include accountability, and I will remind everyone it's external studies but under Board supervision so it's a part of the mutual accountability of the model. And accountability here is, I believe, specifically designed to be accountability to those who participate in those bodies but also accountability to those who these bodies are designed to represent. So that's an answer to Alan Greenberg's question. We're -- the report also suggests that further work on this is undertaken under Work Stream 2.

So three, what have we heard in the public comment around this item? Number one, we've heard a suggestion by (saying name) that the IRP scope be extended to include the ability to challenge the regularity of the --

[Timer sounds]

-- single member decisions. Has it followed due process? We've discussed this about board removal earlier today. That's, I think, a very interesting suggestion to study. We've also received a suggestion, I think it was by my family country of France, to set up a conflict of interest inspector office or something similar to investigate and assess any potential collusion or conflicts of interest that would affect decision-making in the SO/ACs.

And finally, number 4, we've heard from in the chat and the discussions today that some of the powers that we're considering for the community or the Board could also be used for, for instance, removing councillors or chairs of (no audio) in the chat where we were discussing today and that could be related to SO/AC accountability. And that would be it for my intervention so far. Thank you very much.

THOMAS RICKERT: Thanks very much, Mathieu. Next is Kieren.

KIEREN McCARTHY: Thank you. Mathieu said a lot of things I was going to say. But I do think it might be useful, when you're talking about accountability of SOs and ACs, for people that each time there's an election people say we need to have the stats on how many people stood for the election and have the stats on ask that person how many roles have they been in in that SO/AC and how many years they've been doing it. Put a little bit of a light on the fact that it is often the same people over and over again and has

been -- has been the case for many, many years. It may also be useful to sort of force SOs and ACs to produce reports about what for years we've called outreach and how effective that outreach is. For the amount of years of outreach there has been it hasn't produced that many people, so it might be useful in the same way that, you know, producing metrics that the -- that ICANN produces and the IANA produces. It might be useful to put metrics on how many people did you reach out to. How many people turned up at an ICANN meeting. How many people engaged on your discussion on this. And just put -- and force those groups to look at that and to report back on that. And if you're looking at very low figures all the time, then make ICANN can start, you know, other parts of the organization -- organization can start looking at it and say you have very, very low figures here. You've got very low improvement in outreach. That's a definite accountability mechanism.

I don't think that the procedures and processes that a lot of SOs and ACs follow are available or readily readable. That's a clear accountability mechanism. I don't think the membership is particularly transparent in a lot of occasions. That's another accountability mechanism. The Board is required to provide a Board rationale these days for whenever it makes a decision. I don't see that very often. In SOs and ACs decisions, that would be useful. Explicitly stated. Sometimes it's in there at the end of a 30-page report, but it would be good to have that up top. And basically a lot of the things that the community has designed over the last five years or so for the Board, I think you could simply apply them to the SOs and ACs and make them take a little bit of their own medicine and maybe that would help across ICANN.

THOMAS RICKERT: Thanks very much, Kieren. Chris.

CHRIS DISSPAIN: Thank you. Here I am at the microphone again calling to Kieren picking holes in everything that's been done by the CCWG. Global public interest, the -- the Board is obliged to act in the global public interest. If you want to share -- if the community SOs and ACs want to share responsibility with the Board, then the SOs and ACs have to also act in the global public interest. That means you have to do exactly what we do. You have to declare all of your interests. You have to recuse yourself, if there is a conflict. You cannot participate in a decision if you have a commercial interest in it. All of the things that the SOs and ACs currently -- well the SOs at least, currently take for granted as the ability to involve themselves in debate and vote on matters in which they have the financial interest become incredibly complicated if you are now sharing the responsibility of acting in the global public interest. Kieren's points about transparency and openness are absolutely spot-on. The SOs and ACs would need to have exactly the same mechanism in place to spill their counsels. With or without cause and for precisely the same reasons. If you don't -- if we don't do all of this stuff, then it becomes a -- it's not weighted properly. Now leaving aside any changes in the balance of power, you have to -- if you're going to go down the accountability road, that's the only way to do it. Otherwise, you're putting the Board to a higher level as -- than the community but giving the community the power. That doesn't work. Everyone has to be on the same platform. Right now what happens is you guys -- you guys, I include myself among them as a ccNSO person, we go away and do our stuff.

The Board comes back. The Board has the fiduciary responsibility. The Board has the obligation to comply with its articles and et cetera, et cetera, and that's going to change to be shared responsibility. So everyone has to be on the same platform, everyone has to put themselves through the same conflict, the same everything. Thank you.

[Timer sounds]

THOMAS RICKERT: Thanks very much, Chris. Steve.

STEVE DelBIANCO: Steve DelBianco for the CSG, but in this instant bringing up something from the stress test work team. Earlier we talked about stress test 33 with respect to capture. 34 was also requested by Larry Strickling and NTIA. Stress test 34 on page 117 said stakeholders who attempt to join an ICANN AC or an SO bump into barriers that discourage them from participating." And Larry said that that's barrier to entry. Whether actual or perceived, whether intentional or accidental, calls into question ICANN's credibility in applying the multistakeholder model.

So I never really expected any of you to read this stress test but it's great having them right here so that I can actually cite and answer Thomas' questions. So I'll do the same. There are four proposed answers to those questions. First, "The bylaws require those periodic reviews of each AC and SO. In those reviews, periodic review of the GNSO, for instance, barriers to entry should be assessed and should generate recommended changes. Two, the Affirmation of Commitments which we're

baking into the bylaws requires ATRT reviews and item D in the ATRT says, "Assess the extent to which ICANN's decisions are embraced, supported, and accepted by the public and the Internet community." That is a wide-open opportunity for ATRT to say, we're talking about the public and the Internet community, not just the ICANN community.

Number three, "The ombudsman could help a new entrant to join an AC or SO." And number four finally, CCWG proposed a new core value that Becky didn't cover this morning. There's a new core value in ICANN's bylaws and it requires ICANN to employ open transparent bottom-up multistakeholder Policy Development Processes, and here's the new stuff "that seek input from the public for whose benefit ICANN shall in all events act." And that's new language. And that language is in the core values. And it becomes the standard of review for an IRP. So in that respect an IRP can be brought challenging the fact that we're not open to the people we're supposed to be representing. And that could overturn decisions coming from ACs and SOs that are unrepresentative.

[Timer sounds]

THOMAS RICKERT: Nice timing, Steve. Greg.

GREG SHATAN: Thanks. Greg Shatan, for the record. Alan, since you picked on the IPC first, I'd like to answer your question. But it would take more than two minutes, so maybe we'll have a drink or dinner and I can tell -- answer. But I do think that we're hitting some

important points here, and actually, you know, having been the president of the IPC for the last seven months I've been facing, you know, some of these issues and trying to improve our own record on that. We've founded an outreach engagement task force. We have added a publicly archived email list. We've added a list of -- a historical list of officers and directors. Our officers and councillors, which we had never had before. Some of these are recommendations that are in the GNSO rules but, you know, not being followed. Obviously, you know, a group of volunteers, you know, trying to back-end fill those things, it is taxed. More support would be helpful on those -- on those very aspects. But I think this is, you know, part of the maturation process. But I think that the short answer that I can give without being given a drink or dinner is that we are invested in a common trust here, to use the word "trust" in a different way. And that we are -- we have a common enterprise. And while there's obviously certain balancing of enlightened self interest and common interest and public interest, that goes on, I think that ultimately, you know, the basis of trust in the multistakeholder model generally is critical to our future. And to our plan. So every effort we can make to follow the points that Steve mentioned, to follow the points that are in the -- for instance, in the GNSO rules to increase outreach and engagement, to lower friction and barriers, those are -- those are all important things.

[Timer sounds]

THOMAS RICKERT:

Thanks, Greg. So we have, I think, two or three more people in the queue and before we listen to them, let me just say that

according to Fadi, we're going to be experimenting with a little bit of alcohol soon and see what the impact of that on our consensus finding will be. So let's see how that's going to work out.

I see Sebastien's hand is up.

SEBASTIEN BACHOLLET: Yeah, that's good idea. As you know, I don't drink any alcohol, but I used to play rugby and we say it's very interesting when the other drink and I don't. Let's go for Fadi's experiment.

It's -- the question about the SO and AC accountability, it's a very important point. Not too much regarding the Board but regarding the participants and the overall community. But I -- I have the impression that finally we get the expression of the real thinking of the Board of our proposal, that they don't like it.

[Laughter]

And they say in the -- what they write that yes, everything's okay, we agree, we agree, we agree with the fact that you -- you have more power but at the end of the day they told us okay, but if you want to have more power, you need to do like us. Sheesh, I will say. Let's do all that. But it's include budget question, it's include the time, it's include a lot of things that may be difficult to handle, but I really think that the Board member who say plus one and what Chris say we'll think about what is the level of responsibility. How do we organize? Is a single member of this organization need to have the same level of opening what they do, how they do the things? I really don't think so. What we are

looking, it's a community power. It's not the individual people in this taking into account what they think they are doing.

[Timer sounds]

Yes, ding, ding.

My point is I would like to come back to what I write at the first comment period. We need to be sure that in every organization, we have multiple candidates, we have good election process, we have a possibility of choice, and the diversity is important and there are a lot of things that we need to handle in this review of the SOs and ACs but it could be handled in the normal review, adding those points in those AC and SO reviews. Thank you.

THOMAS RICKERT: Thanks, Sebastien, and I'm going to close the queue after Kavouss but let's hear Jonathan first.

JONATHAN ZUCK: At the risk of saying the same thing again in a different way, the comments again point to a stark contrast. Whatever criticisms we have of the community and its accountability the --

There is an underlying assumption there, so the question we need to again ask ourselves is: Where do we see the greater danger in too much power in the hands of the community or too much power in the hands of the board? That is really the question that we are all avoiding asking that I think is really what we're all discussing in an indirect way.

THOMAS RICKERT: Thanks, Jonathan, and I will respond to that or try to respond to that after we heard Kavouss.

Please.

KAVOUSS ARASTEH: Thomas, it's good that you want to make a list of the available options to be further pursued tomorrow.

I would like to -- to come back to the issue that we recognize that we have a problem, but we don't want to address the problem.

The problem is in the summary of the ICANN input in Page 2 -- sorry, on Page 2, fourth bullet, referring to the potential risk of the change or shift of the balance between the different multistakeholders, and in Paragraph 2, specifically they refer to shift of the balance between the government and private sector.

I understand this shift of balance mentioned by ICANN is -- stems from the voting. Would it be possible that you put in the list that you are preparing that in order to empower the community, we make every possible effort not directly to refer to the voting approach? We could refer to the consensus without specifying whether it is the full consensus or qualified consensus and so on and so forth. Could you kindly list that one as one possible option for further discussions, to avoid voting? Thank you.

THOMAS RICKERT: Thanks very much, Kavouss, and with that, we've come to the end of the queue.

We've not come to the end of the session. We got word from Fadi that drinks will be here around 7:00, so we --

>> (Off microphone.)

THOMAS RICKERT: Before?

>> (Off microphone.)

THOMAS RICKERT: Okay. We shouldn't have said that, because now people are going to get distracted because they want booze, booze, booze.

But let's try to take stock and then, you know, we have a few more minutes. I will hand over to Leon afterwards, but I think what became clear now is that we have another aspect which we have agreement on, and that is enhanced SO/AC accountability is needed.

What we're going to do between today and tomorrow is we are going to take the points that you made, list them, and provide you with that list of accountability measures that could be taken.

Jonathan Zuck is perfectly correct in asking the question, you know, who shall ultimately hold the power, but I think that we agreed earlier, or at least I didn't hear any objection, that we need to have mutual accountability either way in order to make ICANN better.

And so we are going to provide you with that list, and we will confirm tomorrow whether we -- we can reach agreement on the items on that list.

Maybe these are things that everybody's in agreement on, and then why not have SO accountability -- SO/AC accountability improved, regardless of what model we ultimately apply.

But another purpose of this exercise was to look at the concerns that we've heard from the community, and looking at the -- at the list of items that we captured this morning, degree of experience of community -- and community preparedness to take on a new role, SO/AC accountability is a preparatory measure for that, according to the board.

How to ensure SO/AC accountability. That's what we're just discussing.

How should community decisions be made. We were going to think -- we're going to think about that a little bit more with maybe a hybrid thing between voting and consensus building.

And we have another few points that we made progress on.

So there was the fear of statutory powers and how that could lead to unintended side effects.

We heard Holly and Rosemary speaking to that, that we can limit, if not eliminate, that unintended side effect.

So I guess the board will talk to Jones Day and see whether we can reach a joint legal understanding on the -- on these unintended side effects.

So we will reconvene tomorrow on these points and see whether we can get more progress on the areas of consensus on that one, or areas of agreement on that one.

I see George's hand is up. I don't want to open up the queue again, but George, the floor is yours, and after that, I'm going to hand over to Mathieu -- to Leon.

GEORGE SADOWSKY:

Thank you. I liked Jonathan Zuck's appraisal of the situation except to say that I don't know whether this is a binary choice, whether we're on top or you're on top.

Is there -- I don't think we have discussed the issue of solutions that cause a balance of power or balance of control, and I wouldn't want to write that off.

We have -- for example, in the U.S. government, we have a situation somewhat like that, although based upon its recent performance I'm not sure I'd recommend it as a -- as a model, but surely there are other possibilities and I think it's worth exploring them. Thank you.

THOMAS RICKERT:

Thanks, George. So thanks, everyone, for a very fruitful discussion, I thought. You know, this -- this part was very interesting and enlightening, so we hope to be able to build on that first thing tomorrow morning.

Leon?

LEON SANCHEZ: Thank you very much Thomas. This is Leon Sanchez.

And while we wait for some drinks, I'd like to give a slight review on what we will be addressing tomorrow morning.

We will be -- I mean, we're almost hitting the top of our agenda time today, so I would like to call for Steve to provide us with a very quick review -- or preview, rather than a review -- but a preview, on what we will be discussing on stress test section, so we can take this and sleep on it and prepare for a --

>> (Off microphone.)

LEON SANCHEZ: Exactly. So -- and we're going to do the same on human rights.

So Steve, if you could please give us a very quick preview.

STEVE DeBIANCO: Thank you, Leon.

Tune in tomorrow for a full discussion of stress test public comments, but here's a quick preview.

Four different categories.

The first would be taking a look at capture or unintended consequences. We'll cover some of the stress test comments that came in on that. There were 20 in total comments on the tab there.

And then Stress Test 21 about the revocation and reassignment of a ccTLD manager.

Two more categories, Numbers 29 and 30, which we covered extensively with Becky Burr's discussion of contract enforcement today.

And then finally, the infamous and all-encompassing Stress Test 18.

We'll see you tomorrow.

[Laughter]

LEON SANCHEZ:

Stay tuned.

[Applause]

Thank you very much for that, Steve.

And on the human rights track, we're going to do something similar, and while we won't be diving deep into human rights this afternoon, this evening, I can tell you that we've been working on Working Party 4 in trying to define the wording that we would be proposing to be included in the bylaws so that ICANN is committed to respecting human rights as we proposed in our proposal document, and so far we have had many discussions around the two proposals that we set in our proposal document.

We are going through them. We are also trying to provide our rationale and an explanatory note that will help anyone reading the proposed bylaw amendment in human rights to interpret in a way that won't be misleading, of course.

So in the public comments, we found that most of the comments support the inclusion on some language on human rights, but regardless of that, we have seven comments that considered that this is something premature to be included into our work and they are proposing that we take care of this as part of Work Stream 2.

So we will be discussing all of this tomorrow. We will be showing you, of course, a preview of how this amended bylaw could look. This is not a final version, this is a work in progress, and we would like to build it in a collaborative way with you.

So stay tuned. Thank you very much, and enjoy the rest of the evening.

THOMAS RICKERT:

And before you all leave, let -- there have been some in the room who said that we should make better use of our time and the resources, and it's not like we are immune against such criticism so we'd rather like to make use of that brainpower and we're going to have a debrief session tonight.

Do we have the room and the time, Alice? Lisetta --

>> (Off microphone.)

THOMAS RICKERT:

-- at 7:30. So those who have ideas, those who want to play a more active role in ensuring that we do make the best of everybody's time, please do come join the debrief session and we will make sure that your views are heard and that we can take your thoughts on board.

With that, I'd like to thank everyone --

>> (Off microphone.)

THOMAS RICKERT: Lisetta. Thanks, everyone. See you at the bar.

[END OF TRANSCRIPT]