

ICANN

**Moderator: Brenda Brewer
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1:00 am CT**

Leon Sanchez: Can we please have the recording started? Okay, thank you. One moment please.

Coordinator: The recordings have started. You may begin.

Leon Sanchez: Thank you very much. Hello, everyone, and welcome to this CCWG on Enhancing ICANN's Accountability Meeting Number 58 on October 6, 2015. And we would like to welcome you all to this call. And of course do the roll call as usual with those attending the Adobe Connect room. And if there is anyone at this point that is on the phone bridge and is not in the Adobe Connect room I would kindly ask you to state your name so we can add you to the roll call. Is there anyone on the phone bridge that is not in the Adobe Connect room at this point?

Thomas Rickert: Yes, it's Thomas Rickert. I'm just dialing in from holiday.

Leon Sanchez: Thank you very much, Thomas. Anyone else that is on the phone bridge but not in the Adobe Connect room? Okay so I note that Cheryl Langdon-Orr has asked for apologies so please kindly note Cheryl's apology to this call. And

just a reminder that if we - if you haven't filed your SOI so far we kindly ask you to reach to one of our staff members so they can help you to fill in your Statement of Interest. This is very important to the group so please do contact staff if you haven't done so.

Our next agenda item is the status updates on the different working parties. So I would like to go with Jordan for an update on Work Party 1. Jordan, could you please give us an update on the work you've been doing?

Jordan Carter: Maybe since you asked nicely I can, Leon, yes. Can you hear me?

Leon Sanchez: Yes we can hear you.

Jordan Carter: Hi, good morning, good evening everyone. Jordan Carter here, dotNZ and currently the rapporteur for Work Party 1. What have we been doing? We've had two calls in the last few days. And well we've worked through draft analysis of the public comments on the board and strategic plan power, on the removal of individual ICANN directors - sorry, on the removal of the whole ICANN board power, and on the incorporation of the Affirmation of Commitments into the ICANN bylaws, the relevant parts of that, mainly the reviews.

And have been reasonably sort of (discussive) calls so people have talked through the comments and have been looking at proposals for what to bring back to the CCWG.

And the mode that we've got proposed for our next couple of calls is the same, to work through the other I think five remaining areas for what we need to do. And the next call, if my memory serves, I haven't got it in front of me, will deal with public comments we've received on the recall of individual

ICANN directors on the community mechanism as sole member on the community forum and on the powers, standard and fundamental bylaws.

I think that's the lot. So in each of the next two calls we'll introduce two or three of those. And once that's been talked through - talked through the comments and talk through the proposed issues for resolution that have come up from the work the subgroups have done that we've set up and we'll also do a second reading of the comments that have already been dealt with once and had people doing a bit of thinking about them.

Probably we're going to have to schedule one more meeting, it's taking a bit longer to get through this as we do the due diligence that is our job on these issues and overall so I'll try and close off that (unintelligible). Overall, you know, a pretty good analysis, comment tool that staff developed has helped us do the work. And I think we'll have a set of sort of issues to discuss from our areas in the Dublin meeting. So that's the kind of summary of what we've been doing, Leon.

Leon Sanchez: Thank you very much, Jordan. And also a reminder that we have a deadline for October 12 to deliver our analysis or our assessment on the comments so we can of course include this in the reading list that we will be sending prior to Dublin. So just a reminder that this deadline stands still.

So next working party is Work Party 2. I don't know if we have Becky on the call.

Becky Burr: Yes, I - I am here. I'm having trouble getting into the room. But...

Leon Sanchez: Okay.

Becky Burr: ...we've had two calls so far. We've worked through issues related to the mission, commitment and core values and issues related to the IRP. And various assignments have been made to write up the issues analysis. In general while there are lots of issues on the IRP we find ourselves very, very close.

There are some harder issues on the mission, commitments and core values. And so we will have write-ups on those issues for discussion in Dublin. We have one more call but like Jordan I suspect we will have to make - we will have to schedule another call to get through all of the issues.

Leon Sanchez: Thank you very much for this, Becky. Next working parties are Working Parties 3 and 4 which I am the rapporteur for those working parties. Working Party 3 hasn't held any calls so far. We will be holding a call later today, if I'm not mistaken. And Working Party 4 has already held one call and we will be holding another call later today I think or tomorrow.

And so far in Working Party 4 we have assigned some work to volunteer. We are currently following the Jonathan Zuck model on assessing the different comments received on human rights. And we will do the same on assessing the comments on accountability, diversity, etcetera - I mean, SO and AC accountability, staff accountability and diversity, which are of course a matter of Work Party 3.

So there's not much to really update on these two groups. We have had also some discussion...

Man: Hello?

Woman: Hello?

Man: Leon, we've lost you.

Man: Hello, Leon?

Man: Okay.

Man: Distinguished co-chair.

Coordinator: Please stand by and I will dial back out to Leon.

Kavouss Arasteh: Leon, this is Kavouss Arasteh. I have no Internet connection. I'm just on audio.

Mathieu Weill: Okay that's noted. Thank you, Kavouss. Okay Leon's call has dropped so maybe in order to give him a little bit of time to join back we can turn to I think Steve who would be able to update from the Stress Test Working Party. Steve.

Steve DelBianco: Mathieu, this is Steve DelBianco. The Stress Test Working Party will hold a call tomorrow, that'll be our first call, to compile and analyze and respond to the public comments that were received. There were 20 commenters on the public comment tool for stress tests. They're in four categories. Some recall that we dive deeper on in the unintended consequences change. There's several on Stress Test 21 which regards ccTLD revocations; not much we can do there.

Stress Tests 29 and 30 on the question of whether contract enforcement could be interfered with by an IRP based on the new bylaws and Becky's group is working really hard to address that with specific phrase in the core values mission statement.

And then finally Stress Test 18, you're all well aware of that, it was the subject of a long discussion while in Los Angeles. And while in LA we were told that GAC members are working hard on some new language, which we thought we'd have seen by now but have not, I will reach out to GAC chair, Thomas Schneider, to see whether there's any progress on that.

Thank you.

Mathieu Weill: Thank you very much, Steve. Are there any questions regarding the status update from the working parties? I think it's worth noting that we are seeing increased board engagement in the working parties, especially Work Party 1, but not only. And that's good to note.

Also that the planning of calls is pretty intense so kudos and a lot of encouragement to the colleagues that are dedicating a lot of their volunteer time on analyzing the comments and providing the due diligence that is necessary for our work to progress. And I think we need to give them a lot of credit for that because that's the engine behind the process that we are trying to steer forward.

So thanks to the rapporteurs for their engagement and the volunteers. And we look forward to the prepared summary in time for the Dublin meeting where I have no doubt that we'll have substantial discussion on the agenda. So...

Kavouss Arasteh: I have a question please.

Mathieu Weill: Yes, please Kavouss.

Kavouss Arasteh: I would like to first of all thank all the rapporteur of working parties for the hard work that you do. The first comment is that we have too many meetings. This week we have 10 meetings, that means an average every day two meetings. Last night meeting of Work Party 2 was only nine participants. And among those nine three people did talking whole 1.5 hour to each other on something that the others may not have followed at all.

So this is a difficult subject but the participants and time does not permitting to see what is the problem. There are so many things which is not on the spot of the issue of IRP people raising many questions which may not be at this time relevant. So, Number 1.

Number 2, main question is that to what extent the working parties taking into account the comments of ICANN board and the outcome of the Los Angeles meeting. It seems to me that there is little care about the ICANN board comments and no care about what we have during the two days discussion in Los Angeles. So I would like to know during the last five days remaining of this (unintelligible) what are the plan of the working parties to take into account the ICANN board comments and the outcome of the Los Angeles meeting. Thank you.

Mathieu Weill: Thank you, Kavouss. I mean, your feedback on the meetings is well noted and honestly it's not expected from everyone to follow everything. And just a reminder that the working parties - they're to analyze and prepare the work but they're not decision making parties.

Regarding the taking into account the board comments as well as the recent developments of the discussion in the Los Angeles meeting, I think it's important to take into account the board comment as much as the other

comments. We need to ensure that they are properly assessed and taken into account.

But I would like to turn to the volunteers whether they're experiencing any difficulty for that or feel that there's a need for clarity in terms of instructions beyond that. And Avri is raising a question in the chat whether taking into account the board comments means do as we are told by the board? That is not my intent to say that. My intent is to say the board comments very detailed, needs to be assessed and be part of the due diligence of the working group.

If there are any developments that take to place in Los Angeles or even further that can be useful to the analysis of the group because they provide an additional context to - or substance to the comments then obviously we need to also ponder them, although if they're not part of the public comments they might have a different status.

So okay I'm seeing - so that's - I hope that's answering your question, Kavouss, but I think it's the best we can do in a very moving environment with lots of development in place at the same time. But a clear requirement on us to do a proper public comment analysis.

And with that I would like to move to the next agenda item and turning to myself, actually. So the next agenda item is a follow up on a conversation that's been taking place on the list regarding transparency on the board briefing and the board discussion.

And we thought it would be appropriate to have a quick recap on this topic in this call considering the traction it got on the list. And a first step is to remind that the co-chairs wrote to Steve Crocker in his capacity of ICANN Board

Chair on - right after the Los Angeles meeting on September 28. And one of the things we suggested, with respect obviously, was to - that board meetings on the accountability to benefit from the highest possible transparency standard, and I'm quoting such meetings as well as communications between CCWG members and board members, would benefit from advertised publicly as well as their conclusion.

And we got a response from Steve Crocker. Maybe we can find the link on the chat about this - how respondent. Let me paste it in the chat because I have it in front of me. From Steve who agreed to share briefing material and have the co-chairs brief the board on new developments when the board is addressing accountability issues and would look into adjusting the schedule in Dublin to enable further exchanges.

So with that in mind I'd like to know whether the group feels that we have adequately conveyed this suggestion to the board or if additional steps are at this point required.

Jordan.

Jordan Carter: Thanks, Mathieu. I wonder if you could just be clear about what response Steve has made to that letter and if there's been a response in writing whether it could be shared with the group?

Mathieu Weill: Okay, let me paste the response link in the chat, it's in the correspondence section of our wiki and it's been made on the list. Although I must admit the traffic on the list has been so heavy that maybe some of you are well excused if they haven't noticed it. But there was an official response from Steve which I've just pasted the link to and which was very supportive of our suggestion,

although not really committing on anything regarding the upcoming board meeting, transparency of the meetings themselves was not included.

Maybe can we have the - Steve's response in the AC room please? There it is. So Steve was informing us of the board members that would join our processes and, I mean, the board has delivered on that and I know they have engaged in the work party calls. And regarding briefing materials we have received an additional name of (Ram Troncey) a few minutes after it was sent to the board but that's definitely in line with the commitment.

As I said, there was no direct answer on the board meeting themselves and how they - and to be totally transparent as well, we co-chairs have not been asked to brief the board (unintelligible).

Great.

Bruce Tonkin: So, Mathieu, it's Bruce Tonkin. I'm on the call. Can you hear me?

Mathieu Weill: Yeah. Yeah, I have Greg in line and I put you right after Greg?

Bruce Tonkin: Sure.

Mathieu Weill: Greg.

Greg Shatan: Thank you. Greg Shatan for the record. I just wanted to note that in response to Steve's email that came in a couple of hours ago I responded and in my response I asked whether this was based on any specific advice from Council and if so if that advice could be shared with the group. Thanks.

Mathieu Weill: Thank you, Greg. Bruce.

Bruce Tonkin: I will - there was a board informational or a board call today which I wasn't on, it was during a time I wasn't available. So I believe it was a board discussion rather than something that's come from any specific advice. But if there is any specific advice I think Steve agreed in an email last week that any advice we get we'd pass on. So I'll follow that up.

Mathieu Weill: Thank you, Bruce. And are you aware of any conversation within the board regarding the transparency, advance notice of meetings and so on regarding - when they're addressing accountability? Has this been discussed or not yet?

Bruce Tonkin: Just - I've seen it discussed via email. And, yeah, so I think this is in response to the general conversation on the list about more transparency in the process, is that right?

Mathieu Weill: That's correct.

Bruce Tonkin: Yeah, yeah, there's been discussions via email. Let me try and get back to you to see if there's any movement on that. But in essence you want advanced notice of when the meetings are happening and the topics, etcetera?

Mathieu Weill: I think the idea was that just like board meetings have transparency standards regarding advance notice meetings, advance notice of agenda, and clarity on decisions that are made...

Bruce Tonkin: Yeah.

Mathieu Weill: ...we were suggesting to apply these principles to board decisions or communications when they relate to our group so that...

Bruce Tonkin: Communication, yeah.

((Crosstalk))

Bruce Tonkin: I think you raised a fair point about transparency. Just be clear, we have board meetings, which are decisional and so, you know, we issue board resolutions and, you know, we have seven days' notice of a board meeting when we're actually making a board decision.

We frequently have what we call informational calls, which is really just an opportunity for board members to discuss things. And they're often scheduled within a day or so's notice. But I can certainly undertake to inform you of when they're happening and any topics on those calls. But the topic might just be discuss the latest CCWG report. But certainly I could share that.

Mathieu Weill: But, Bruce, I mean, something like - Bruce, the board comments, sorry, on the CCWG, it cannot be made on an informal call, right?

Bruce Tonkin: Which one are we talking about...

((Crosstalk))

Bruce Tonkin: Steve's email or the original...

Mathieu Weill: Well Steve's latest email is certainly something that has broad implications in terms of the process.

Bruce Tonkin: Yes.

Mathieu Weill: I would expect that it's certainly bound by some board procedures. And certainly there can be some transparency about how the conclusion was made that it was an appropriate email to send.

Bruce Tonkin: Okay, right. Yeah, I'll get back to you in terms of giving advance notice but just to describe the procedure, so there was a board informational call to discuss, you know, progress on CCWG and then that would have been an outcome of that discussion, it would have been Steve please send the following email. Yeah, a consensus would have been generated within that call. It wouldn't have been voted on the board resolution, it would have been a note that was sent through consensus. But certainly I can clarify that process for you.

Mathieu Weill: Thanks, Bruce. So I'm taking this as an action item from our call for...

Bruce Tonkin: Yeah.

Mathieu Weill: ...you in your board liaison capacity obviously.

Bruce Tonkin: I'll do that, yes.

Mathieu Weill: Thank you very much. I think it's important that we fully understand everyone's processes in this - after the Los Angeles meeting so that we can rebuild the trust in the process.

Bruce Tonkin: Yes, and I'd also be - I can certainly clarify whether there was any, you know, legal briefing, etcetera, provided.

Mathieu Weill: Sure. Thank you. So looking - okay, and I'm seeing no other comments on this so I'm moving on to the next agenda item, Leon, for the legal request. Are you back with us?

Leon Sanchez: I think so, Mathieu. Can you hear me?

Mathieu Weill: Yes, perfectly.

Leon Sanchez: Excellent. So we've had some discussion and request on the mailing list. And we would now like to certify questions to our legal advisors. And these - these questions of course will be sent in a clear email that I will just highlight the topics that we will be certifying questions on. And these are whether directors (unintelligible) California nonprofit public benefit corporation, which are (unintelligible).

What is the relationship between these duties and the mission of the corporation? We will also be certifying the questions raised by Jorge Cancio under ICANN's current structure. Do SOs and ACs have legal rights to select directors in line with designator rights under California statute?

And as I said, the series of questions raised by Jorge Cancio regarding fiduciary duties. And we are also certifying at this moment and authorizing our legal counsel to begin drafting bylaws that include the Affirmation of Commitments in them. We have been waiting for this to happen for quite several weeks now and we recently received a document with what is (unintelligible) to be an amendment to the bylaws that includes Affirmation of Commitments.

But this document didn't come either in a redline format or any review friendly format so we sent it back to ICANN Legal so they can ask Jones Day

if they can deliver a proper redline document for review. And we won't be of course waiting anymore for replies or answers from them but rather we will be beginning the work with our legal advisors.

So I would like to ask Holly whether there are any doubts on the questions, as I said, we will be sending these questions in a clear written email. But of course would like to hear in advance if you have any questions or a need for clarification at this point. So Holly could you please let us know if what we're certifying at this stage is clear enough or we can help you clarifying any of the subjects that have been certified.

And I see Greg Shatan's hand is up but I'd like to go to Holly first so, Holly...

Holly Gregory: Thank you. Thank you, Leon. And from the United States, good evening everyone or very early good morning. I think, Leon, that we will have greater clarity around the questions once we see the clear description. There was a question that we would like to ask that you certify to us. And I wasn't clear if that was on the list. And that question is under what conditions is a default judgment available should the board refuse to participate in an IRP.

The reason that we'd like that question to be certified is it is a question that was raised in the email discussions and ICANN Legal weighed in on it and we have a different of what the response should be.

I do want to also highlight that we really do have concerns that we're limited in our ability to participate in that discussion because we've been asked to wait until questions are certified to us. And we understand of course all of the good reasons for that. We just want to highlight, however, that other lawyers do weigh in and address questions that arise and those are not always the views that are consistent with independent counsel. And we want to make sure

that when we're silent on an issue people understand that it's not because we agree with what is being said but it's because we've been asked to stay on the sidelines. And I think it's really critical that people understand that.

So ICANN Legal is not under a similar restriction in their ability to communicate with you all. So just please be advised that we are waiting for questions to be certified before we weigh in. That being said, there have been a couple of times in the last day or so that we weighed in because the question was just so directly related to something that we had just given advice on.

And for example Alan asked a clarifying point about our recent memo and we wanted to point out the footnote and so we just went ahead and treated it as certified because it was so clear and direct and simple to answer without further research. So with that I invite Rosemary if there's anything that you would like to add to my comments. But I think other than that, you know, we will wait for your list of questions and certainly let you know if there's anything on them that isn't clear.

On the bylaw drafting we've received the draft. It looks like all that's happened is the language that people at CCWG have worked on the bylaws around the AOC have been dropped into the bylaws now. It's not clear that there's been any actual change to it. But we will now take a look at it and start working on it. Rosemary, did you want to add anything?

Rosemary Fei: No, good summary.

Leon Sanchez: Thank you very much, Holly. Thank you very much, Rosemary. So in regard to the questions that I didn't mention on the board refusing IRP process, it will be included in the list of questions that will be certified. And as to the ability for you to weigh in during that discussion we noticed that you kindly weighed

in to a couple of discussions in the list following some clarifications on previous memos. So I think that that is perfectly okay. And what we would like to ask you is that whenever you follow the discussion and you see any subject that you identify as of course of an important to weigh in by either you or your team, it would be useful for you to flag it to us so we can certify as soon as possible whenever it's needed.

The reason for this is that we need to keep track of the certified questions and we need to be mindful of the cost that this carries to the CCWG and of course ICANN. But otherwise please do flag those issues that you feel are important for you to weigh in so we can certify questions if deems needed.

So next in the queue I have Greg Shatan. Greg.

Greg Shatan: Thank you, Leon. Greg Shatan for the record. I agree in large part with what you said and also was encouraged to see counsel proactively seeking to be certified to respond to a question. However, I think that this rigid emphasis on certification is a little bit too constraining. And I would ask that we consider where a question doesn't require further research from counsel but it can be answered essentially in the course of the rapidly moving conversation that we should allow our counsel to do so.

I believe the certification requirements is still important if we're going to be asking for anything in terms of significant work in terms of either research or drafting. But if there is a response that can be made in real time without a lot of expenditure of billable hours to get there, I think we would benefit given the pace at which we're working from giving our counsel the opportunity to speak freely. Thank you.

Leon Sanchez: Thank you very much, Greg. And I think this is in line with the answers that both Holly and Rosemary provided as follow up to previously certified questions so I think we're all in line with this and of course if it is a follow up question that require actual research or is just a clarification reply or answer to some previously assigned work that shouldn't be in the need of recertification to - in some way. So I think that whenever counsel flags issues that haven't been certified and they feel that of course they need to weigh in to that discussion that is where we would require for them to flag it to us so we can certify as soon as possible.

So next in the queue I have Mathieu Weill. Mathieu.

Mathieu Weill: Thank you very much, Leon. Mathieu Weill speaking. And fully support your approach, Leon, that obviously follow-on requests and clarification on items that have been certified in the past are welcome from our lawyers and don't need further certification or it's an endless loop and we would get lost. So I hope this is a useful clarification for our lawyers and for everyone. And I would suggest that we put that clearly in writing in the notes from this meeting so a clear track is provided that this has been discussed.

But my comment was actually whether we should consider another question to certify. A question about - I remember some discussions that took place earlier in our process where there were discussions about whether ICANN as it stands now was already a form of designator model.

And I think in light of the recent comments we've received regarding the designator model it could be useful to task our lawyers to further analyze whether or not the current ICANN model could be qualified as a designator model. And I'd like to - I wanted to make that suggestion. And I'm sorry I wasn't able to provide it before the call because this specific comment was

provided a few hours only before the call. But it really triggered that question for me. Thank you, Leon.

Leon Sanchez: Thank you very much, Mathieu. And I think that's a great question. This is very useful. Now that we have received some feedback from the board that the designator model would be sharing the same concerns by the (unintelligible) then I think that this question that you have raised is perfect. So we can find out whether we are already a designator organization. So that would clear out the fact that there would be little or no change at all to be made to the governance structure in ICANN in the case that the answer is that we are already operating as a designator model.

So I see Greg's hand is up and I don't know if that's an old hand or a new hand, Greg? Okay so I believe that's an old hand. So one more thing on certification is the discussion on GAC and (unintelligible) powers I believe. And I think that these questions have been already answered so I would like to ask counsel to please point us to the relevant memos in which these answers have been provided.

There were a couple of emails by (Rafael Scali) I believe, and I will make sure that we include those questions on the email that will be sent with proper certification. So if you could kindly just point in that case to those memos that address the corresponding issues it will be much appreciated.

So I think that covers this agenda item. So I will now turn back to Mathieu so we can address the next agenda item.

Mathieu Weill: Thank you very much, Leon. And we saved the best for the last agenda item obviously. It hasn't escaped your attention that the email list discussions have been pretty thorough, sometimes even heavy and robust. It's probably

challenging for some of you at least, at least for me it is, to follow everything. So we thought it would be useful to try and recap some of the recent discussions and where they might be putting us in the process.

Because as it was actually outlined by Kavouss earlier regarding the work parties the discussions are developing pretty fast and at the same time we're analyzing the public comments, which were received a few weeks ago now. So it's sometimes a little bit confusing to understand where we are.

So what I will do is try and provide an overview of what I personally read through this various email exchanges and then obviously open for any addition from the group, any comments on the various aspects so that we can, at the end of this agenda item, sort of develop a better shared view of where the discussions are taking us at this point.

And obviously there's no intent to make any call for decisions at this point, it's just to make sure everyone shares the perspectives on the discussions that are taking place.

And if there is a technical mean, Jorge, to summarize the 200 emails we receive everyday in one single email I think you should launch a company on that. There is definitely a market within ICANN.

So I think the number one item I would note is that the key issue for several stakeholders in the public comment and now the board has made it very clear is regarding whether SO and ACs are sufficiently representative of the global Internet community, sufficiently accountable to the global Internet community to be provided with the community powers - community powers they're in agreement but the ultimate enforceability of these powers.

That's been made very clear and especially I would like to thank Bruce Tonkin for his very honest and clearly laid out email over the weekend on this matter. And I think they really sum up most of the conversation that we've had in the Los Angeles meeting and really show how this is at the core of the concerns of many.

I would like to note, however, that we still do not have any definition or specificity of what kind of changes of the SO and AC system would be needed to suddenly make it acceptable to transfer this kind of authority to them. So that's a part of the conversation that hasn't taken place right now.

There is also a lot of discussions regarding the voting and obviously I am seeing some (unintelligible) email - okay that was interesting. So on the voting we're seeing some traction for investigating a model based on a consensus in terms of the community powers, whatever the model. The concerns on voting are fueled by the ability to go to - step into the process, step out of the process and the respective ways.

And the consensus is seen as a way to avoid this. It also needs - some concerns have been raised regarding the ability by one part of the community to effectively be in a position to veto but probably that's something worth investigating and it's been a significant traffic of email have been dedicated to that and are certainly useful.

I think more and more in our group we're seeing people acknowledging that it's going to be extremely difficult to convince widely on the member model. There has been some traction for investigating a designator model, especially the single designator model instead of membership with some reservations expressed regarding the ability in this case to enforce the budget powers

required by the CWG as well as the ability to enforce a separation requirement which is also a condition from the CWG.

And of course it's better to note that the board, at least Steve Crocker in his email overnight, for me a few hours ago, made it very clear that this would not be acceptable to the ICANN board but the ICANN board in this matter is a key stakeholder but we need to listen to all stakeholder's input on that matter.

So that's a third area. And a fourth area was an idea introduced by Steve DelBianco that the process could be turned into a two-phase process with a follow up governance review being scheduled in a few years' time for a sort of second step of the enhancement of ICANN's accountability. And I'd like to have Steve maybe explain this a little more in 60 seconds, I think he said, and then we'll open for discussions around this summary. Steve.

Steve DelBianco: Thanks, Mathieu. This is Steve DelBianco. In Los Angeles it was clear that the membership recommendation was on a collision course with ICANN's legal team and the board. I think a lot of you understand that. When CCWG's lawyers explained in LA how we planned to constrain the member and the exercise of any unwanted statutory powers ICANN's legal team just dug in deeper and really seemed to me that they're fulfilling their reputation for trying to protect the corporation from the community.

And then when we hear the board say that our plan amounted to restructuring and was destabilizing, I mean, a lot of us on this call are engineers and lawyers, and we don't understand that because we rely on the existing structure of ACs and SOs for the entire proposal. So we don't understand how that was restructuring.

So right after the LA meeting Jonathan Zuck sent a four sentence email about obtaining community powers in Work Stream 1 that would be enough to force a change to membership after transition. Jonathan called his email a flyer, so I'm not sure we took it as seriously as he intended.

And then, lastly, Bruce Tonkin, as Mathieu just described, gave us the first really sensible explanation for board resistance, namely that ACs and SOs today are not sufficiently represented. And, you know, we're not going to fix Bruce's concern in a few weeks or even a few months. So that drove me back to Jonathan's flyer of an idea and that's what I sent around to you all on Saturday.

I'll paste the link to my email in the chat if you want to bring it up. Let me just summarize what it is. I recall that we turned to membership several months ago as a natural way to get enforceability of the required community powers. But membership wasn't our goal, it was our means to achieve enforceability.

But if we can get sufficient enforceability of the five powers and an IRP without resorting to membership well then we probably could get our jobs done before we leave Dublin. And the board has said they support those community powers.

You all know what they are, right, to block proposed op plan, strat plan or budget, managing changes to fundamental bylaws and articles, power to block regular bylaw changes, appoint and remove individual board directors and the entire board and of course the mechanism for a binding IRP even if ICANN's board refused to participate in the binding arbitration.

So I'm not a lawyer but I made a lot of assumptions that if we could get all that done we'd be able to deliver the community powers. I was silent on the

notion of designator model but assumed that that might well be part of any enforcement scheme. I don't know. But, look, like Jonathan Zuck said, we would need a Plan B if it turned out, later on after the transition, that the corporation resisted enforcement of our community powers.

Now Plan B would be to activate the membership gene that is latent in the ICANN body because nonprofit public benefit corporations have a membership gene in it and it's in the ICANN bylaws and articles today.

So what would do that? Well it would need to be a process that's set in the bylaws before we do the IANA transition. And it would have to provide for an ability to do a governance review that would be called up by community consensus at any time. The governance review would try to determine whether ICANN's ACs and SOs have grown to become sufficiently representative of the global community and we could then make the recommendation on a move to membership.

I said in my draft for all of you to consider that 2/3 of the board would have to reject that recommendation on the move to membership to stop it. And if they did we'd go to a consultation with the board. And then if we persisted and we still wanted to do it it would take 3/4 of the board to reject a second time. If that happened we use the powers we got earlier to spill the board. Then we elect a board that would support our proposal.

That's it, folks. That's why it was simple enough to fit on one page. Now Steve Crocker's most recent email on behalf of the board would attempt to take designator off the table too and certainly change this whole atmosphere a little bit because I don't know whether we can get the enforceability that all of us need without a tool like designator.

But, again this was offered as a way forward to get us to Dublin and provide a Plan B if the community's figured out that the enforceability wasn't working. So I'll stop there and glad to take any questions.

Mathieu Weill: Thank you, Steve. I noted a question from Anne on the chat which was whether there was significant public comment on the second draft report to the effect that SOs and AC are not accountable enough to support the full member model. I think - so that's within the purview of Work Party 3 I guess. So if the due diligence has not been fully conducted yet. But from my personal reading I must say I have seen several comments to that effect although not overwhelming comments but some.

And especially from outside - basically from outside the ICANN community either from the technical community or from several governments of various countries, including for instance China I think, in my memory. So that's definitely not unrooted from the concerns that were raised in the second public comments.

Jordan, your hand is raised. Please.

Jordan Carter: Thanks, Mathieu. Steve, I really appreciate you putting that email out on the list and I (unintelligible) in another sort of constructive way. The confusion I had or the concern I had with what you proposed was something like this. The board has kind of, and one of the reasonable concerns, said that if we need to change the structure of ICANN pre-transition to achieve an acceptable level of accountability then it would make more sense to make that change and let the new system run for a while to test it before there was actually an end to the IANA functions contract, before the transition happened.

And I can understand the logic behind that though I don't agree with it. But a part of that is about saying to the decision makers, to the US Congress and the to the NTIA, look, the model is fit for purpose and it carries on (unintelligible) stability here.

But if we have kind of at the core of the transition a pending governance review that requires the same scale of change, which has been described as fundamental and damaging and destabilizing, if I was anyone looking at this from outside the little bubble that we've created for ourselves in ICANN, where we all sort of pat ourselves on the back and say how wonderful and unique we are, I would have the same objections in terms of stability or reliability to a review with an unknown outcome with an unknown set of decision makers that would happen at some point after the transition as I would before.

In fact, I'd have more of a concern because I wouldn't know what the outcome was going to be. And if you add into that the fact the we've scheduled a deep discussion about jurisdiction afterwards if I was taking an objective look at that set of proposals, as someone who had set out some criteria around the multistakeholder model, or around no government control, I would find that more difficult to agree to than to agree to a membership model.

So I'm not an America. I'm not a veteran of the Hill. I don't have any special expertise as to how American politics works. But I know really well how politics works generally and that's how the decision would go in my country. It wouldn't get through because it would cause future instability and uncertainty for the decision makers. So that's one point.

And the only other point I wanted to make was in trying to work through to some kind of compromise it's really unhelpful when any of the stakeholders in this, and the board is a stakeholder, keeps throwing redlines into the mix. Most of us have been pretty careful to not do that. I would only urge everyone to keep not doing that, keep talking through to a conclusion, not using decision making rights that apply later to veto things. Thanks.

Mathieu Weill: Thank you, Jordan. Bruce.

Bruce Tonkin: Yeah, thanks Mathieu. I just want to I guess endorse Steve's overall approach there. I think in particular - this is from Steve DelBianco - I like the idea that focus on finishing the details and bylaws language for the enforceable powers exercised by a super majority of ACs and SOs and Steve goes on to list the six powers.

I think the board is broadly supportive of that too. So I think, you know, we're close to consensus and then it comes down to the details. So just about all of those things in the board's comments were what we called 1b. And we made some suggestions and I agree with Jordan, we should continue to work in the working parties and work constructively together to refine the rules and procedures around those powers.

Then if - so that's - so assume we've now got bylaws language that gives the community a series of powers. Then the issue is what has the board - well what least what if the community feels the board is not keeping to its bylaws? And so then that means that we should work on refining the IRP process that Becky and others have been working on to make sure that the community has a way of, you know, holding the board to account, that it actually sticks to its bylaws.

And then the third thing, which is I think the bit that's most contentious at the moment, is okay so what if after board going through that dispute process, which is - should be a binding dispute process, what if the board just says we're not going to do it? Then let's enforce that. And I think there's a number of different ways that can be enforced and I think we can have a much more open - well a much more focused discussion on that enforcement piece.

In other words, the last piece is how do you enforce if the board genuinely decides that it's not going to follow a binding arbitration? And if we're just focused on the enforcement of that piece I think that can be a constructive conversation as well.

Mathieu Weill: Thank you, Bruce. Any other comments? No? okay so what we'll do is I think follow up on this conversation on the list while the work party assessment takes place. I think it's useful to say that we have a conversation going on. I hope that everyone can keep an open mind and provide as much clarity as possible as to their requirements so that we give this discussion the highest changes to proceed.

And we'll try to take stock of those email discussions on a regular basis so that we try and get - we try to remain as inclusive as possible. Please bear in mind that not everyone is able to follow everything on the list. And so we need to provide recaps on a regular basis.

And I see Jonathan has raised his hand in the meantime so please, Jonathan.

Jonathan Zuck: Yes, so thanks. Can you hear me okay?

Mathieu Weill: Yes, Jonathan.

Jonathan Zuck: All right, thank you. I'm not exactly sure what to say to this discussion to some extent because I know how much the ICANN community abhor facts. But this feels like something resolvable through facts. In other words, can we come up with enforceable powers and the - on which the lawyers can agree are in fact enforceable or not? And that's got to be the model going forward.

I mean, I sort of started this and I agree with Steve about trying to build some kind of a model review program into the future and I think we shouldn't be afraid of a constantly evolving ICANN but that our principle goal here was empowerment of the community.

And over-empowerment of the community is obviously the board's concern. And I feel like the representative nature of the community is a little bit of a red herring there as has been discussed in the chat.

So, I mean, what is - is there a way that we can get consensus among the lawyers that there is in fact an enforceable solution for board member removal so that we can get this basis of the community power in order to get reform passed in the future. I mean, I think we're just at a point where we need to find a way to break through the log jam and as strange as it may seem is the fact there the brunt of finding that path forward.

Mathieu Weill: Thank you, Jonathan.

Kavouss Arasteh: Mathieu, can you put me please in the queue?

Mathieu Weill: Well you're next Kavouss, please. Please, Kavouss.

Kavouss Arasteh: Yes, I have several comments after today unfortunately, there is some activity here in Geneva and some Internet connection is interrupted, I have no

connections. I have several comments. The Plan B or whatever referred to by Steve is a good start. We should not take it out. We should continue. He proposed something which is constructive and I add something to that and Avri also. So let us take us that one and that is a way forward.

Let us do it in a steps in order to have something instead of having nothing. So please can we take his plan plus whatever some other people have proposed? I am too much concerned or very much concerned about voting. I am in favor of consensus in whatever manner consensus is build up whether by rough consensus or by any other consensus. So let's take Steve's plan and take it forward - pushing to forward as to Dublin to see what we can do and perhaps we should concentrate on that instead of fighting with each other. Thank you.

Mathieu Weill: Thank you very much, Kavouss. That's very constructive. And I now have I think Alan. Jonathan, I assume it's an old hand so Alan Greenberg. Alan. Alan. We are not hearing you. Okay, Alan, if you are speaking we're not hearing anything except some background noise. Still a lot of background, Alan, but nothing we can hear.

Alan Greenberg: Can you hear me now?

Mathieu Weill: Yes.

Alan Greenberg: Ah, somehow...

Mathieu Weill: Better.

Alan Greenberg: Somehow I got put onto the bridge silent mode even though I never pushed a button. Sorry about that. A couple of things, I find myself agreeing with the last couple of speakers that we had a tentative plan and way forward. I

personally thought it was implying a designator model. And perhaps it was, I don't know.

There's a number of realities that we have to look at, however. Regardless of what the CCWG comes up with it has to be approved by at least the majority if not all of the chartering organizations to go forward, that's number one.

And number two, ultimately the board is going to have to implement the new bylaws that put it into effect and if the board, for whatever reason, or the super majority of the board, for whatever reasons believes it is not in the interest of ICANN to do that it won't get done. So, you know, yes it's a multistakeholder model but it's still, at this point on today's bylaws, must be implemented by the board.

So it's futile to work out something which isn't going to meet those criteria and I agree about the redlines, I think we need some real face to face, excuse me, telephone to telephone maybe, dialogue at this point so that we're not going off in random directions which we're then told three days later oops, that crosses the line that we didn't mention was there.

We really don't have any spare days at this point. You know, we're working somewhere on negative days at this point and we can't afford many of those if the transition actually means something. And to some of us on this call, I understand the transition may not be important but to others it is very important. It's very important not only because of the transition itself but the impact on how we will be viewed in the rest of the world.

So I think we need to stop doing things which push us back and I think we need some real dialogue between the board, between the two sets of lawyers,

between whatever, so that we don't have too many more false starts. We can't afford them. Thank you.

Mathieu Weill: Thank you, Alan. And you're providing me with an opportunity to inform that we are - we the co-chairs are working with staff to assess the timeline consequences of our - I mean, where we are in terms of timeline and we will be in a position in the next probably maybe by the end of today UTC to share some of this on what the timeline would look like now if we can move to a fruitful conversation in Dublin. And that is certainly going to inform the discussions related how to the transition and the decisions we have to make.

And the question I'm hearing you raise is whether we should keep working from the bottom up as the group trying to find consensus within the group and then presenting it to the board and to the chartering organization obviously or whether now that the board has expressed some very clear redlines the process within our group should be basically constrained by the redlines that have been drawn very clearly now by the ICANN board.

And I think that's an important discussion that our group has to make. It's certainly new to me that in the process that would be the way it would be designed. But I think it's an important question and you rightfully raise it. Next in the queue is Jordan.

Jordan Carter: Thanks, Mathieu. Thanks for that. I just wanted to add sort of a counterpoint to Alan's point. None of us know what will or won't be approved by the stakeholder groups because at the moment there's nothing for them to approve. At the moment no one in their right mind would approve our second draft proposal because of the feedback that it has.

And so until we get to a consensus based on honest representation of views, I don't think it's helpful for anyone to say well if you do this it won't be approved by X; if you do this it won't be approved by Y. The ICANN board is bluffing if it thinks that it can stand against a consensus in the community. We don't have a consensus in the community about our model yet.

That's the job that we should be focused on. If we come to a consensus, if it involves the community, the same community that elects the board, it's highly likely the board is going to buy into it. So that's the job and that's why the whole raising of redlines and saying you can't do this now is totally the wrong approach because it turns it from a discussion about collaboration and consensus building into a competition of models. That's the outcome of the approach that's being taken in the way the board is raising its concerns.

I was pleased to see Bruce say in the chat that he doesn't think that's a positive approach. I hope other board members share his view. And just change the way the board is expressing its views to what it does want to see, not what it's going to allow. And then we can be more likely to get back on to a consensus building path that can lead to something that we can all approve.

Mathieu Weill: Thank you, Jordan. Alan, please.

Alan Greenberg: Yeah, just a very brief point. I don't know, to be honest, I have no clue whether if the CCWG and all the chartering organizations approve something if the board would approve something that it didn't agree with. I suspect not but that's a personal view and it's certainly not loaded with any fact.

Nevertheless I think we - many of us do, you know, I can't speak on behalf of the ALAC and I certainly cannot tell the other ALAC members or participants in this group what to say or what to think. But I have a pretty good feeling of

the pulse. And from that perspective, you know, I think I could predict what we're going to approve and what we're not going to approve. I could be wrong.

But nevertheless, I think the constraint of what the board will approve is important and moreover it's even more important to make sure that if they've made a decision on designator, for instance, that we understand what the underlying rules are and not vague statements because, Number 1, maybe they are ill advised and we can convince them otherwise, maybe.

And, if nothing else, if we know what the basis is for the reluctance of a particular change we may be better suited to, you know, to come up with something that is right. And at this point my sense of the timing is we need to go into Dublin having some idea of what we're talking about, not hope to come out of it from Dublin because the time going forward is - even with an intercessional meeting held in December or something like that is going to be really, really difficult. Thank you.

Mathieu Weill: Thank you, Alan. And I think that's definitely an echo to Jordan's previous position that everyone start explaining what they want and promote their positive requirements instead of what they don't want (unintelligible). Tijani, you're next.

Tijani Ben Jemaa: Thank you very much, Mathieu. Tijani speaking. Do you hear me?

Mathieu Weill: Yes.

Tijani Ben Jemaa: Okay, thank you. Thank you. So we are really pressed by the time. We have time constraints. Second, I heard now and I have read it before the proposal of Steve DelBianco, in fact it is the proposal of Jonathan. And I heard Bruce

saying that it is something that the board can live with. I propose that Steve or Jonathan write it very clearly on the list and put it as a proposal to have the temperature of the CCWG members and participants so that people can say yes they can live with, no I don't like it.

This will be a kind of (unintelligible) that will give us an idea about perhaps we will have something that we may have some consensus about it and we can go to Dublin with something that we can elaborate and that we can develop better. Thank you.

Mathieu Weill: Thank you, Tijani. Roelof.

Roelof Meijer: Thank you, Mathieu. This is Roelof. Can you hear me?

Mathieu Weill: Yes, perfectly Roelof.

Roelof Meijer: Okay. Mathieu this is a reaction to what you just said. I don't think we should be constrained by the redlines of the board, so to speak. But I think we should first try to stay within those and still deliver what we have to deliver. If we find that that is impossible that's the moment we should decide to go outside those lines because then we can also - argument why.

And I think as we all know the board has already stated before that if we show that we cannot deliver the power that we agree on and the enforceability that we also agree on with the board within the existing structure that they will agree to the necessary changes in structure. So my point is we should first see if we can deliver within the lines that are now being set by the board and if we can't that's the moment when we go outside.

Mathieu Weill: Thank you, Roelof. Useful suggestion. Thomas, you wanted to get in the line, please you're next.

Thomas Rickert: Yes, thanks very much, everyone, Mathieu. And welcome, everyone. Just a quick note to say that I guess we need to be very careful in how we define redlines. There might be things that we like or things that we don't like. And I guess this goes particularly for the board. We've been tasked to come up with a consensus solution that has been developed through a bottom up community process.

And just - let's just assume for a moment that we end up with the board proposal, which is perfectly possible looking at the conversations that we had. If I wanted to tackle the process or criticize the process, I would look at how the community came to this decision. And even if it were broad community consensus that we need to go with the MEM, again, which is an outcome that I cannot predict, I would try to criticize the outcome on the basis of okay, well the community started with a couple of options and then the board rules them out one by one.

So now that we end up with exactly the board proposal, I mean, is this really bottom up? Is this really consensus and community-based if we are just - or if the board is continuing to limit the options for the community to look at?

So I think Jordan and others have been right that we need to be very open in what we would like to see. We also need to be voicing concerns, try to remove the concerns and then I think we will come to an implementation model that has least friction. But I think it is an extremely dangerous task to just rule out categorically options that have been - that are still under discussion in the community and particularly since we have not completed the analysis of public comments. Thank you.

Mathieu Weill: Thank you, Thomas. Avri.

Avri Doria: Thank you. Avri speaking. I very much want to follow on with what Thomas said. I also wanted to respond to what Roelof said in terms of we did not start at a single member model. We got there as we worked through other models and found that, for example, as much as people liked various aspects of the designator model it failed to give us the budget and strategic community voice that we felt was needed.

We tried some of the other models and found that they were too quick to take us through court as a method of resolving things. I think that is one of the things that we also have to add to our list of requirements that while we very much want enforceability we don't want that enforceability to be by always living on the knife edge of do we go to court on this or not. Do we have to commit board-icide or not? But rather that we have internal processes that have been built up from bottom up.

In terms of dealing with the notice that basically does look like it is informing us up front not to waste our time and (unintelligible) we believe in but to accept constraints if they apply, it does look like in this process we are giving up the very bottom up multistakeholder organization that we're trying to evolve towards.

And I think that that's, you know, very unfortunate. So I agree we need to be open minded, I disagree that we haven't gotten to where we've gotten by looking at facts, by looking at the facts based on the advice we've gotten of what can be achieved in the various models and what can't be achieved.

I also very much am concerned that by using arguments that say our community is not representative enough the board has not only cut its own authority in terms of well if they can put in place a system that's not representative then, you know, from where does their authority come? But they're also very much damaging the fact that we do have an ever-expanding, ever-outreach, we have open comments to the world in six languages on every main issue but there is room in one SO or AC or another for anybody that wants to work with ICANN. And as I say that we are constantly doing outreach on that.

So to say that we don't have a sufficient degree of participation or representative enough is really very damaging to our entire effort. And I'm very concerned that our board is taking that approach. Thank you.

Mathieu Weill: Thank you, Avri. I think it was challenging at times to hear you for some as they noted in the chat but I think we - your conclusion was quite clear. Thank you. Greg.

Greg Shatan: Thank you. Greg Shatan for the record. In going through many of the public comments, as we all have, I noted that, you know, a number of stakeholders have opposed some or in some cases many of our items in our draft report but, you know, in most cases at least as far as I can tell, you know, the bulk of the comments have been favorable.

But where we've seen an unfavorable comment, or a couple, from stakeholders, while we take them into consideration, our reaction to the board is of course completely different. You know, we're not wringing our hands because of the Center for Progressive Technology, which doesn't exist, you know, said that the member model is bad or that the IRP is overly

cumbersome. You know, we'll listen of course but, you know, the board has basically skidded us into a ditch here.

And part of that is our own fault because we are - we don't have a common - we don't have a strategy, we don't have a way to arrive at a strategy so we're basically being highly reactive and running around with our hair on fire. And I think we need to, you know, there are some people who say stay the course, others who say hold the tent. You know, others who say, you know, let's get what we can today with a promise to get more tomorrow.

I think that we have all sorts of thoughts running around but we don't have a common viewpoint; we have no united front because we have no front to unite. And we have - if we view this as a negotiation, or worse yet, as an adversarial process with the board, which I note this most recent advice from their counsel, as I've noted in the chat was written by a trial lawyer, not a governance lawyer or a transactional lawyer, I take that as being meaningful. And I note that others have noted that it didn't take legal training to note the tone.

We are kind of rattle off in a sense, and I think we really somehow need to, you know, decide which direction we're going because we're going in a lot of different directions; some big, some small. You know, big questions are still out there. I'm not even sure we know what enforceability means or that we commonly agree on what enforceability means.

To my mind it means that if you have a decision you can go to court and have it enforced. It doesn't mean that that court is going to make a decision on whether that decision was good or bad, it means that the end result of your exercise of power will be enforced by the court without questioning whether

the power was exercised appropriately or inappropriately because that power was given to that entity that made the decision.

So I encourage us to somehow find a way of whether it's a large group, or a small group, a small group and then a large group, to find a way forward and try to find a way and pick it. And I'm not saying that - I'm not exactly sure what it should be yet myself. But I think right now we're, to paraphrase the Canadian humorous (Steven Lecox), we've jumped on our horse and we're riding off in all directions. Thanks.

Mathieu Weill: Thank you very much, Greg. I think there's an expectation that's been set by Tijani's suggestion that there is some elaboration on the proposal that was conveyed by Steve and joined with Jonathan and Kavouss joining in with additional details and suggestions.

I think what would need to be assessed and elaborated on is whether the various - in which areas would these various models be enforceable and certainly there are some proposals by the board. There are some different models being considered. But also what - how would a second phase become acceptable, what would be the condition that would trigger the second phase review.

Because if we say now it's not ready, we need to elaborate exactly when or what would imply that the conditions are met for the second step review, that's also in relation with what Jordan said. And I think that's the part that would need some elaboration on this. And I don't know whether Steve or Jonathan could share whether they would see a way forward on this. Steve or Jonathan?

Steve DelBianco: Thanks, Mathieu. It's Steve DelBianco. And I just put two lines in the chat.

The first was that I don't readily see what to elaborate on on the Plan A part the stuff we want before transition since those are our five powers of an enforceable IRP. And it's really up to our lawyers, hopefully with the agreement from Jones Day, to articulate the degree of enforceability that we get with and without designator to get that done.

And then with regard to elaborating on the Plan B part, what I put in writing was simply this, that a consensus of ACs and SOs could call for that governance review at any time. The trigger event is likely to be that any of our five powers or the IRP was being ignored or frustrated or sidelined by the corporation and if that's the case that would certainly trigger. But the event is simply a consensus. And we'll define consensus. Super majority is what this group has been using all along, the super majority of ACs and SOs said it's time for a governance review well then it would kick off.

You know, and I would welcome lots of input on the parameters around that governance review. But let's not make it more complex than it needs to be. We all know what its intention is. Its intention is to activate the gene of membership that is latent in the ICANN beast and turn that on over the objection of the board using the enforceable power of spilling the (unintelligible) and electing members to the board so that they will not be able to muster a 2/3 to block it.

But glad to take more assignments, just have to fit them in with all the other work we're doing on Work Party 1 and stress tests.

Mathieu Weill: And, Steve, I think Jordan is raising a question in the chat which I was about to raise as well is if a consensus of the SO and AC triggers the governance review and the governance review concluded to we need to switch to a

membership model, for instance, what if the board still disagreed? How is that enforceable?

Steve DelBianco: Mathieu, I lay that out...

((Crosstalk))

Steve DelBianco: Yeah...

Mathieu Weill: Yeah?

Steve DelBianco: Got it. Mathieu, that's all laid out in the last paragraph and the board would have to vote on the recommendation of the governance review. It would take 2/3 of the board majority to reject it at which point we go into a conversation. And the only basis the board could use to reject it would be that the plan that we came up with was not in the global public interest, whatever that means.

And then after that consultation if we still - if the super majority of ACs and SOs still want to convert to membership it would take a 3/4 board vote to reject it the second time. And if they did we are left with the power of spilling the entire board and electing members that would allow it. That's really - it's as simple as that. And I don't have the legal skills to elaborate it too much further. Thank you.

Mathieu Weill: Thank you, Steve. Greg, is that an old hand? I think so. Jonathan I think is next. Jonathan.

Jonathan Zuck: Yes, I think that the way forward is really reductionist. And as Becky's question, it's the discussion that's going back and forth between Bruce about the law firms agreeing with each other. We really just need to get to the

bottom line of enforceability. And I think as everything flows from that, I mean, we shouldn't make this such a complex question; it's a simple question. You know, I mean, we can go back into the details and debate about Jordan's point about future instability, etcetera, but I continue to be less concerned about that simple because I think we've always intended an environment of continuous improvement, which could involve structural changes.

We've had plenty of structural changes in the past and we can have them in the future. And I don't think that's the end of the world. It boils down in the end to whether the community has the ability to enforce its will when all is said and done at the end of the day. And that ought to be something that's factually derivable. And once we actually have those facts we can build, you know, the Version 1 of the accountability framework around those facts. And absent that we're just debating against each other about whether something is enforceable or not.

And I don't feel that's productive for a bunch of non-lawyers to be doing. I think the lawyers need to get in a room and come out with a recommendation of something that is in fact truly enforceable.

Mathieu Weill: Thanks, Jonathan. Kavouss.

Kavouss Arasteh: I think the discussion is now taking a polarization. This does not take us anywhere, people pushing for one or the other. We have to find out a way forward. I don't think that if something is not possible we could push for that. Let us see what we can do. The way proposed by Steve and by me, because of what they propose, in my view, is workable. We have to see to what extent we need to improve that. They put a lot of effort to find out what we can do now, what we can do at the other phase of exit stage.

No doubt, (Mort) should understand that (unintelligible), too, is (unintelligible) exist. We need to have one in order to continue the issue as (unintelligible). So let us work on this team approach. Thank you.

Mathieu Weill: Thank you, Kavouss. Jorge?

Jorge Cancio: Hello. I was in silent mode. Do you hear me? Hello?

Mathieu Weill: Yes, we can hear you, Jorge.

Jorge Cancio: Okay, thank you. I want to stress that I think there could be some convergence in what we are seeing in the conversation and in the chat. And I think this convergence would be to have two parallel tracks. On one side we have the logic conversation of - started by Steve DelBianco and Jonathan Zuck and others, which is also more a general kind.

And then we have the work in the working parties, with the Board members participating in it. And I think that's really the key part of it. And there is where we should be further refining the requirements for the community powers, taking into account the comments we have been receiving.

And I would add to considerations two thoughts. On one side, the discussion on the diversity, on the requirements on diversity, is really key to this exercise. And it might help for future conversations and discussions on the model, because the further or the larger the diversity is within our SOs and ACs, the greater is the argument that these SOs and ACs really represent our larger Internet global community.

And on the other side, the other thought is that when we are considering the decision-making process within the community, for exercising the community

powers, if we try for consensus on new consensus models, or address any concerns of perceived or real fears of capture of that decision-making process by activist SOs and ACs or members thereof.

And lastly, I think that it is important to solve the question which has been put forward by some -- for example, Becky Burr -- on the enforceability of these community powers. And then when we have all these facts on the table, we will be able to see what legal is really necessary for implementing this. Thank you.

Mathieu Weill: Thank you very much, Jorge. Bruce?

Bruce Tonkin: Thanks, Mathieu. I guess there's quite a bit of discussion in the chat, just going backwards and forwards. But I think one of the things is, you know, Becky said let's talk about the trust continuum. A few people have said we can't rely on trust. I'll say again, the Board is not asking for trust. The Board is asking for enforceability.

Then we're differing as to the degrees of enforceability. So Holly has set out in the chat that there's - what Holly's described is three levels. There's member designated and the MEM. But I'm also seeing comments from someone on the list saying that I think, MEM gives you any enforceability.

And that's where I'm struggling, because, you know, we've asked (unintelligible) enforceable. I'm struggling because, you know, what we as a Board have said is (unintelligible) talk to the other law firms, and at least get some agreement on that. Apparently there's not agreement.

On more than - normally what happens, I do a lot of commission negotiation, and I have lawyers on both sides. And obviously the key thing is you're trying

to make sure that your agreement with another party is enforceable. That's really what a contract is.

Now nearly always, it gets to this point where you have multiple law firms with different views. And normally the principles -- as in those that are requesting the advice from the law firms -- get together and say, we agree that we want a certain set of requirements to be met. And then you ask the two law firms to work together on that, and then come back to you with some text.

And I don't think that that's happening at the moment. I think it's difficult, because we're obviously - the CCWG's a large group. The Board's a large group. We've got lots of other community members.

But I'm more than happy to work with the CCWG on at least high level agreeing what our requirements are; and more than happy to convene some sort of call with the various law firms and lawyers to get together and at least agree the framework. And I just don't think we have that right now.

Mathieu Weill: Thanks, Bruce. I think that the parallel you're drawing from a commercial negotiation has just a couple of limits. One is that we're in a (unintelligible) process on both sides -- on the Board side and on the CCWG. There's multiple stakeholders. So instructions to lawyers are not as clear as they would be in a private bilateral negotiation.

And we're also in a bottom-up process where obviously some of the discussions on the requirements are not over. Despite the claims that we are all in agreement with the powers, when we get into the details, it's clear that there's still some refinement to bridge and gaps to bridge, with that regard. So I wish life was as simple as putting the lawyers in the same room, I expect it won't be, at this point.

Bruce Tonkin: Yeah, I think you certainly can't just put lawyers in a room. You've got to have clear requirements. But - and I know people are sensitive about the idea that there's some sort of bilateral negotiations. But I actually think the community's pretty clear.

You know, I think the Board - I haven't seen anyone say that they don't want enforceability, including the Board. So at least we have a requirement there. And then I think the other requirement could be that maybe we have a different tier, but the Board's view is that -- and I think we've heard this from (Larry) from the (NTIA) -- keep it simple as well.

We've attempted to keep it simple, and I guess some people think it's so simple it's not enforceable. I at least want to deal with that point, because we think that we have put forward something enforceable. And, you know, we have a problem if nobody agrees with the enforceability factor.

Mathieu Weill: Okay, so what I'll do, Bruce, is (unintelligible) that, I think it would be valuable if our counsel could point to the relevant parts of the memo where they raised concerns about the MEM enforceability. And I think it's been disclosed on the list that there was a disagreement between lawyers on this.

Once we have disagreement between the lawyers, obviously - I mean what does that mean for the trust into the enforceability? It means that we need to go for something else, or have the lawyers reconsider the position. But I think it's clear from what you're saying that if it hasn't been clearly conveyed to the Board what the concern regarding the MEM enforceability was...

Bruce Tonkin: Yeah, that's correct. Yes.

Mathieu Weill: I'm happy to request to Holly and Rosemary that they point out the relevant parts of the memo about this, and their emails that I know they had been sharing already. And we'll put that into a specific correspondence that can be shared with the Board, so that we are clear on the legal aspects on this, and there's no misunderstanding about what we're doing and why we're doing it.

Bruce Tonkin: Yeah, I think that would certainly be helpful, because certainly the Board is still working on the understanding that what (unintelligible) proposed is enforceable. And but we - you know, obviously now there's - I know (Dickie) has asked questions about that. So, you know, clearly that issues' not resolved.

Mathieu Weill: Okay. So I'm going to turn to Holly now, but I'd like to have the action item of the meeting updated with this particular request as an outcome of the meeting. Holly?

Holly Gregory: Hi there. So we did do a memo that addresses this point, and we're happy to recirculate it and point out the pages where it's discussed.

We've also shared with Jones Day earlier today -- because we wanted their feedback on it before we shared it with the broader group -- a comparison of the current IRP to the IRP as it's proposed in the CCWG's second proposal, to the combined both IRP and MEM proposed by the Board. And that might also help shed some light.

Now of course it's true that binding arbitration is binding. I mean that's why it's binding arbitration. That's why we use the term binding. But then the question is, what do you need to have to get to binding arbitration?

And one of the difficulties in talking about how strong is enforceability when we talk about the powers that you all want, is under some legal mechanisms,

as we've described, some powers simply aren't available in the same way. And so you need to rely on less direct enforcement powers.

So, for example, the power to recall the Board and to remove directors can be a very powerful indirect means of enforcing other rights. But in order to give the power to remove directors and recall the full Board, you need to make sure that you do it in a legally enforceable way. And that's why we've been talking about things like a designator model in that instance, or a member model.

We can walk through this all again. Maybe it makes sense to have a time with Board members on the call, and sort of have the Sidley and (unintelligible) lawyers walk through it, and give the Jones Day lawyers, if they'd like, a chance to critique it.

Again, I don't think that the differences are big difference around legal interpretation, but rather - and as we've had this discussion with Jones Day, you know, we've been talking about our understanding of what the CCWG was aiming to achieve. And we designed the legal models around how do we best achieve what the CCWG was hoping to get by way of enforceable powers.

We can, you know - you can decide to have less powers. You can decide to have powers that while they may be enforceable, there's greater risk about enforceability. You have all the issues around legal personhood and who can enforce those powers. So every one of these models comes out in a different way on where you are on that, on the strength of the different elements that matter to the CCWG.

So again, I think this is more an issue of, what is it that you really want? What is it that you're willing to compromise on? Where are the risks that you're

willing to bear (unintelligible) choose unenforceability? And it's much more that kind of a disagreement, to our minds, than it is about a legal interpretation that somehow there's great disagreement about. I don't think that that's the case.

I know that it's hard, it's difficult information. And I know that it would be really lovely if it was just a much more straightforward kind of issue. But these things are really complex. And, as I said, the powers that you want, legal mechanism that you use to achieve those powers, and the degree of enforceability are all intertwined. When you push on one, you come to, you know, different conclusions. And with that I'll stop.

Mathieu Weill: Thank you, Holly. Bruce, you want to follow up? And then we'll wrap up. Bruce?

Bruce Tonkin: Yeah, thank you, Mathieu. And also I'd just like to thank Holly. I think that was a very clear description. Mathieu, I wanted to - can I just ask a question of Holly?

Mathieu Weill: Ask your question, and I'll see if I can certify it.

Bruce Tonkin: Okay. My question really is - and as far as this is one thing, is almost to use a stress test or scenario (unintelligible) the question for Holly. If we pick one path, it's probably a really important one to all of us, and that's the ability to remove directors.

That said, there's a bylaw that has the mechanism for removing directors. And then there's a dispute process that if a director doesn't leave, for whatever reason, so technically they're not adhering to the bylaws, is the mechanism

that has been proposed by MEM give that ability to remove that director? In other words, is that ability to remove a director in the bylaws enforceable?

Mathieu Weill: Holly, it would be certainly valuable if you could...

Holly Gregory: Yeah, it's not as simple as - I think that we feel that there is some risk there in terms of enforceability, because you have to also ask the question, how is that right in the bylaws expressed? If it's a right to select and remove a director, which is a designator right, then the party that has that designator right would have the power to enforce it, if that party were a legal person.

And so this is where we get into these complex issues around are SOs and ACs legal persons? Is it a designator right or is it (unintelligible) in a different way? If what you're trying to do is create a bylaw that is not a designator right, then the question is, who has standing to enforce it? To whom does that right run? It all becomes more murky.

That's not to say it's not enforceable per se. But the risks become greater and the challenges in trying to draft around it are greater, and the uncertainties are greater. So when we talk about enforceability, in some ways we're talking about, what are the ways to do what we think the community wants, in the most clear and straightforward way?

To the extent that the criticism of something like a sole member or sole designator model is complex and confusing, I think some of the other kinds of solutions that are being suggested give rise to potentially even greater risks and uncertainties, because I think it's likely that courts will have less experience interpreting them if they ever come to, you know, to an issue.

With that, though, I do want to ask if Rosemary has any comments. She, after all, is our expert on our team with California non-profit public benefit experience, and she may want to speak to this issue.

Mathieu Weill: Rosemary, would you like to add something? And then I will conclude.

Rosemary Fei: Sure. I don't have a lot to add. I think Holly put it well. There are some rights that are clearly established in (unintelligible) that are a question either with members or with designators, or with the ability to give third parties rights.

In my view - and those third parties have to be - you can give third parties rights even if they're not people. But it's hard to see how they'll be able to enforce those rights, or who will enforce those rights, because it just keeps coming back to the issue of a legal person. And if we don't know who the legal person who is who's enforcing the MEM, it might be sincerely enforceable.

But when you actually sat down and tried to enforce it, there might be a lot of barriers. And I think that not knowing - for example, one fundamental thought is that someone can only enforce a claim that they have. They can't go out and enforce other people's claims.

And the MEM issues group is not - comes into being, in a sense, after there's been concern raised. And so the underlying concern that the MEM issues group brings to arbitration may actually pre-date the existence of the issues group.

So what happens if you then - it's not clear that the issues group is intended to be an unincorporated association. But maybe it could be. Maybe it would be

the person with the personhood to enforce. But did it come into existence early enough so that it actually has the claim?

So I think that the timing, who the person is, how they come into existence - I'm much more certain that if we create either a sole member or a sole designator and make clear that it's an ongoing unincorporated association - this is just, for example, one little issue. I don't mean to say this is the whole piece.

But an ongoing unincorporated association, whether it has the powers of a designator or it has the powers of a member, at least it's a legal person at every realm of its time. So that's one last issue that could be raised as a barrier to that entity being able to enforce.

If we don't have the MEM issues group being an unincorporated association, then I wonder. We clearly have a lot of legal persons in this picture -- (unintelligible) and other, you know, natural persons.

But are they going to be willing - if it's left to them to have to personally sue to enforce something, even if we make it clear that they're doing it on behalf of this MEM issues group and so on, are they going to be willing to put themselves on the line as plaintiffs personally and go through all the horrible experience that litigation is, in order to make sure that this right is enforced?

Whereas if you have a legal entity person, then you can have people do things for it, not in their own names; not that they're the plaintiff, but that it is a MEM issues group, or if we have a sole member or sole designator, it would be the plaintiff. And you can - ICANN can pay people to represent it.

So we feel - not feel. That makes it sound like this is a touchy feely thing. Our assessment of the certainty of enforceability of the MEM proposal is limited by the fact that we don't quite understand yet what the proposal is, with respect to who would sue; when that person comes into existence; what the mechanism is through which they come into existence.

Mathieu Weill: Thank you, Rosemary. And I'm conscious of time, because we're almost at the top of the hour. So Alan then will be the next to last intervention, and then we'll wrap up. Alan?

Alan Greenberg: Thank you very much. I said this in response to, I guess, (Steve)'s original message. The Board proposed that chairs be the enforcer, as it were. And we looked at that in this group a long time ago, and discarded it for some very good reasons.

Number one, as Rosemary said, chairs may not want to take on the legal responsibility of doing this, even if indemnified in terms of cost. You don't get indemnified in terms of your time, and the potential risk and how it's viewed.

What's more, although the Board could indemnify the chair, whoever the chair is, my understanding of legal action is I can't sue ICANN, and then next week (Jordan) becomes chair of the ALAC, and (Jordan) suddenly takes over that suit. If that's a legal right to be able to do that, I've never heard it. So I don't know even how you could do it, even if we could get over the fear people have over doing it.

So I suggested other ways of doing it, and various Board members have privately said, sure, there's plenty of other ways of doing it. But I haven't seen one concrete on the table. And until we see one that we think is saleable to our community, the whole model is in question. Thank you.

Mathieu Weill: Thank you, Alan. And to conclude on that, I'd like to - I think it's important to come back to what the core issue is. The core issue is not a legal issue. It's not about the model.

It's about the conclusion that the mutual accountability model we had been advocating from the start, and the sharing of the stewardship basically, is felt - the balance that we've been designing has to be moved. But the (unintelligible) same movement to the SOs and ACs as we were seeing, because this SO/AC representative made concerns, and the SO/AC accountability concerns.

So we need to work on a way to get enforceable powers, and we also need to not forget that the expectation, the underlying expectation, is that the enhancement to ICANN's accountability includes significant work on the core issue. Otherwise we're just patching the model and setting things up for actually an everlasting concern on this.

And so my - the action I'm taking is - and I would like to take on to an action that was highlighted in the chat. What we'll do is we will task Steve, Jonathan and Kavouss, who volunteered to join, to have a short briefing with our lawyers on the Plan B proposal, the Steve-Jonathan-Kavouss proposal, so that it can be fleshed out and give rise to a more detailed conversation in the next occasion. I think it's a useful approach that needs investigation shortly.

And with that, I'll move to the any other business. And before opening for anyone if there are any other business, I'd like to mention that there are two upcoming coordination meetings happening later today, UTC.

One is the transition facilitation program call, so that's a set of monthly calls that have been set up in July, I think, with the various chairs of the working groups, plus Board representatives, (NTIA) representatives, updating on the progress on the various tracks.

And also a call has been organized including an update, and actually centered on an update on our group to update the SO and AC chairs, in order for them to organize their planning for the Dublin session.

So that's two occasions that will take place later today at these European times regarding where we will deliver updates on the group. And we'll obviously certainly face questions and concerns regarding the timelines, and we will certainly mention the recent developments, including some of the concerns in the group regarding how the interaction with the Board can protect the parliament nature and the multi-stakeholder nature of the process.

Bruce, I suspect that's an old hand, but I see Kavouss' hand was raised. So, Kavouss, if you have any other business...

Kavouss Arasteh: Yes, this is a comment that I was not able to make when we were talking about the question. May I suggest that all questions to (unintelligible) should be channeled through the co-chair, issues that all individuals take the form of questions to the - they can do individual in formal as they wish.

But any question should come to the co-chairs, and we should have a list of all questions to see which questions have the general support; which question has been answered; which question has not been answered. Now we have a lot of questions. We don't know which one has been answered; which one is going to be answered. So there needs to be some sort of dispatching of all of these questions (unintelligible). Thank you.

Mathieu Weill: Thank you, Kavouss. That is indeed a good reminder of the process, and I think our lawyers are being careful to respect it. And with that, I know we are four minutes after the hour, so I'd like to thank you all for a very constructive approach all along during the meeting.

We have certified the number of questions for the lawyers, that's setting the ground for fruitful discussions in Dublin. Also we're starting to see some form of way forward, or at least what paths are worth investigating. I hope everyone gained a shared understanding on this during the call. That was our main goal.

And once again, I think we owe a lot of credit to the volunteers who are hard at work in the working parties. And please keep up the effort. This is going to be at the center of the work that we're going to be doing in Dublin, and that's where our way forward is.

So thank you very much everyone, and I hope I give you - we'll talk to each other very soon, either in the work (unintelligible) calls or in the CCWG calls in the next few days. Thank you very much.

END