

ICANN

**Moderator: Brenda Brewer
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2:00 pm CT**

Woman: The recordings are started.

Jordan Carter: Great. Thank you. Good morning everyone, afternoon, evening and welcome to the Work Party 1 call for the CCWG Accountability.

Our agenda is before us in draft. Sorry for the couple minutes late start here. I just am running late all morning.

We'll start the call now. The agenda's in front of you. We've got - you've got new public comments now I see on the fundamental and regular bylaws from Keith and individual director removal from Mike and Robin.

And then we have another chance to have a look at the comments on the Affirmation of Commitments incorporation and the whole board removal in the second part of the call.

And then sort of look at our upcoming call plan for the next meeting and to confirm whether we need another meeting in that slot on Friday that I mentioned.

And are there any changes to this agenda that are required or are people ready to go ahead as planned?

I don't see any speaking lists there. So remember that if anything does occur to you during the call we can deal with that in the any other business side of it at the end.

I guess for the sake of completeness I should ask and I don't usually, is there anyone who's joined this call through a telephone bridge who is not in the Adobe room that we could mention on the list of attendees?

And Kavouss has pointed out in the chat that we've got a terminology mistake in the agenda here. Fundamental bylaws and standard bylaws should be our label not (unintelligible). Apologies for that.

Okay we're all here. We're ready to go. So I would like to turn to Keith Drazek for this.

As I said in the agenda I was hoping we could let Keith do the presentation and work through it. Keith's documents aren't particularly long though. So I think that we've got a little bit of flexibility. It'd be good to finish this agenda item in a half hour.

And Keith just one last point before I hand over to you is that I may need to leave the call at 9:00 in an hour. I apologize for that if that does come to pass.

But I'll need - I'll just be seeing if Steve DelBianco can help me out with the chair.

So if there's a change in chair you know why and if there isn't you know it's because I'm stuck here. And Keith over to you.

Keith Drazek: Yes, thanks very much Jordan. Hi everybody. This is Keith Drazek.

So I've got two public comment summaries to review. The first is the Section 4 fundamental bylaws which is Page 33 of our second report.

And I should note just special thanks to James Gannon who volunteered to help coming up with this summary. So he actually did the drafting work and the summary work on this part of the summary.

I will run through it cause I don't think he's joined the call at this hour. And then we'll move to the second of my two which is Section 7.2 discussion of the standard bylaws.

So for everybody's reference, the quoted language that you see here was pulled from our executive summary, just to remind everybody what it is we're talking about, you know, what it is, you know, related to the fundamental bylaws that we're proposing.

So in the areas of consensus the public comment summary on fundamental bylaws a total of 17 comments were received by the CCWG that directly addressed fundamental bylaws.

Strong support for the concept of enshrining fundamental bylaws into the ICANN was received in all of the comments.

General support was received for having a high threshold requirement to change any fundamental bylaws.

Okay, the establishment of the bylaw relating to the SCWG as a fundamental bylaw. I guess that should be the CCWG as a fundamental bylaw received support from all commenters who referenced this bylaw.

So I think in the interest of time it's important to note that there was strong support and I think clear consensus on the requirement to have the ability to approve the fundamental bylaws.

Okay I'm scrolling down. So areas needing refinement. There were - I'll just run through each of these because there aren't very many.

So we received a comment from (Caston) Manufacturing noting that any changes to ICANN bylaws must not preclude it from being subject to US laws both state and federal.

We further noted that the fundamental bylaws should contain a requirement to act in the public interest and not in the interest of the corporation of its stakeholders in the event of a conflict.

Okay the BC noted the CCWG's proposed community mechanism as sole member may not be the right body to launch a separation working group since the protocol community IETF may not be represented. So this is clearly a reference to the dependencies with the CWG proposal.

And the suggestion was that the ICG specifics that a separation working group if ever needed would include the IETF regardless of whether that group was participating in the community mechanism.

Next area, a number of commenters requested a clearer and more easily understood definition of the process including any consultation steps such as the community forum.

I think this is something that we expected. This particular one is something we expected coming out of the public comment period, an acknowledgement that the, you know, that we were going to have to provide a fair amount more detail and explanation to help fill in the gaps and make it more easily understood.

And we received a comment from (ilig) noted that deadlocks caused between the board and the community on changing fundamental bylaws may require a stress test.

I will note that this is actually a similar comment to one received in the standard bylaw section.

Okay, the CC - sorry, the CWG stewardship noted that the reference to the IANA functions review may need clarification to refer explicitly to the IANA functions review and the special IANA functions review.

And then finally the ICANN board suggested that a bylaw be added to require a public comment period to be observed prior to all bylaw changes.

The board additionally noted that for all areas requiring further consideration by the CCWG such as the IRP the community should consider whether they

require immediate enshrining as fundamental bylaws or once there are additional process improvements needed.

Okay, so down to areas of divergence. The ICANN board noted its disagreement with the process of changing fundamental bylaws preferring not to utilize the sole member as proposed by the CCWG while supporting the general concept of requiring support from the community to change fundamental bylaws.

And the next area where there was divergence in the public comments was four commenters remark that Article 17 regarding ICANN's offices should be enshrined as a fundamental bylaw. And four comments believed that it should not so no clear consensus there or clearly no consensus there.

All right, options for consideration by the CCWG. First the CCWG may consider further clarifications in its communications of the process and methods by which fundamental bylaws would be changed or amended.

The CCWG should consider making an explicit reference to SIFR in the bylaw referring to the IFR process.

Third, the CCWG should consider the comments of the ICANN board while discussing the question of SMCM and any other reference mode that the CCWG may deliberate on.

The Stress Test Party Working Group, Stress Test Working Party may consider a stress test related to deadlock between the community and the board over changing of fundamental bylaws.

Next, given that the CCWG made the decision not to further examine the SCWG it may not require further analysis to respond to the comments of the BC with regard to the launching body of the SCWG.

Further clarification should be sought from the BC to assess if the current status of the work SCWG is sufficient.

Next, given the current divergence on the issue of enshrining Article 17 as a fundamental bylaw the CCWG may need to revisit this discussion and provide further rationale for their decision.

And finally the ALAC noted the following clarification for the CCWG to consider.

And it's a fairly comment there, Paragraph 259. The definition of the board threshold to approve changes to fundamental bylaws is unclear.

Most board votes are judged based on the number of members voting or abstaining but excluding those members not present.

For the approval of bylaw changes the threshold is 2/3 of all members. And I've got a glitch on the screen so oh, there we go, 2/3 of all members of the board.

Accordingly the threshold for approving fundamental bylaws should explicitly be 75% of all members of the board since available votes should be construed as just those present at the time. This matches the description in Paragraph 236.

So with that I will pause, happy to take any questions, any comments or feedback on the public comment summary on the fundamental bylaw section Section 4.

Okay (Steve) go ahead.

Steve DelBianco: Thanks Keith. As one of the Stress Test Team members I'll bring the ilig comment over on the deadlock number one.

Number two, you mentioned Article 17. And did you mean Article 18 on the US location that's in the bylaws?

Keith Drazek: I did mean Article 18. I apologize if I misspoke or misread the Roman numeral. I thought it was...

Steve DelBianco: Right.

Keith Drazek: ...17 up above. Okay.

Steve DelBianco: And on that point since it came from the Affirmation of Commitment Section 8B, the commitment to remain in the US the Affirmation of Commitments team did extensive analysis on the Article 18 as well as the comments for and against it.

And I distributed that about 10 o'clock Eastern time this morning. You'll see a whole section in there on that.

So let's coordinate so we both don't do the same work on Article 18 is fundamental. Thanks.

Keith Drazek: Okay thanks very much (Steve), very helpful. I appreciate you offering to take any of the workload, not like you don't have enough already.

Okay, any other questions or comments on the fundamental bylaws section Section 4? And if we don't have anything further to discuss here we can always take it to the list if anybody has any thoughts following this call. Alan and then Jordan. Alan?

Alan Greenberg: Yes thank you. Just a note on that very last one. That wasn't meant to be controversial. It was just pointing out some inconsistencies in how we worded things. Thank you.

Keith Drazek: Yes, thanks Alan. And I think once I got to the last couple of sentences there that became more clear. But yes thanks for calling that out and again something for us to focus on in terms of clarifying language and our explanations which I think is something that, you know, will be a requirement throughout this next phase of our work.

Jordan over to you.

Jordan Carter: Thanks Keith. I just wanted to thank you for doing work and for the presentation and just to ask a question.

How many comments again raised a concern about the methods of doing this that we proposed? Was it only the board?

Keith Drazek: Going back it was certainly the board and then the questions is how many others?

If we look at the areas of divergence there were only two. One was about Article 18 and the other was related to this particular issue. And that one came from the board.

So it's a good question. It's worth maybe another scan through the comments Jordan. But I think the answer is it was the board.

Jordan Carter: Okay thank you. I think we have to deal with the model on our next call, the model, "model"...

Keith Drazek: Yes.

Jordan Carter: ...and including in that the decision making process. And that will then shape ways that we need to change or not change all of these community powers.

So I just wanted to...

Keith Drazek: Yes.

Jordan Carter: ...check what the appetite was for a change here. Thank you.

Keith Drazek: Yes thanks very much Jordan. I think that's exactly right. You know, so it's probably important for us to flag or, you know, put a little note that, you know, this is one particular area that would be impacted by a change of model and something that we need to - you know, that we'll need to circle back on. But I think that's fairly obvious.

Okay, any other questions or comments on Section 4 before we move to 7.2?

Okay staff if we could put up 7.2, the standard bylaws which is only about half the length of the last one.

And again before we move on, thanks to James Gannon for doing the written summary of Section 4, very helpful - appreciate his work on that.

So once the document comes up on the screen this one should move very quickly because there was only I think eight comments and very strong consistent support with one call out I think from the board again about the model.

Okay. Staff is something coming up on the screen shortly?

Okay thank (Alice). Thanks (Brenda).

Okay, thank you. So public comment period Number 2, Section 7.2, the power to reconsider or reject changes to ICANN's standard bylaws.

And again I copied and pasted the section from the executive summary of our second report just as a reference and then focus on areas of consensus.

So a total of eight comments were submitted on the proposed community power to reject or force reconsideration of a proposed standard bylaw change.

All comments were supportive of this community power and no comments were opposed. The areas needing refinement, two commenters submitted suggestions for further work and/or consideration the first being ilig. And this is similar to the comment on the fundamental bylaws section that highlighted the concern about deadlocks and changing bylaws.

Deadlocks and changing bylaws or fundamental bylaws may require a stress test. We believe that it would be helpful to also explain the details of the legislation procedures in case of a deadlock during the amendment or enactment of a bylaw.

So again I think this is an area that would really require just a little bit more explanation of the procedures and the steps.

The second comment was from the ICANN board that agreed with the power and then said the board should not be instituting bylaw changes that are now supported by the community.

The community threshold to demonstrate an objection to a bylaws change needs to be agreed upon using the current SO AC structure as opposed to the voting mechanism opposed in the CCWG accountability proposal.

So again I think this is a reference to a desire to see non-voting and a reliance on the existing structures rather than the voting mechanism that had been proposed.

Okay and areas of divergence. The ICANN board supports the community power and acknowledges the need to establish mutually agreeable thresholds for its use but prefers “using the current SO AC structure as opposed to the voting mechanism,” included in the CCWG second draft proposal.

And both comments the board’s and ilig’s highlight the need for further consideration and/or explanation of the mechanisms for implementing and enforcing the agreed to community powers.

So the options for CCWG consideration, the CCWG may consider further clarifications around the triggers, thresholds and dispute resolution paths required for or resulting from the use of this power.

The CCWG may consider revising the community empowerment mechanism to rely on consensus among the SOs and ACs rather than voting.

And finally the CCWG may consider further explaining how a conflict or deadlock resulting from the use of this power would be resolved.

And that's the end of this section. This one was pretty easy and pretty straightforward. So let me pause and see if there are any questions or comments anyone?

I see that Kavouss has asked a question in chat asking Keith do you see that these two powers may be impacted by the model yet to be agreed or are they independent of the model?

Kavouss I think the - my response to that for both of these is that it will likely rely on the model as we're calling it.

And I think there's no question in either of these public comment responses that the powers are desirable or that the powers themselves are agreed to. There's strong consensus for both.

The question now is again an implementation question. And I think that does have some impact either with or from the model.

(Steve) I see your hand and then Jordan.

Steve DelBianco: Thanks Keith. On Page 1 where there's a discussion of the board arguing against what they call the restructuring right? They want to use the current SO AC structure as opposed to the voting mechanism. I'm confused by that and I realize the board wrote that probably very early in September.

Since then we've had many, many interactions with the board including Los Angeles. And what do we really think the board means by existing structure since all of us know that the CCWG's voting is all based on the existing structure, existing ACs and SOs where they would indicate their preferences with a certain weighting?

Do we think this is about concentration of power, something as Fadi has said before? Is it about the weighting or is it about the fact that we did it through a membership model?

And I know you can't answer all that but we have to consider what the board wrote in early September in light of the clarifications that they've given us since then so that we really are addressing the real core of their complaint instead of maybe a unfortunately phrase comment because we're not restructuring anything. Thanks Keith.

Keith Drazek: Yes thank you very much (Steve). And I think it's a good comment. I think you're right that it's the language in this particular section is a little bit unclear.

I know we've got some board members on the call today. I won't put them on the spot. But this is probably something where we could benefit from some further elaboration or maybe a little more specificity around the actual concern.

I - my takeaway was that it was, you know, a differently worded way of saying the same thing which was that they didn't like the membership structure. They didn't like the reliance on voting and that they preferred the SOs and ACs themselves to work presumably through a consensus process to, you know, a consensus process to initiate or use the power.

But I agree, I think this will be a worthwhile point for clarification.

I see George has said that he'd be happy to comment on this when we get to the board removal question.

George you're welcome to speak up now if you'd like. In the meantime I'll go ahead and take the queue. I've got Jordan then Alan then Greg.

Okay Jordan.

Jordan Carter: Okay thanks Keith. I just want to tell you on this level thing. If we - the model that we might choose if we were choosing training, a membership thing, a designator thing or the mem thing those will affect the enforceability of their power in the end. Because in any of them it'll be written into the ICANN bylaws and available for people to use.

And the point of decision making process which is independent of the model choice will also affect how this power is exercised.

So I think we just need to keep that in mind. We don't need to solve those in this discussion. And the - and that's kind of what I was intending to add except say also that I think we should reverse the items in the next agenda item to do board removal immediately following this one. Hence the two topics do kind of go together.

Keith Drazek: Okay?

Jordan Carter: Thanks.

Keith Drazek: Great. Thanks Jordan. Great comments and suggestions. Alan then Greg.

Alan Greenberg: Thank you. I was going to hypothesize on what I thought the board meant and the - and how it came about.

But if board member are going to want - or will actually answer the question directly then I'm - I don't - I'm not sure it's appropriate for me to try to read into their minds so I'll pass.

Keith Drazek: Okay thanks Alan. Greg over to you.

Greg Shatan: I was also going to comment on what I thought the board - well not on what I thought the board was referring to but rather on the fact that there doesn't appear to be a standard decision making methodology for cross community decisions as far as I know.

And we have the CCWG model which is an evolving model and not sure that it's, you know, precedent setting per se especially for these kinds of decision making efforts as opposed to the long deliberation process of a CCWG.

So again I'd be curious to know what they're referring to. Thanks.

Keith Drazek: Okay. Thanks Greg. I see (Steve) has put his hand up so (Steve) over to you. Thanks.

Steve DelBianco: Thank you. So it's been interesting listening to these suggestions about what the board might have been thinking about.

Let me try to make it very simple because it's - I don't think it's very complicated. There - it separates this into two or three interesting things.

First of all we're talking about the SOs and ACs exercising their power. And I don't think there was any fundamental issue there.

The issues instead focus on essentially two elements. One is the details of how many votes it takes and so forth. And I'm going to stand back from that. That's a - it's an important discussion but I - you know, I think it's just a question of seeing the thresholds properly.

The other is that - and here's the crystal thing I think about sort of what we're thinking about. How can we say yes to this and no to membership and so forth is that from our perspective the membership and equally the (their) model have two qualities to them.

First of all they effectively attempt to replicate what exists already. You can go directly to having the SOs and ACs in whatever combination you choose exercise the power that you're talking about.

And second of all it creates an additional structure that has some uncertain and potentially negative or unbounded side effects which is where all the argument is between the different legal teams.

So the force of our comment before I don't want to get into those big issues. The force of our comment before was very straight-forward.

It said look, you can do exactly what you're talking about directly by having the SOs and ACs exercise their power and just set whatever thresholds and rules you want and put those into the bylaws.

So it seems to me pretty straightforward. And if I haven't tried - if I haven't been able to simplify it for you then I'm willing to try again or to yield the floor to somebody else who could try.

Keith Drazek: Okay thank you (Steve). Thanks for weighing in and, you know, giving us a little bit more sort of elaboration or clarity.

I'd like to see if there are any questions or comments. Anybody like to respond or ask any follow-up questions?

There's some activity going on in the chat. I would certainly welcome people to weigh in. Robin I see your hands down. Greg you have a hand up from before. Steve I think your hand up is from before.

I have Robin and then...

Man: And for me.

Keith Drazek: ...Steve DelBianco in queue. Okay thanks.

Okay Robin go ahead.

Robin Gross: Hi. This is Robin. Can you hear me?

Keith Drazek: Sure can.

Robin Gross: Can you hear me okay? Okay great. So yes I'm trying to understand what is the heart of the board concerned with the designator model.

Again there were a number of powers in the membership model that the board was concerned about and wanted to constrain. But I'm not - I don't understand when the board says it has the same concerns about the designator model.

Because really the only additional power that confers is board removal. So is that the power that the board objects to with respect to designator?

I mean there is - there really is no additional structure that's created or if you think there is could you tell me what that is or if there's another objection to the designator model other than board removal? Could you explain what that is also please? Thank you.

Keith Drazek: Okay thanks Robin. Okay so while Steve or other board members want to consider that let me go to Steve DelBianco and then we'll come back for responses.

Steve DelBianco: Hi Keith. It's a follow-up to Steve Crocker's explanation. And Steve I'm looking verbatim at what the board wrote in early September which was the bylaws change needs to be agreed upon using the current SO AC structure.

So needs to be agreed upon would - are you anticipating that means you ask each AC and SO what say ye, yes or no and add up the yeses and compare them to the no's? Or did you have in mind a threshold or unanimity? And how would you guys say that you ought to count an AC or SO?

Let's say RSSAC we ask them what do you say about this bylaws change?
And they say no opinion. Have you guys thought through how we'd want to count that in this relatively simple mechanism?

And I realize sometimes we say we don't want to do voting but we still end up doing what the board said was figuring out if the ACs and SOs agree or don't agree.

So I was just putting aside the issue of whether there's any different weighting on RSSAC and SSAC. Let's leave that aside. There's plenty of people concerned about weighting.

But if everybody had a weight of one what did the board mean by needs to be agreed upon? Thank you.

((Crosstalk))

Steve DelBianco: Would you like me to respond to that?

Keith Drazek: Yes thanks Steve. So thank you Steve. Thank you Robin. We have a couple of questions queued up and Steve over to you. Thanks.

Steve DelBianco: Well just with respect to the last, I don't think we have a detailed suggestion about exactly what the formula would be.

The broad picture is that the thresholds should be pretty high so that there's stability in the system.

It's not fundamentally different from the discussions that have been going on within the CCWG about how to set those thresholds and what weights to give and so forth.

You know, you can look at it from an engineering point of view. And you're setting these - you're twisting these knobs and setting these thresholds. And then you stand back and ask okay, under what circumstances this is kind of a stress test look at it.

Under what circumstances will the system be too easy or too hard to make something happen that you wanted to make happen?

And, you know, as long as the thresholds are reasonably high and sensible to everybody I'm not sure it makes a huge difference.

In any individual case, you know, given the individuals who are in place sure setting a threshold that say 75% versus 80% you might get a different answer although I think you'd have to work very hard to construct cases where that would matter.

If you set the thresholds up at 100% unanimity well then it becomes extremely hard to make anything happen.

If you set the thresholds down at bare majority well then things get a lot easier. So our - we weren't really speaking to that. And I'm not sure that we have a hard view.

Sure individual board members will have different sensibilities about it. But we have not had that discussion. And I would say my take on things is that as

long as the mechanism is got, you know, sort of enough inertia in it almost anything you do will be kind of acceptable.

Man: And Steve just to follow-up any idea what you do when you ask an AC or SO and they have no opinion? How do you count that? Is that a no or is that agreement or do you ignore it?

Steve DelBianco: Well let me turn that around. In order to go forward from where we are you're going to need agreement among the SOs and ACs that exist.

And so I think rather than us saying we want it to be so many SOs and so many ACs and if the SOs or ACs drop out well then that counts as a no or it counts or it doesn't count and so forth. We could do all that.

But why don't you ask each of the SOs and ACs how they feel about it and see what the consensus is across there.

And if there is some commonality, if there's an area where they're all in rough agreement I can imagine that the board would have no particular problem with that.

I can't say for sure. I have to look at what the results are. But, I can easily imagine that you don't want a situation in which an - which say and S AC says we don't care and your rules are so tight that their affirmative assent is required for unanimity. That would be maybe setting the threshold too high.

And on the other hand for example in the board we have a rule that an abstention is treated the same as a no vote. But that's different than if you're actually absent.

So when we have votes you have to have a majority of the people who are there and abstentions and no votes are counted the same which is a - you know, raises some interesting issues about why do one versus the other. And it's usually to make a point as opposed to affect the outcome.

I would just say think through all of those. Pick something that seems sensible, you know, not too easy to gain and you're in the right range.

Keith Drazek: Okay thanks very much Steve. So this is Keith. We need to move on. I'm already over time by seven minutes. But we have a couple of questions that were posed.

Robin asked a question earlier that I hope you've had enough time to consider about the sort of resistance or objection to the designator model.

And I guess if we could try to keep that tied to the discussion at hand which is the public comment on the bylaws, the fundamental and standard bylaws that would be helpful.

Then we'll go briefly to Kavouss. And then Alan I saw your hand go up then we need to move on.

So the question is to Steve or any board members that would like to respond to Robin's question about the opposition to the designator model.

Jordan Carter: Sorry, can I jump in here? It's Jordan here. And I'm conscious that we flagged that we're going to be discussing that question at our next call.

And I think there's a problem if we (lapses) that topic now for two reasons. One of them is that there are quite a lot of people interested in that problem

and they might want to be participating in the discussion and we've told them it's not happening today. We told them it's happening tomorrow.

And the second is that we do have work to do in this call that we're not doing if we spend time talking about that topic.

So Robin with the greatest of respect and sharing your view to understand the question now is not the right time to discuss it and I'd like to suggest that we don't.

Keith Drazek: So Jordan with that I'm going to hand it back over to you. I think we've wrapped up the discussion on the Section 7.2 in Section 4. And we will continue our work to consolidate the recommendations for CCWG consideration.

Jordan Carter: Thanks Keith except there was still two hands in front of you.

So Kavouss and Alan as long as you're not wanting to talk about the model or decision making in the model and please add your contributions now. If those are what you want to talk about the next call is definitely the time to do it.
Alan?

Alan Greenberg: Thank you. That is what I was going to talk about but very briefly. And I will not be able to be on the next call.

I was just going to point out to Steve that the survey that he suggests we do we have done. And we have the answers to the extent that they're available that they're available right now.

Five of the groups have definitely said something. Two of them, one of them is still consulting and the other one has been silent. Thank you.

Jordan Carter: Thanks and thanks Alan. And thanks everyone. Thanks Keith for that presentation. It's always nice when there's a nice tight document to look through and that was good.

Thanks everyone. I'm sorry Robin for being a bit directive about the topic but we're tight on time at the best of times. We need to focus. You know, we need to focus our attention on what we need to get through.

And the next topic on the agenda is gone from my computer screen. But I think we said - I was suggesting swapping the order of the two items.

So if we were to agree to that and the next topic is the review of the changes that have been made to the board removal comments.

And for the life of me I can't remember right now who it was who developed that. I think it was Steve. Steve was that you?

Man: Or Greg.

Jordan Carter: Greg. That's right, it was Greg. Thanks. So I think that that's been circulated in the last few minutes actually, an updated document and by Greg that deals with this.

And I hope - I think staff might have it because they're uploading something.

So may I turn it over to Greg to take us through that, the changes? Thank you.

Greg Shatan: Sure. I'll go through the - help us turn and face the changes of this particular document.

The first change really comes up on Page 4. Basically in this case I removed the two items which had kind of crept into this but which really were related more to the removal of the individual board members.

And on our call we decided that these would be dealt with as part of the analysis of the right to remove an individual board member. So as you can see this - those are gone.

The next change really doesn't come until the last page which is Page 6 which is the options for consideration by the CCWG.

I see a question in the chat from Jordan. Do the pre-service letters need to go into the individual director removal paper?

I would say yes because they are intended to be used for removing each director as well as for removing all directors since the essence I believe of the account of the board's suggestion is that the removal of all directors is essentially the removal of each director simultaneously.

So the pre-service letters go for one or go for all or go for each rather since each one would have their own individual letter.

And (Mike Sartia) says he has it in the current individual papers so it looks like we are in alignment.

So with regard to the areas of - I did not change anything in areas of concern and divergent. And really this - so we come to the options for consideration by the full CCWG.

Here again retained the suggestion that we need some more clarity around standard for the selection of the interim board. This should probably be - it should be clear that these are not intended to be part of the bylaw but supporting documentation.

And we may - I may add it here that we will - we should probably review and borrow heavily from the - any criteria that exists for the selection of board members presently since the idea is to as near as possible replicate the same, you know, level of talents and scope as the current would have.

Two and three disappeared. Next we have the clarifying consequences for failure of the community to meet process requirements as we had one commenter who noted that there were no consequences for failure to meet any of the requirements in the process, the goal, the principle, the deadlines.

And that was a fairly high level comment so I think it seems to be we - either we deal with that in more detail in WP1 or we throw it back to the full group to see if there's an interest in exploring that. You know, or we consider that to be essentially an implementation detail?

Or is that one of those things that although it may seem like implementation is necessary for kind of understanding of and comfort with the proposal since people tend to fill gaps with worst case scenarios or at least with a variety of different imaging.

I think this relates - two and three in a sense are related making time periods less rigid which in essence, you know, lessens the need for consequences of - or in essence penalties that the number two is suggesting.

So, you know, this another thing for the full group to consider unless we think this isn't, you know if any of these should be removed from consideration now is the time to say that we should run a red line through them as well.

So kind of moving through them I think let's just start back on number one. Does anybody think that number one should be removed from the options for consideration?

Jordan Carter: Sorry Greg, as has been pointed out by Kavouss I made a mistake. My intention was that we would work through the individual director paper from Mike and then reprise this whole board recall paper and then move into a combined discussion with George at the top of the queue because he's asked to.

But in my haste I over sketched the individual director recall.

Keith Drazek: For those of you who know Emily Litella I will say never mind.

Jordan Carter: So ladies and gentlemen with your permission I would like us to go and work through the paper on individual board recall and then to have a combined discussion if people are okay with that.

And I hadn't meant to reverse the order of both of those topics. And that was just a mistake. And so Mike I see that you're on the call. Would you be able to take us through the paper on the removal of individual ICANN's boards members?

Mike Chartier: Certainly. I...

Jordan Carter: Apologies everyone for getting the order wrong.

Mike Chartier: Certainly. I see it's displayed. If we can move to the third pages where the first two are just background. The third page is where we have substantive new information.

And with regards to the public comment there's - there were 32 and who rate the issues specifically. I believe all there was one contra statement by IT Law Turkish Institute but I think they were talking about the entire board. It wasn't clear.

So we have consensus on the power anyway you call it. Now half of them, largest block was unqualified. So as the proposal as written they supported.

Four commenters were just looking for some clarification or added requirement. And two as we spoke wanted some (pre) per poor behavior established where the proposal was done.

One had concerns with the provision - I guess you might call it double jeopardy that if a member survived the call they couldn't be - they're indemnified against the - against another call. So I thought that was interesting, you know, why we would do that.

And one just stated a timing issue that directors would call within eight months. There's not enough time to vote in another one. So they - they should not be replace for that, you know, that term.

Areas of concern, the biggest areas of concern have to do with the SRAC that was originally appointing the director be the sole person to remove them.

And sixth commenter said, you know, this is serious. They saw this as maybe shifting it into more parliamentary type situation where the directors would be, you know, more parochial and more beholden to their community if they did something like that.

And then the other was for cause. And we had multiple commenters that wanted some standard of behavior adopted. And then of course the board proposed to put that standard in pre-service letters so the people serving would know exactly, you know, the commissions under the - under which they would be serving which didn't seem unreasonable.

And then another one, you know, pointed out that - and we had the comments in LA that if you - you could have the situation where if you removed a number of these at one time it could be equivalent to removing the entire board.

So then moving on to the options in order to deal with the concerns raised about having SO ACs as the sole determinates in their board director, you know, it's true that they're not supposed to represent the community. However there's a reason why we had them, you know, appoint their directors right?

And so you want to retain that, you know, that bias in there now I think.

So, you know, a way forward might be a combination of or mandating that the SO AC is involved and maybe some additional. It could be all the way up to the process we used for the non-com or with the situation that, you know, one

of the 75% had to be the appointing SO AC to something much lower SO AC, you know, plus one other.

Related is to establish a standard of behavior and to document that or cause for, you know, reciprocal or cause for removal in P service letters. It might be the case that if we adopt number two and establish the cause or establish a standard of behavior maybe that would be enough to assuage the fears that the SO ACs, you know, have this singular power meaning those people that objected to that that the recognize that the SO AC can't just recall her for any reason. Maybe that would, you know, make them feel more comfortable about just the SO ACs having that power. I'm not sure.

Then - and finally I think we want to look at the timing a little bit so that you can have the part, the issue where there - we'll have a batching effect or maybe like three member versus or eight board members might be recalled all at once.

I think we could do that just with limiting the number of members that can be recalled at some time.

So I'm - floor is open now just want to - okay, George is that...

((Crosstalk))

George Sadowsky: Thank you. Am I off mute?

Mike Chartier: Yes you are.

George Sadowsky: I hope so, thank you. Three points quickly. Mike you said something about wanting to retain bias comparing the parliamentary versus the oversight board.

I think probably what you meant was you really want the members from a given constituency to understand the history and the concerns of that particular constituency and be able to reflect them appropriately in your decisions as opposed to a bias which I think means a slant with perhaps no reason.

Second and regarding a standard of behavior in the bylaws - sorry, standard of behavior there is if you look in the bylaws requirements for directors.

And I'm wondering if that isn't sufficient or if it isn't sufficient maybe it ought to be in the bylaws.

Third if you look on Page 1 of your paper which I have displayed in front of me there was a suggestion made by in the board comments to take item 2B at the bottom of the page, representatives of the appointing and removing SO or AC must explain blah, blah, blah. This is the rationale that was mentioned yesterday.

The comment was that should be a 1B. In other words that when a call to a director - to remove a director is made or even before it is there should be at least some kind of a rationale publicly given why this process is beginning as opposed to holding it until the forum sorry, the forum is constituted. Thank you. If any of that's not clear please ask questions.

Mike Chartier: No they're all crystal clear. Just with regards to the first one with regards to bias that's exactly what I meant.

When I talk about bias I'm talking in the process to remove the - a director, the SO AC appointing him would have a bias.

The - in that process they would have - in the current process they have all the power right? They have the ability to remove them all by themselves. So that's the bias I'm talking about.

So I think I actually said that in the larger explanation that it's not that the director you know, themselves have a bias. They just understand the community that they're coming from and they're bringing that perspective to the board. So yes I..

George Sadowsky: Yes thank you. I understand that and I agree with it.

Mike Chartier: Yes. Okay. Robin I see you're next.

Robin Gross: Thank you. This is Robin Gross. Can you hear me okay?

Mike Chartier: Yes.

Robin Gross: Okay great. Yes I really want to draw some attention to some of these claims that we're hearing that we need to be able to show a certainly narrowly defined cause or causes in order to be able to remove our directors.

I think that the public comment is overwhelmingly in opposition of that that members or designators can recall their individual board member anytime that they feel that that board member is not performing adequately.

And that's the way the statute was intentionally designed. That's the way it's supposed to work.

I mean we're all grappling around trying to come up with new accountability mechanisms when here the statute has provided one to us and we're saying we don't want to use it. That seems a little odd to me.

It's the most fundamental accountability mechanism we've got to be able to pull the board members who are not performing.

So I think it's really important that we think about this distinction between cause and rationale. I think we all agree that rationale should provide and opportunities to answer for and rebut and have an appropriate process. We can all agree on that.

But what there is significant resistance to and frankly it's not going to change is the idea that there's going to be some kind of narrowly defined cause that stakeholders must sink into if they want to be able to exercise their lawful rights to recall a board member that isn't performing adequately.

So I think it's very important that we include the need to provide a rationale but we not confuse that concept with narrowly defined causes which could unduly limit our ability to have the organization managed in the most appropriate fashion. Thank you.

Mike Chartier: Okay. Robin what do you think about the idea though of standard of behavior? Do you think that we could construct the standard of behavior or...

((Crosstalk))

Robin Gross: No actually I don't. I think that again that's trying to set up a series of narrowly defined causes. And I - or narrowly defined behaviors if you want to call it that.

And I just think that that's not what the statute has provided us and we should make use of what the staff provided us before we think about trying to create and invent entirely new mechanism.

So I think that the burden...

Man: Whoops.

Robin Gross: ...should be on anyone who wants to change that power away from what the statute has provided to show that it - that they must. And frankly there just isn't any support in the community that could be called consensus to try to narrow it.

Mike Chartier: Okay. Cherine I think you're next.

Cherine Chalaby: Hello? Can you hear me?

Jordan Carter: Yes.

Cherine Chalaby: Yes? Okay, thank you. I just want to talk about point four in your - in the current proposal which says that only the SO and AC that appointed the director could decide on that director's removal.

When we were in LA quite a few of us and I believe Kavouss was one of them and perhaps Tijani as well and others we expressed that we do have a concern with this.

And the reason is very simple. The bylaws are very, very clear. They say when a member is appointed to the board the member has to act in the collective interest of all stakeholders, not the single interest of a single stakeholder.

And therefore once you're on the board your mindset and everything you do have to be looking at the public interest, looking at all of the stakeholders and not be captured by the organization that appointed you. Because you can see how dysfunctional a board it would be if that would happen.

So I believe that if you're appointed to serve the entire community the decision to remove you has to be by the entire community.

References we've made to other companies like public companies and said that the shareholders have the right to remove their director yes, yes. And you know why? Because that director is not following their orders.

And guess what? That is exactly, exactly the behavior we don't want in ICANN.

I mean we are here ultimately to serve the billions of end users. And when you're on the board you have to really be in the mindset of protecting these end users all over the world.

And you have to act in the best interests of all of the stakeholders, not a single one. So I would really urge you - urge you to consider please the removal of individual director. Why I support the removal of individual director - I'm not against it but I'm against the process that's being described here which makes that individual director has to follow the orders and be captured by the SO and

AC. I think if the community makes that decision, I'm totally supportive of that. Thank you.

Mike Chartier: Thank you Cherine and yes, I think I brought up that that was the most serious concern however there's a difficulty. If it's not the case that there's value in having, you know, an SO AC then the SO AC the ability to appoint someone, you know, from their community then there's no reason to do that. We just have all the directors, you know, appointed through the NOMCOM.

We see value in allowing, you know, a particular SO AC to appoint a director and there seems to be - and personally there seems to be value in giving that SO AC some, you know, additional power with regards to its removal.

Cherine Chalaby: May I respond to that?

Mike Chartier: Sure.

Cherine Chalaby: Yes, sure. For this board to be really functioning well and acting in the collective interest of all stakeholders, there have to be people with experience of those various stakeholders who understands what's going on. So you enrich the board with all of these experiences so that the decision in the end that the board takes isn't dangerous of all the stakeholders. It is therefore that stakeholder who comes with that very rich experience of a particular sector or a particular organization has to act for that organization, no.

He or she brings that experience to enrich the decision so eventually when we make a decision, it is a decision in the collective interest. And, you know, the bylaws are so clear on that. It's so clear. It's black and white. It says when you appoint a director to the board, understand that you're appointing the director to act in the interest of all stakeholders.

So that's why the SO and AC have to put people who have this experience and not just the NOMCOM who brings independent directors like myself in from the outside who don't have that experience. And it's that combination that creates the right balance for the board. Thank you.

Mike Chartier: Okay, thank you very much. Tijani you're next.

Tijani Ben Jemaa: Thank you very much. Tijani speaking. I will begin from where Cherine finished.

As you remember very well from the beginning, I was opposed to the removal of the board member by the appointing bodies and they explained why.

Everyone explained why and I will not repeat that.

You remember very well in Paris at the end of the meeting I was angry because people said - some of the reporters said that the majority was with this removal by the appointed bodies and I said we are not working with the majority. We are working with consensus and there wasn't a call for consensus. There wasn't a vote so we cannot say there is majority and that's why - that's how the forum - the committee forum came to make it - to make the removal more - to give an opportunity to the board to remove the actor to explain his case and to oblige the SO or AC who will remove the board member to explain why.

So the removing the board member by the appointing appointee for me is not for the benefit of ICANN and of the stakeholders. It is for the benefit of the appointing bodies and this will also make a different - a different statement between the board members because people who are - board members who are appointed by the NOMCOM will not have the NOMCOM remove them. They

would have the committee remove them. So why we don't do the same thing for all members?

Other point - (Robin) said that the membership or the stakeholder - the designator models - the designators or the members have the right to appoint and to remove the directors. You remember very well that we explored every kind of these models and we refuse the full membership. We refuse the full designator model.

We went to the sole member and then the sole member - it is the sole member who has the right to remove so it is the whole committee who have the right to remove the director. At which time we found in our group unfortunately ways to make the appointing body be the sole body who can remove the director and I always opposed on that and I continue to oppose on that.

Coming back to the rationale and the causes. I am against the causes because if we make the list of causes, this will open the way for an endless appeals from the remove the actor. We - but I do and I strongly support the rationale. This is the minimum.

I think that is the standard behavior - how you call it - it is something very good and I think it exists already but it must not be only causes for removal. We may have a behavior that is not in those - in this - in those behaviors and that will perhaps cause the removal. Thank you.

Mike Chartier: Thank you all.

Steve DelBianco: Hey Mike it's Steve DelBianco. Jordan kicked it over to me to manage the clock on the last pre-discussion.

Mike Chartier: Okay.

Steve DelBianco: So could you get through - you see the goal here is for you to get through all of your first reading of your analysis of the public comment so that you get comments from a lot of us in order to do a second draft potentially as early as Thursday of this week. So in keeping with that can you wind this up in another 12 or 13 minutes by getting all the way through your document?

Mike Chartier: I think so. We're all the way through the document. There's only three more hands up so I am going to - if I could close the queue at that point and just take the next three points - the next three in. So (Greg) you're up.

Greg Shatan: Thanks. Since I think the point of this exercise is to go through the public comments and understand what the comments are telling us rather than to reargue the underlying points, I'm going to wave my time here. Thank you.

Mike Chartier: Okay. Thank you. Mr. (Arasteh) are you on the line?

Kavouss Arasteh: I am unfortunately - thank you very much colleagues and Mr. (unintelligible). My name is Kavouss. Thanks again.

I think people push too much on consensus. I don't remember that consensus has been emerged. We have always rejected that. It is unconstitutional. Why? Because the board - board means the group of people that they discuss, act and perform the duties in the collegial manner, not serving a particular region, a particular designation, a particular group of the people.

They have to safeguard the interests of the public and I give examples in the chat. If a GNSO director does not meet the expectation of the GNSO but who will meet the requirements of all AC's that do not participate in the

(unintelligible) or may not participate in holding but still that board member should be removed. Why? Because he acted not in favor of a particular group but acted in favor of the collegial manner of the entire community.

Chairs, I'm sorry but it is unconstitutional. I have never seen in any other area that they have type of the board that they want to form - not to form - they want to estimate or they want to judge the behavior of the individual. They have to do it behavior of collegial actions. They are responsible collegially.

If it goes to the community if the GNSO has sufficient argument to satisfy everybody that this board member not only does not act in favor of expecting the requirement of GNSO but also does not act in favor of expecting the requirement of the whole community then it should be removed.

So what is the problem that we put it on the collegial view of the community? So what is the problem? I don't understand that. Unless you want to give some favor to somebody and if you come to the voting, you know that very, very probably the AC may not voting and among the three SO's and one AC maybe two or three. So we captured by a minority among the entire majority to remove one or two directors. It is not constitutional. We have to correct that. Thank you.

Mike Chartier: Okay, thank you. (Alan) you're the last one.

Alan Greenberg: I'll be very quick. My personal position is I think AC's and SO's should be able to remove them - remove their directors - but I can live with the community doing it also.

I'd just like to point out the illogic in some of the arguments that have been raised. At this point since people are up for renewal after three years, this

means they're only going to act in favor of their community for the six months or nine months before their reappointment. So if they're going to do that, they're going to do it anyway. It just changes the period of time in which they do it.

And number two - if people are that malleable that are willing to cow cow to their AC SO just to be reappointed and just to stay in office then the AC and SO is likely to pick someone who's going to listen to them even without the threat. There's plenty of malleable people around here who will simply do what they're asked to keep their friends. So I think the arguments are a little bit specious in some cases. Thank you.

Mike Chartier: Okay, thank you Alan. With that (Tasha)'s going forward. I'll send forth a summary of our discussion here and if not suggest solutions, right - key up the relevant points to see if we could come up with something that might be acceptable to the community. Looks like we have substantial divergence on a couple of points but I'll circulate something to the group shortly and I think Thursday I'll be responsible for a second draft so that's what we'll work to as Steve mentioned earlier.

So with that, I'll give it back to you, Steve.

Steve DelBianco: Thank you Mike and in the second draft when you think you have a resolution for something like clarifications and refinements, put it in italics or something in the document so you know what you're proposing us to approve. The same is true for divergent. If you're proposing the WP1, go one way or the other on a divergent to put it in italics and of course if you want it to go to the full CCWG, you're really just teeing up the question. So thank you very much Mike. We'll look forward to having another draft from you for our Thursday call on October the 8th. Thank you.

And with that, we're going to turn it back over to Greg Shatan. This is the topic on recalling the entire board. I'll ask the staff to load Greg's document. Greg, do you remember where you were so you can return to talking us through the changes? Let's try to wrap this up in no more than 20 minutes. Thanks, Greg. Over to you.

Greg Shatan: Thanks. We should go directly to page six of the document and the list of options for consideration by the full CCWG. I think what we should do here is decide in these cases whether we do want to bring these options back because they represent the - a number of comments or worthy suggestion or both and whether we want to adapt them in any way.

So I will look at the first one first - creating standards for selection of the interim board. As we discussed a little while ago and on the first call, we should probably rely to the extent possible on existing standards for the selection of board members and indicate where those standards need to be modified or waived such as the geographic diversity standard although obviously it can be an aspiration but not a standard. And if there are any additional standards, somehow that the current board standards don't capture then we should add those.

So I can draft a couple of sentences that capture that and if there's any opposition to putting it that way or to putting this option back to the full CCWG, now would be the time. So seeing no comments on that and no hands, that's how I will handle that first item as Steve DelBianco was saying.

Steve DelBianco: Yes Greg, I will defer to you as to what time to bring this up and in what area of this document but warning on the leaders call. (Byron Holland) has said something like if we were to consider doing anything later on, there needs to

be something iron clad about the ability to exert the community's will upon the board and that led me to raise the question do you believe that the spill the board powers that you're articulating here are truly iron clad in a variety of models from member to designator to letters that board members sign ahead of time.

And I realize it's not expressly a public comment analysis but it will be relevant to all the work we do between now and Dublin. So please consider that it may not be relevant to the document but its part of what we need to hear. Thank you.

Greg Shatan: Thanks. I'll mull that over as we run through these. I think that goes to the larger issue of whether the powers are powers or whether they are privileges. Second suggestion was that there should be consequences if the community fails to meet the process requirement but no consequences were actually suggested by the commenter. So questions whether we should call - bring back to the full CCWG the idea that we should consider and institute consequences or indicate that there are no consequences if goals, principles or deadlines in the process are not met.

And I would note that goals, principles and deadlines are three rather different types of requirements - probably a one size fits all approach doesn't make sense. So this is somewhat of an open ended topic but it does indicate kind of a lack of detail as to what would happen if the process breaks essentially in some fashion. So any thoughts on whether this should be expressed differently than it is and perhaps adding some of the additional verbiage that I just went through?

Steve DelBianco: Greg, its Steve. At this point we're on page six where you're articulating the areas where we want to put it to the full CCWG and so they won't be that

familiar with this topic because they won't have read the first five pages. So it strikes me that in all of us we're drafting these analyses. Wherever we're putting something to the full CCWG, we probably need to add - we need to add enough context so that the questions like this consequences question are digestible by people who haven't been part of any of these discussions. Thank you.

Greg Shatan: Steve, that's a good suggestion so I'll add some context or prefatory language I guess to each of these so that they can be kind of set up in their own - in their own way and they may be somewhat redundant and stuff in the first few pages but that way at least this section can kind of stand on its own.

The third suggestion was the time period should be less rigid generally speaking and that tight timelines could open the process to capture presumably because some groups are more easily able to respond to tight timelines than others. And specifically that the 120 day period for selection of the replacement board to replace the interim board might not be sufficient and that should be treated as a target rather than a deadline. That seems like a fairly straight forward suggestion. So I don't see any reason they should not be brought back to the full list.

Next, one commenter noted that there could potentially be a failure to agree on interim directors. So I think that we need to at least revisit the process for selecting interim directors to make sure that it is a process. So that will come to an end since I guess if the interim directors are being - need to be essentially in place before the power can be exercised, the consequence of failure to agree on interim directors is failure to be able to exercise the power. So that's a fairly important thing to eliminate.

Another general comment was that the process was labyrinthian and cumbersome and should be simplified. So again I think that requires us again to kind of take a look at the process and how we've explained it to see if it's overly dense or twisted and see if we can at least make it clearer or at least an expression.

Steve DelBianco: Watch the queue.

Greg Shatan: Steve.

Steve DelBianco: Yes, thank you. On the previous item or on this one - a simplified process - it strikes me that that's not a vote or a consideration option for the whole CCWG. That might be a refinement. I realize it's not the same as doing the work but I don't know why we'd want the whole CCWG to indicate yes or no on the notion of simplifying the process. That would be just my feeling.

And then on the eliminate the potential for failure - item four on page six. If we put that to the full CCWG, we can't just ask yes or no on eliminate potential. We would probably need to articulate how we would minimize that potential and so we would come up with a WP1 consensus I hope on what we think the improvement would be to address this concern. And maybe you think that should go to the full CCWG but a yes/no question like that isn't going to get us any further down the road to describing a workable mechanism. Thank you.

Greg Shatan: Thanks, Steve. So your suggestion is that these should essentially be self-contained with both context, problem and proposed solution in each item. Is that a fair characteristic?

Steve DelBianco: Yes, I think so. And if the proposed solution to minimize the potential on deadlock, we would probably want that proposed solution to be discussed here on the WP1 calls that remain so that it represents the WP1 consensus that we're now presenting to our brethren in the CCWG. Thanks.

Greg Shatan: Fair enough. Thanks. Tijani?

Tijani Ben Jemaa: Thank you, Greg. I think that we still need a deadline for the appointment of the interim board. Yes, perhaps it could be (unintelligible) not the deadline but we need it in time because the organization cannot lead without board for months which would be a catastrophe.

I think that the process and the procedure of appointing the interim board and leading with an interim board with a reduced interim board is already a problem. So we cannot add to this problem and we need this time to appoint it. Thank you.

Greg Shatan: Thanks Tijani. I think that the way this actually works is that the interim board needs to be essentially ready to go before the power can be exercised. So there will not be a time when there is no board. The issue is only how long will the interim board serve should there be a deadline of 120 days for the interim board to be replaced by the replacement board or should that be a target so there isn't kind of a rush that could possibly result in a suboptimal replacement board.

So I don't think there is any risk in our plan of a board-less ICANN but we'll...

Tijani Ben Jemaa: Sorry for the confusion, okay.

Greg Shatan: I'll just clarify that. Alan Greenberg.

Alan Greenberg: I was just going to say basically the interim board has to be identified when you vote - when you say you want to identify the whole board - provide your interim board members. That's a parallel operation. It's the replacement board, not the interim board that the 120 day deadline was set for. Thank you.

Greg Shatan: Right and I did correct that in this draft. So I think number six is the suggestion that there should be a standards for the board that this group should put together. I think that, you know, (Robin) touched on in her comments on the individual board member topic I think. So the question is whether we believe there should be community standards for the board separate from whatever standards are, you know, given to the board by the corporation.

And here clearly we're suggesting it's in WS2 so I guess under the DelBianco formulation I am released from creating actually a list of potential standards to be considered. So the question is whether we want to suggest that there should be standards from the community for the board.

Steve DelBianco: I think that makes sense, Greg.

Greg Shatan: Fair enough. It is, you know, a suggestion so we will put that forward, you know, with a little bit more context as a suggested WS2 item. Last but not least one commenter suggested that the threshold for total recall should be 80% of an increase from our current suggestion. We can certainly, you know, turn that suggestion back but obviously we went through a big process of coming up with the numbers that we do come up with. So we can look at it but it may not go very far. George.

George Sadowsky: Yes, thank you Greg. I wanted to comment on that. I was looking at the comments yesterday about recall percentage and I posted something on the list about this by the way and I'd like to go over that. I think if you take all of those comments, nobody has suggested that the criterion is too tight. There have been suggestions that it shouldn't exist. There have been suggestions that the criterion should be tighter.

Clearly if this happens - if the board is recalled, it's a nuclear event. It's - the consequences are going to be international. They're going to be destabilizing and this is not business as usual. It's a cataclysmic event.

My suggestion is to view this question and to make sure that a capture doesn't occur is that the criterion shouldn't be a percentage of votes because if you have 80% of the votes for recall, you have 20% of the votes against them and the problem with that is that this might make very attractive the idea of removing the board as a way of settling differences and disputes between the stakeholder organizations within the community and that's - from my point of view that's not acceptable.

You really want unanimity and I would argue that the way to get that is to forget about the model, forget about the voting but put it up to the constituencies directly. If all the constituencies say the board is not functioning, the board ought to walk. I would also apply that to the individual board member but we talked about that.

If two of the constituencies say the board is functioning and the rest say it isn't, you've got something going on which is not really due to the board. It's due to the issues that are in discussion and the way of settling it by getting rid of the board is the wrong way to do it. So I would strongly argue to take this back to the CCWG and for further discussion. Thank you.

Greg Shatan: Thank you George. Steve?

Steve DelBianco: Yes, I wanted to address what George is suggesting with respect to the threshold. I - whenever we put it to the full CCWG on the notion of threshold, we should always clarify what do you do to count abstentions counting whether we are in a binary situation where each AC and SO gets one and only one sort of vote which is a yes or no or whether there's any weighting because I realize that our thresholds Greg were devised in an era when there was weight associated with the AC SO's and I realize that most of them weren't equal weight and two of them were lower weight.

But it isn't enough to just say 80% without clarifying whether you're talking about one per AC and SO and how you deal with an abstention. And George's suggestion for unanimity might be listed as one of the options but even George needs to clarify how abstentions are treated in unanimity.

George Sadowsky: I can do that right now.

Steve DelBianco: Please do.

George Sadowsky: If you have - if you include all of the AC's and the SO's, I would argue that you need say five or six positive responses from the SO - the collective SO and AC population. I think there's seven right now.

If you're restricting it to members only if there is membership which I would argue against, then I would argue you need all but one to say positively this is a good idea. We back it. But and so abstentions disappear because there's a couple of AC's that don't respond very well very quickly and we understand that but so that's why you want a positive abstention, throw the bums out and

if you get enough of those then it works. If you don't get enough, it doesn't work. And we could argue about what the limits are but that's a different argument from saying the mechanism isn't there. That's what I propose.
Thank you.

Greg Shatan: Thank you George. Cherine?

Cherine Chalaby: Hello, can you hear me?

Greg Shatan: Yes.

Cherine Chalaby: It just struck me when I'm reading the recording of the entire board and compared this to the individual board members that recalling the entire board is a higher threshold by the community as a whole rather than individual SO and AC and an individual SO and AC cannot recall the entire board and make that decision.

Maybe I missed it but is there a back channel by which the entire board can be removed by a lower threshold by just removing the individual board members individually. You see what I mean? So there has to be something in the - recalling the entire board to say that this can only be done as one action rather than by individual action through the back channel of the lower threshold.

I don't know if I expressed myself very clearly but it just struck me that there is - that there is a gap here that needs to be closed. Greg, do you understand what I said?

Greg Shatan: Yes, I do Cherine and I think to some extent this is reflected in the suggestion that the board made which is crossed out number three here that the removal of the majority of directors should be subject to the same thresholds as total

recall so that basically you could not stack up a series of individual removals and create a removal of the board kind of by one by one. So I think that...

Cherine Chalaby: Provided that the decision to remove individual board director is the same group of people that take the decision to remove the entire board. That would be consistent. Whether you remove one board or entire board as the same group via the community and it was the same threshold then that would be consistent. I agree with you.

Greg Shatan: Well I think that there may technically still be an issue even if the board - individual board members can be removed by the entities that appointed them which is what the California nonprofit law contemplates with regard to designators. So that's - so I think the point in this sense is well taken either way that you don't want a kind of - as you say - a kind of a back channel or an end run around these requirements because, you know, clearly if every appointing member, you know, decided within a period of a week to remove their board member, it's hard to believe in massive coincidence and clearly it's likely that they're either kind of cooperation or, you know, possibly just incredible disgust but more likely coordination.

Cherine Chalaby: But I think the CCWG proposal ought to say something about this that there's no back channel.

Greg Shatan: Well we can make a note of that.

Cherine Chalaby: At least in the bylaws.

Steve DelBianco: Two minutes, Greg.

Greg Shatan: Thanks. Kavouss?

Kavouss Arasteh: Yes, two points Greg. You observed perhaps from the board comments the removal of the majority of the board member. What do you mean by majority - 50% plus one, 2/3 of the board member? This is one point.

Second, how this removal of majority will occur in reality. That means one by one or several SO or one AC at the same time remove the director? It could happen. How possibly it could happen that but in any case it really is possible that it has happened or it will happen. You should have a definition for majority, number one.

Number two, something is missing in the entire process of voting in and only in the act of voting and that is the quorum of voting. Steve DelBianco tried to explain it in the second proposal but it is not clearly mentioned. We should have the same threshold for the quorum. Removal of the entire board requires that the quorum of the voters of the same criteria as they decide that these either 75% or 80% of the people should participate in the voting and within that 80% have participated in the voting. 80% should vote in favor or against (unintelligible) 64 or 65 comes to that.

That is something that is missing and I still has not yet clearly described how this quorum of voting will be established. If only three out of the seven or two out of the seven participate in the voting, there is no quorum majority. So how that could be affected even if they have a (unintelligible) of 90%. 90% from two or 90% from the three - that leaves 12% of the entire - a 12 vote of the entire 29. So something Greg is missing and we have to address. Thank you.

Greg Shatan: Thank you.

Steve DelBianco: Greg, we'll have to leave it at that and hope that the next draft will pick up on that, okay.

Greg Shatan: Yes, that was 2 minutes and 15 seconds so I have no time. Thank you.

Steve DelBianco: Greg, thanks again for the write up and I think that if the third draft of what you've got comes up on our next call or two, it won't take very much time at all because you'll just be surfacing the items that you're clarifying and flushing them out for full consideration. I really appreciate that.

Staff, can I get you to load the second draft on affirmation of commitments? Public comment please. And then also tea up (Rinalia)'s email as the second thing to load. Alright team, we can go directly to page two. There's nothing new on page one which is just the summary and if staff can give us each individual control scrolling, that would be helpful. Go to page two everyone, please.

Alright, there are five areas needing clarification and refinement. At the end of each item I put in italics what I took from our call on Monday to be what WP1 thinks the refinement should be. So this is your chance to say Steve, you got it wrong, that's not what we meant or indicate objections to the proposed idea that we have in here.

So the first one was that we believe that the text of the affirmation of commitments - number seven - commitment number seven should go into the ICANN bylaws just like we proposed in our first draft but it was inadvertently left out of the second draft.

I see Kavouss and George you still have your hand up. I think that's from the previous (unintelligible).

George Sadowsky: Okay, okay.

Steve DelBianco: Thank you. Are there any objections to the proposed text in italics? And this is a refinement that would not go to the full CCWG. It's the WP1 answer. Great, no objections.

Number two - the review teams. We were asked to clarify who selects the candidates and who appoints them. And so I recommended based on your conversation that you all had the other day that we will inform the commenter that the AC's and SO's select the candidates and the AC SO chairs then selects the members but that does not have to be reflected in the document. It's only in the response to the public comment. Any objections? Go ahead, Alan.

Alan Greenberg: Not an objection but the current review teams have experts on them or people who are deemed to be experts. Are we ignoring that? Are we discarding that all together deliberately or did it get slipped between the cracks?

Steve DelBianco: Alan, if you go to the page 74 in our second draft, the experts are delineated on every review team. So we do anticipate that the experts are in there and I can read it to you but that's not part of the membership of the review team.

Alan Greenberg: Okay, so you're differentiating that way. Okay, thank you.

Steve DelBianco: Well right, this is the way we covered it last time. Here's what it says. It's paragraph 519. Review teams may also solicit and select independent experts to render advice as requested by the review team and the review team may choose to accept or reject all or part of this advice. So we leave it to the review team just like we did here on - in our first - in our second draft. So

that's not even up for public comment. I mean nobody commented on that so I wasn't going to bring it into this discussion.

Alan Greenberg: Okay. It's Alan. I'm just pointing out that that is different from the current process where there are experts who are appointed by the current selectors. I don't have a particular issue with it. I'm just pointing it out.

Steve DelBianco: Right. So any objections to number two? Great. Thank you. Let's go to number three.

There was a clarification requested on our paragraph 507 which has to do with whether we would disrupt any AOC review that was in process and here's what I got from the discussion on Monday.

I think that all of you want us to clarify that the new review rules such as the appointment of experts, the sharing of confidential information, the transparency of reporting - etcetera - that new review rules would prevail as soon as the bylaws were changed and any in progress reviews at that time could adopt the new rules to the extent that was practical.

I mean you can't go back and start over with a brand new review team composition but they might pick up on the confidential document access. And then I also said that WP1 agrees that a plan review should not be deferred just because the new rules allow a longer cycle time and thereby if the community wanted to do a review sooner than five years from the previous one, that would be allowed under the new rule.

So this clarification would say that if there was ATRT3 scheduled for 2016 and it was already planned and then July comes around and we adopt the new rules for the AOC and it says no more than five years, well that doesn't mean

that suddenly the ATRT3 gets booted two years down the road because our proposed new rules - our cycle time allows it to be sooner. It just says you cannot wait more than five years. Are there any objections to this clarification number three? Fantastic.

Clarification number four is about taking action on recommendations, okay. This was a comment or we wanted to retain the current AOC words which mean take action whereas the CCWG proposal was that the board would consider and begin implementation. So here's what I got from the discussion we had. It's at the bottom of page two under number four.

I said that we believe that AOC's requirements for the board to take action from the AOC as in practice meant that the board would consider the recommendations and either approve or explain why it would not approve. This CCWG text gives the board six months to consider the recommendations and begin implementation of the approved items. So I'm saying that I don't believe we have to change our text with potentially an explanatory note to that effect. I'll take a queue on that one. Go ahead Kavouss.

Kavouss Arasteh: Yes, I agree with that but I think we could put some qualifier in and if they - unless otherwise specified will be six months. It might be cases that there is an important issue and those who recommend that ask for earlier implementation but not six months.

If you put this expiration which has been in many, many other places in other areas, I do think the term unless otherwise specified and...

Steve DelBianco: Specified by who Kavouss?

Kavouss Arasteh: If it is specified differently, that specification shows that within three months or immediate action. Is it possible that you consider that, please?

Steve DelBianco: Kavouss would you clarify who is it that's specifying otherwise? Is it the review team itself in the report?

Kavouss Arasteh: The team that they put the recommendation because of the nature of the issue that this requires immediate implementation or implementation earlier than six months. It depends on the type of recommendations. There are many, many subjects and there are different degree of importance and priority. So they recommended or recommending entity would put that on this otherwise unspecified. That is up to them if they deem so necessary to specify another period - another timeframe than six months.

Steve DelBianco: Right but if the timeframe is shorter then we are imposing an obligation on the board where we're writing a bylaw that is not specific. The bylaw is empowering any review team to require immediate consideration and implementation. So we'll all have to consider that Kavouss. This is the first I've heard of this idea and I'll put it in the next draft of this document. Thank you.

The next one is on number five - I'm sorry - there is a queue on this. So Alan Greenberg, go ahead.

Alan Greenberg: Thank you very much. The six months was there because some review teams in the past have said you must do this within two months or something like that and it was totally outrageous. On the other hand it is conceivable a review team might explicitly ask for longer time for one reason or another so we may want to have a little bit of wiggle room there but we really don't - we really need to be really careful about imposing shorter timelines unless the board

explicitly and typically the board participates in these processes unless they explicitly say yes. But I find that really problematic to do it in less than six months. Thank you.

Steve DelBianco: Alan, I think both Kavouss and you are - would be satisfied if we simply clarified that it says up to six months so that the board could take it less than six months because you're suggesting that the board would have to agree. So it's up to six months. Agreed?

Alan Greenberg: You're already saying within. That's up to. That's the same thing. I'm just pointing out...

Steve DelBianco: We've already got that covered.

Alan Greenberg: I'm just pointing out that it is conceivable that some review team might want to explicitly make it a longer term. I think it's an edge case and I don't think we need to worry about it.

Steve DelBianco: Agreed, agreed. Steve Crocker.

Steve Crocker: Well you've covered much of it. The actual process when the recommendations come in from review teams is that they get subjected to a whole series of steps. How much resources will it take? Is it clear what's meant? Who would be in charge of it? What would be the plan for doing it and so forth? And all of that takes place prior to - prior to the board making a decision as to whether go forward. It also includes recommendations from the staff, an analysis of what the impact could be on the organization and other things.

So the decision whether to go forward or not with a given recommendation is not just let the time pass and then oh my goodness, we have to say yes or no to it. There's quite a bit of stuff that happens and I understand and appreciate that that's usually not so visible. We tried what we can to make it more visible over time.

I think the six month timer is appropriate to say, you know, don't let that process languish. Make sure that you get a decision and so that's perfectly comfortable. But I think trying to say that the recommending body has the authority to impose the implementation breaks the model that there is a very important proposed disclosed tension here.

All of the review teams and indeed advice from other supporters have to be subjected to the ability to say no if there's something flawed in it and having all of that in public and visible I think is an extremely important part of making the whole system work. Otherwise you have an unbridled tendency for any group whether it's a review team or whether it's an expert group or whether it's one of the advisory committees to start developing the notion that whatever they say must be opposed and they become legislative bodies in their own right.

Steve DelBianco: Thank you, Steve. I think we've had three counter opinions to Kavouss's idea of allowing them to shorten the timeframe within six months, gives the flexibility to do it sooner but the obligation in the bylaws is they cannot wait longer than six months to take it up.

So I think we move onto number five which is nothing to do. I'm not proposing anything. That's an informational item. And number six - number six on review team transparency. We discussed this extensively on Monday and what I recounted here is on page 75 and 76 of our second draft we already

have an obligation that the draft report from the review team has to describe the degree of consensus that was achieved. Let's check that box on the public comment.

And the second item is that on page 76 we say the draft report will be published for public comment and the review team will consider the public comment and amend the review as it deems appropriate but what we didn't have in here was what the public commenter asked for was an explanation of how the public comments were considered by the review team.

So if we agree with this public commenter then you would follow what I put into italics because we would add the words that the final report should include an explanation of how public comments were considered. And it was my - my best judgment from the discussion that we had on Monday that that's what most of you wanted to do. Is there anyone that objects to that reaction to the public comment? I see two hands - Crocker and Kavouss. That means you're objecting to this change? Go ahead, Steve. Kavouss are you objecting to this change?

Kavouss Arasteh: No to that one but I have to sort of comment on number five. If you will allow me, I can come back to that but first dealing with number six - I have no comments on number six. But I wish if you allow me to come back to five.

Steve DelBianco: Kavouss thank you. Five is not a change and it wasn't even something that would be...

Kavouss Arasteh: Yes but it is not what we usually say. We could not use personal pronouns - we, you, our and so on and so forth. We should replace them by CCWG and in the second one what do you mean by unprecedented access? Do you mean full access? What is unprecedented? What is precedent and what is

unprecedented? This is something that we just - and you told me you could replace it by something that really you mean. I think you mean full access in number - in two (unintelligible) that the CCWG or AOC and review team full access to the ICANN internal documents. Do you mean full access by unprecedented?

Steve DelBianco: Alright Kavouss thank you. Let me answer. First of all I will change all the personal pronouns. I appreciate that advice. The second thing is it is not full access. We devoted a lot of time at WP1 on a full page of what access looks like. It's an entire page on access and it is on paragraph - page 75 - called the confidential exposure to review teams and its not full access since the board incorporation could indicate no, we're not going to give you access to this but we're going to explain why.

So it's not full access and it is unprecedented because we've never had anything like it before but I am happy to use a different word. If you want to come up with one, just email it to me and I'll plug it right in but thank you Kavouss. I'll change the personal pronouns.

Alright folks, let's move onto the next page which is the harder stuff which is areas of divergent and we only have five minutes - areas of divergence. The good news is we only have four of them, right.

The first is this notion of should the ATRT be recommending amendments and sunsets for the other reviews. I'll cut right to the italicized text because it sounded like you folks were pretty solid on this one. You said that we would agree that each review team would be able to recommend amending or sun setting its own review and it shouldn't be subset. I'm sorry. It should be sunset its own review as part of the report. So that's a change to the affirmation of commitment bylaws.

But we would retain the ability that the ATRT - I think that (Aubrey Doria) used the word overarching review team - is still also able to amend or sunset other reviews and to recommend new reviews. Are there any objections to giving each review team the ability to recommend sunset or amendment? I guess we'll start with Kavouss and then Alan. Go ahead Kavouss.

Kavouss Arasteh: No, no comment. Sorry.

Steve DelBianco: Thank you Kavouss. Alan?

Alan Greenberg: Yes, just that the wording should be that the ATRT can recommend amending or sun setting. The ATRT has no power to do it itself.

Steve DelBianco: Agreed, Alan. I had recommended the first sentence.

Alan Greenberg: You have it in the first and the last but not the middle.

Steve DelBianco: Catching that. No objections from the group then. Okay, this is a significant change and I'm glad we were able to accommodate the public comment no longer a divergence. The next one - number two - on the who is directory services review text. We discussed this one and I realize not a lot of you had a chance to review it but we were hoping that you would prior to today's call.

The proposal here is that work party one would agree with the board's proposed text for the who is in directory service review. This was circulated by (Bruce Tonkin). Steve Crocker was the first one to bring up the idea that the board had some changes to it, that the BC was fully in support of the board's new words but I want to suggest that we retain our proposed method

of the cycle timing as measured from the initiation of review as opposed to the conclusion. Any objections to adopting this?

And Greg, in particular I called out the IPC to take a tight look at the new language so that we know whether you're comfortable. It's a very slight change to the way we address who is. Thanks everyone.

The next one - I wish (Rinalia) were on the call because she would be able to speak to this. This is about the commitment to implement the affirmation of review recommendations before the next round of PTLD's. So I have expanded the text here to make it clear what this was all about is that the affirmation of commitment - the document we're working under today - already obligates ICANN to adequately address issues of competition, consumer protection, security, stability, resiliency, etcetera. That is already in the affirmation of commitments.

And so what we did for our second draft was operationalize that in paragraph 575 to say that the subsequent rounds should not be open until the recommendations have been implemented. The word implemented is not the same as the word adequately addressed so I understand where people are paying attention to this and I also understand that the registry constituency - while they didn't comment on it in the public comment - is pretty concerned about it right now as well.

So I don't know what exactly to do with this one but I put a straw man proposal in there that we would propose to retain the original commitment and keep the text there. (Rinalia) sent an email around just a few hours ago where she's suggesting that the board ought to retain the discretion about which of the recommendations it would implement before moving forward with the next round. I'll quote (Renalia).

She said the board will decide which of the CCT review recommendations must be implemented before moving forward with the next round. So the question is do we leave it to board discretion so the board will figure out what it means to adequately address. And if you believe that, we would strike paragraph 575. If you believe we want to obligate implementation of the CCT reviews, we would retain 575.

It's also possible that we boot this to the full CCWG. There's only one minute left on this call and I don't want to drag everyone over so I've got a feeling we should just suspend this discussion now and I'll try to get in the queue for our next call to pick it up right on this one and I hope that (Rinalia) can be on as well.

So we are out of time on this one. We'll just break here. And I'll let you know that our next call is scheduled for Thursday, the 8th of October at 0500 UTC and I'm scheduled to discuss the community forum. (Mathew Shearer) is going to lead us through that document. And the community - the model, right - CMSM. (Robin Gross) is going to lead us through that and I believe (Robin) has already circulated a document on that too.

That's what's on tap for our next call and we'll probably do second readings of (Jonathon Zook)'s budget document after integrating Cherine's changes and we can probably go to a second read on (Keith)'s bylaws document and potentially get to Mike's single board member removal.

I think that's it for now. (Unintelligible) what I didn't get to point out to you is that on the last page - page five - I did cover article 18 as a fundamental bylaw so feel free to borrow that text and bring it into the work you're doing on

fundamental bylaws since the AOC group is just recommending to go to the full CCWG.

Are there any questions about the agenda coming up for our next call? Supermodel - that's the right way to think of it (Robin). I love that. Alright everyone, thanks for all of your patience in working through this and thanks to the contributors who drafted everything. We'll talk to you on Thursday morning. Thank you. With that you can terminate the call.

END