

---

DUBLIN - CCWG-Accountability Face to Face Meeting  
Friday, October 16, 2015 - 08:00 to 18:00  
ICANN54 | Dublin, Ireland

LEON SANCHEZ: Okay. So good morning, everyone. Can we have the recording started?

Okay. So it's started.

Good morning, everyone, and welcome to the CCWG face-to-face meeting in Dublin where we'll be, of course, having the roll call with those attending the AC room, and if there is anyone on the phone bridge that is not in the AC room, can you please state your name at this point so we can add you to the roll call.

Okay. So we seem to be having problems getting into the room. Okay. So we'll ask staff and I.T. to please have a look at connection issues in the AC room because there are many who are, indeed, in this room that are not being able to access the virtual Adobe Connect room. I see that Becky is in that situation, also Sebastien Bachollet is in that situation, and a lot of -- Alan is too in that situation, so there are many people that are actually trying to get into the Adobe Connect room and are not being able to do so.

So please give us a hand with that.

JOSH BAULCH: If you guys will notice, the URL for this particular meeting is actually different. It's not [icann.adobeconnect](http://icann.adobeconnect), so you'll see that it's [meet16733133](http://meet16733133), a wonderful easy URL to remember.

---

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

---

It is actually for -- just for this particular session that we had to change the URL due to capacity, so that we could accommodate more than a hundred people in the Adobe Connect.

So this will be -- every time you guys are in this particular room, this will be the URL.

So I do apologize. I know that's confusing.

LEON SANCHEZ:

Okay. So just please make sure that you're trying to access the correct URL for this meeting room.

And, yes, you can see it on your screens.

Okay. So we have a full day of work today ahead, and it is important for us -- or for everyone who speaks to please state their name before speaking, for transcript records and of course for those who are joining us remotely to identify everyone on the Adobe Connect room, and, well, the usual rules for these meetings.

Remember that we have -- we don't want to use a timer but we do have one and we are willing to use it anytime.

So please keep your interventions concise, one subject per intervention, and of course please do observe the rules of behavior either on the Adobe Connect room or here in the room. That is something important for us. We've been always polite to everyone, so let's keep it that way.

And I would like now to turn to my co-chair, Mathieu, for an important message.

MATHIEU WEILL:

Thank you very much, Leon.

---

Mathieu Weill. I'm the ccNSO appointed co-chair.

Welcome, everyone. I don't know what this says about me but I'm actually pleased to see a number of you face-to-face.

[ Laughter ]

It does mean a lot about my life, I guess.

We are ahead of not only an important day of work but a full week. Very, very full week. And I've been speaking in this group about turning points in the past, and I think that might be another one, so -- and at least I hope we are all in this period of turning this in a positive manner so that at the end of this week we are happy with the way we've used this significant amount of our time and of our resources.

And obviously, lately I think there's been a lot of traffic on the email list, but also outside of our group, and I would paraphrase a famous -- I think it's British -- character saying that the rumors of our failure were greatly exaggerated.

>>

Yet.

MATHIEU WEILL:

Yet. Thank you. Thank you for asking -- for adding this.

If you look at the scorecard that we've been updating based on the public comments we have received, we're not in red.

There is a bit of red, but there's also green, there's a lot of things to refine, but there's a lot of common ground.

---

And this is the product of what we've achieved through our work being thorough, fact-based, requirement-based, and listening to the public comments so far.

We've had a first round, we've listened, we've adjusted. And now we've had a second round. We've listened. Now comes the time to decide where we're going from there.

And I think that's a very important aspect of our meetings this week, that we base our work on the public comments, on the statements that are on the record, not on the noise that's taking place outside.

And we also need to remind ourselves what kind -- what type of achievement we've had.

We have significant support in the public comments on very substantial enhancements, on very substantial proposals, and in itself, in a consensus, bottom-up, multistakeholder world, that is already quite an achievement that we need to be proud of and that we need to build on because it's an achievement and it's an asset that we need to keep in mind when we move through this week.

But very soon, maybe tonight, maybe tomorrow, we'll know. We'll know whether this week we are -- whether we have reached another turning point or whether we're in danger of facing the gridlock, which is definitely what we need to -- what we need to avoid.

I'm sure you're all convinced of that. I just wanted to reaffirm the importance of this meeting and the responsibility that we share with this, just in case you were not aware, and just adding a little bit of pressure in the room so that everyone's focused.

---

And I'm seeing -- I'm not seeing that many smiles now. That's good.

So we've prepared a very busy agenda for the day. It's based on the -- off the understanding and analysis of the outstanding work that's been conducted in the last few weeks by the work party volunteers and rapporteurs. They really did an outstanding job at looking at the 90-plus comments, some of them more than 80 pages long, but quality, quantity obviously are not what matters. We went through all these comments and treated them fairly, and that's to the credit of the volunteers that committed their time to this exercise in a fact-based approach, and I think that's one of the key assets from this process.

So with all the traffic and the analysis taking place, we read all this, and basically our -- we were figuring out how to approach this. And the conclusion we drew was that currently there are too many moving parts in the proposals, too many options still being considered, for us to be able to finalize some key aspects. Dependencies are everywhere. Of course in an accountability framework you have dependencies. Everything depends on everything. So we cannot provide some of the refinements until we've set some of the basic principles of the process. We cannot clarify the process, how we go to the last-resort mechanisms, until we've defined some of the basic rules.

So we are suggesting an approach today where we will focus first on the most contentious and open issues that are the founding bricks for the accountability framework, and we want to clarify a way forward on this. "A way forward" meaning something that we will use as the basis of our investigations to then flesh out and refine the other aspects and then take a step back -- we can step back and look at whether the whole picture

---

is consistent enough, is solid, meets all the requirements and the criteria and so on and so forth.

So we want to limit the number of the moving parts as far as the key bricks of the accountability frameworks are concerned, and so we'll start with basically the most contentious issues.

In the scorecard, we'll go from red to green. That's our approach. And most of the morning is going to be devoted to the most contentious issues: The decision-making -- I have this here; it's also on my screen so that's better for my neck -- the decision-making mechanisms; the implementation model discussions; the board director removal power; and the budget.

And we also -- and then obviously we'll have lunch in the middle.

But that's our approach. And then we'll go through the others. And we'll go -- for the yellow, green ticks part of the scorecard, we will try and use an approach of: Present, discuss, and either confirm or defer. So it's, what, present -- PDD or PDC or whatever. We'd like to add another set of acronyms, if that's possible.

So for the refinement aspects, either we have agreement and some form of consensus and we put it on the list for first reading kind of agreement or we defer to working group further work and we have breakout sessions tomorrow. So that's something we're going to use a lot in the afternoon where you see the slots are smaller.

But this morning, we want to tackle the big issues and we want a way forward, which means that we use a particular option as the reference model, as the reference option, so that we can finalize the others.

---

In terms of approach, obviously at the end of the day our hope is that when you look at the scorecard as a whole, where there's some green, some red, well, I hope that because we are in Ireland it's going to be all green. Maybe not all green, but at least the green, it's going to be greener, and then at the next session greener and then -- and so on until the end of the week.

So that's our hope, and with that, I'm not sure whether there are any questions yet, so I'm turning to Thomas.

THOMAS RICKERT: Thank you. Good morning, everyone. This is Thomas Rickert, the GNSO appointed co-chair.

And while staff is bringing up a few slides, let me just say that I'm quite disappointed partially with the support that we're getting from ICANN these days. I spoke to Theresa the other day. She said, "Do you need anything for this meeting," and I said, "I want a 20-piece big band to entertain us during our coffee breaks."

Do you see it here?

>> No.

THOMAS RICKERT: You don't, so -- but joking aside, we've spoken a lot and applauded the community for what they've done, but I just wanted to emphasize that we would be lost without the excellent staff that we have to support us, so let's just give them a round of applause.

[ Applause ]

---

Okay. So the way that we're going to go about with this has been outlined by Mathieu already.

We're going to start each of these discussions with a quick rapporteur report on the public comment analysis and the options that the sub-teams came up with to address the concerns voiced by the community, but we've also asked the rapporteurs to specify an option that in their assessment of the community feedback could be an option for the group to move forward, and we're then going to seek support from the group for these approaches.

But let's take a step back for the moment and look at what we really need to do.

This is not the time to come up with entirely new concepts, with entirely new ideas that everyone needs to digest and needs to fully analyze that need legal memos and stuff like that.

So let's build as much as we can on what we have. Our work products have undergone an evolution. We've walked forward, then we've walked back a little bit, and then we refined. So let's see this as an evolutionary process, so ideally, we would not come out of this meeting with an entirely new set of ideas, but we would just take the evolution of our recommendations to the next level.

And while doing so, let's try to remove as many concerns as we heard from the community as possible, while checking that when we remove concerns, when we tweak, we still meet the requirements that we agreed on way back in Frankfurt.

So that's essential, and let's keep that in mind, because there is a linkage between what we're doing here and the time we need



---

to deliver, so the more familiar our group and the community is with what we did, the easier it will be for the community to buy into the refinements that we agreed on.

Next slide, please.

When we're talking about community empowerment, I call this the triple E approach. This is obvious to everyone, but let's just refresh our memories on that, because we're -- there's been a lot of talk about the third area, the enforcement area of the community powers, while we have two more phases, and I think we've failed to make sufficiently clear in our report that we're going to strengthen and make part of the game what I've called the engagement phase.

So the second phase, the escalation phase, this is what we've discussed, but people thought that we would jump to escalation immediately whenever we do something, which is far from correct.

So we're going to have an engagement phase first on the budget, on other areas, between the community and the board, and the better that works, the less the risk that we need to go to the escalation phase. I.e., discussing the community powers. And the better we are in those two areas, the lesser the risk that we will ever need enforceability.

Next slide, please.

So let's keep these three distinct.

And also, I think what we should bear in mind is that we need to fulfill key features, and they have been themes that came up over and over again from all areas of the community.

---

We need to come up with a concept that avoids capture, that avoids concentration or the reallocation of power, we need the system to be inclusive -- which is sort of mirroring the concentration of power part; if you're not inclusive, you're concentrating power somewhere, so we need to be more inclusive than we were thinking earlier and we need to be efficient. We need to make our recommendations workable, implementable. They need to hold water in ICANN's day-to-day operations. And again, this is just a reminder in bold that the better we are in phases 1 and 2, the less the risk that we will ever need that. If we bake in these four principles into the first two phases, I think we will have less friction or less -- less divergence on the third area, the enforcement area.

So that is just to set the scene. I'd now like to invite Jordan Carter to the table. He's the unfortunate guy that's now going to have a Herculean task of guiding us through the outcome of WP1. And most of the contentious areas are actually in WP1. So thanks, Jordan, thanks so much for all your hard work and your team that I think has been outstanding and we're looking forward to your report now.

JORDAN CARTER:

It's all been really easy. Good morning, everyone. Jordan Carter .NZ and the rapporteur for Work Party 1 on community empowerment. I hope you're feeling empowered. The first topic on the agenda is the -- I've forgotten the name of it as it is on the agenda. The decision-making mechanisms. And I'll take you through a brief scan of the public comments and then make a couple of other comments before we open up the discussion, which Thomas is going to chair.

---

In the PC tool, the helpful one that the staff did, there were some comments in the model tab on the sole member model and one of the points made from the comments, there's a lack of consensus on the voting allocations and composition of the community within the model, e.g., the role of advisory committees. And in the voting/forum tab, voting slash forum, the next one, 39 of the 92 public comments exactly and specifically addressed this question of how we make decisions. Only 13 of those were in support, 11 were in disagreement, 12 had new ideas, 7 had concerns, and 2 were neutral. And so, you know, as people analyze this -- and I want to thank Avri and Robin who did the -- the work in pulling this together -- if you go to page 24 of this paper that's flying past you on the screen, yeah, so in the second tab in the areas needing clarification or refinement, there's this point that there must be a minimum number of SOs and ACs participating. So people were worried about participation, making sure that a small subset of the ICANN community doesn't start exercising these powers. And then flowing over page 24 onto 25 in the areas of concern and divergence, I draw your attention to three of the statements made there. There's a lack of consensus on whether communities should take decisions through formal voting or through establishing consensus. There's a lack of consensus on the voting allocation between the SOs and ACs. Comments were concerned about a range of things, dilution of authority of the SO community, some support in favor of the same allocations of authority and influences there are in the allocations to the ICANN board, and there were some concerns about dualities, the tagline, that second paragraph on this page, in terms of dual roles for the GAC. And so that -- that piece, the comments on this decision-making mechanism were part of the broader thing.

---

We didn't split them out, the broader comments on the mechanism.

And so I just want to wrap up with a couple of other points. We know that voting happens today in ICANN. A lot of the SOs and ACs do come to decisions through a consensus discussion and then they kind of rubber stamp it with a voting at the end to make sure their decisions are clear. And that was what we had in mind with the second draft proposal, that there was going to be -- whatever process, each SO and AC used to come to its decision and then it would rubber stamp it. And if you remember the only reason we allocated votes to people within the community mechanism, there were two reasons. One was that we wanted to distinguish between some SOs and ACs and others. So it was a question of relative influence. If you want to have different weights of decision-making authority, you have to have some way to distinguish. And the other one was to say to each SO and AC, you don't have to be yes or no. It doesn't have to be a binary choice for you, whether you support the exercise of this power. If you have diversity within your participants, you can reflect that diversity into the decisions that are being made.

Now, at the Los Angeles meeting one of the constructive things that happened was the breakout sessions on decision-making and the community. And I might, if you think it's useful, Thomas, get Steve to give a report back on -- is it Steve or Jonathan? Jonathan to give a report back on how that went. But if there's a view that consensus rather than decisional voting is the way to go, there's been a discussion about how that can work. And personally, I don't have a view either way. I'm supportive of us exploring the consensus model because it can head off some of the concerns that were raised in the -- in the -- in the public comments. And the challenge -- whatever the

---

decisional thing is to make these powers hard to exercise because they only happen after a consultation engagement process has not worked and after kind of dialogue and reconciliation hasn't worked and after the true -- the start of a discussion about using these powers hasn't worked. So these are all last-resort backstops. But they have to be able to be used. So you need to make them hard to use but not too hard to use, and that applies whether it's consensus based or voting based. So I think, Thomas, that's kind of the flavor, again to summarize. There are concerns with the mechanism, with the weights between people. There was a useful discussion in LA about maybe shifting to a different model, and we think we should be up with that. WP1 doesn't have a recommendation on it because we didn't get that far through, but that's my intro to the topic.

THOMAS RICKERT:

Thanks very much, Jordan. And we were actually thinking of reviving Jonathan Zuck in his capacity as rapporteur of the breakout sessions on decision-making. So Jonathan, would you like to speak to this a little bit? You can come to the table, if you would like to.

JONATHAN ZUCK:

Good morning. I'm married. That's my -- that's my news.

[ Applause ]

And I -- I can express no better dedication to this process than being here while my new bride is back in the hotel, you know, making -- having vacation in Dublin while we're doing this. Okay.

---

[ Laughter ]

What a way to begin a new marriage, right? So what we did in Los Angeles is we had a series of breakout discussions where folks got together in small groups to just kind of brainstorm about what a community activation mechanism consensus building mechanism might look like. Because it's -- it seemed important to flesh that out a little bit so it didn't feel like some light switch you could throw on in a whim which makes the whole process seem less approachable.

And so I put together just a couple of slides. The first was to provide a little bit of context, right? And so for lack of a better term I call this the accountability timeline. So if you look at it, there's these different phases that happen. And pardon the late night graphics, if they do more harm than good.

So the first, I called it consensus position development. I wanted to say policy, but that's a term of art at ICANN. But it's, you know, what's the position. And so this is sort of the status quo. These are the processes that we have in place now for consultations, for policy development, et cetera, that -- whether it's budget development, bylaw changes, review team recommendations, et cetera. The processes that ultimately lead to some type of board action, right? So those are the processes that exist today. And those processes exist in an environment of continuous improvement, right? So, for example, the ATRT1 made a recommendation that we should have a reply period for public comments because they thought it would lead to more debate between the commenters. And for a number of reasons, that didn't work, and that's being rolled back. But that was an experiment in this upfront process of position development, again for lack of a better term.

---

So then the next phase, if you will, is the Board resolution. The codification of this, the justification for the decision made by the Board. These are elements of transparency, et cetera. And again, this is somewhat of the status quo but something we're talking about a little bit in this process.

Then the next phase of this that's more optional, if you will, is the community objection process. So that's what's new, right? So that we've gone through the consensus-based position development and the Board has, you know, come out with an ultimate resolution to that position development, if you will, and justified it. And now the community wants to take issue with that. So there's going to be an objection by some individual, and I'm going the talk about this more in the next slide, some consensus building, and then ultimately presentation of that consensus back to the Board.

And then the last part of this is the arbitration or enforcement component of this accountability timeline. So at the very tail end of this, if the first three arrows, right? The reason I did the arrows that way is that ideally, the very first arrow would just go straight through. That's the normal process. You would make it all the way to implementation at each of these levels. But you bring in the arbitration enforcement at the very end if you have an issue and the Board and the community are sort of are at loggerheads and that's when you bring up reconsideration, IRP, or some form of arbitration, whether it's with an arbitrator or in court, it's still some type of arbitration, right?

So that's sort of the final phase, if you will, of this overall timeline. And the reason I wanted to show this is it's a very long timeline. And then if you go to the next -- oh -- so if you click here, this area I've circled is really what has been the focus of

---

Work Stream 1's work. And it's -- it's really kind of a fuzzy line, a dotted line, et cetera. But the objective here wasn't to go back and revisit the consensus position development processes as part of Work Stream 1. There was a recognition, whether you want to call it Work Stream 2, 3, 4, or simply continuous improvement there was a recognition that there would be more development at all phases, you know, in the immediate future and indefinitely, that these processes would be continually improved. So this process has peeked a little bit into the Board resolution process in that there are some requirements for justification of decisions and some additional transparency, but for the most part this process that we've been engaged in has -- on this timeline begins at the point at which the Board's made a decision with which the community disagrees.

And I think this is important because as we go through the comments, there's a lot of comments that would say, wouldn't it be nice if instead we had this better process for getting to the Board's resolution in the first place? And I think that's there's broad consensus about that as well. That would be nice. And I think we'll be working on that, you know, for the foreseeable future, to improve those processes in which the community is engaged in the position development process. And there's already improvements, et cetera. Okay? So what we're focused on in this, because of the limited timing and the limited requirements of Work Stream 1, we're -- we are focused on just the point at which there's a disagreement.

So then go to the next slide, please. Click. Is this the -- to give me a sense of what it's like to be married?

[ Laughter ]



---

>> (Off microphone).

JONATHAN ZUCK:

Okay. So the next slide, if you could see it, is an attempt to bring together the results of those subgroups in LA and to talk about a process that seemed to kind of percolate out of that. And it's a multi-step process. And so as you can see in this very small slide right here --

[ Laughter ]

-- I very carefully made it like a staircase because it's a method of escalation that happens over time. And I think that's an important part of this discussion as well, is that there's a very involved process of ultimately coming back to the Board and saying no. It's not something that's done in a whimsical way. But instead there's an engaged process. Can you just click on the slide below and not even put it into --

>> (Off microphone).

JONATHAN ZUCK:

Okay. All right. I didn't -- okay. So the idea here, in the first phase there's an individual, it can be any individual, who objects to the decision made by the Board. Okay? That person then needs to go to the SO or AC that best represents them and convinces them that that SO or AC should object in turn. And whatever the mechanism will be for that SO or AC to object will be up to that SO or AC, right? However they form their own consensus within the SO or AC is up to them. But that's the job of the individual so to get them on board.

---

The next phase is a kind of a huddle or a call, right? Just to level set and see, is there enough interest in this topic that we should proceed to a broader community engagement to decide whether or not to proceed to a community objection. And so what came out of the -- what came out of it is there should be a minimum of two SOs or ACs that agree this process should move forward or escalate. Right? On the staircase -- I'll sit back down since I don't have a slide to point to anymore.

>> (Off microphone) this is death by PowerPoint.

JONATHAN ZUCK: Yes, exactly. So the next step of this, the next process, if you will, would be to have a community forum and have a very broad conversation which everyone's invited and all voices are heard, to determine whether or not there's some broad consensus around this objection to the Board's decision or the organization's decision. And from that discussion the so-called community council, if you will, right, will sit together and decide whether or not to move forward that objection, based on the input from that community forum, right? So I think the objective would be to use like a ccNSO style consensus process where, you know, no more than one, no more than two objections. But maybe there's an option for a vote, if the people that are trying to advance the objection and there isn't ability to reach consensus, there might be a vote, and that's a conversation we could still have, within that community council. Because that's what, as Jordan said, might allow for a particular SO or AC to split their position and then see if there's enough of a majority view as a result. And only if it then gets through that process is there then a presented objection to the Board that says, here,

---

we really disagree and want you to roll back. And here's the alternative language that we recommend.

So that entire process would happen before any of the other things that we talk about that we're calling enforcement, right? In that last arrow. Because we'd only go to that next phase if the Board said, I'm sorry, I feel strongly -- we feel strongly about this. We know you -- we know you've reached consensus about this but for reasons that we outline here, et cetera, we still think we're right. And that's when things might go into a more what we'd call the enforcement phase. And it's only at that point that the model and everything that we've been discussing so much would even come into play. Everything prior to that doesn't have anything to do with the models we've been discussing for enforcement and it's only then. And then it's, how do we resolve that dispute between the community and the Board or the community and the organization. And that's -- that's the essence of the enforcement discussion. So there's a great deal of escalation and different, you know -- I think it was a little bit like a staircase. You know, you get to each landing, right, and take another level set to see where we are. And it's only if we reach to the top floor that we even begin the process that we're calling enforcement.

So that was the purpose behind that second slide. And I think that that was sort of the purpose behind the subgroups in LA, was to realize there was, in fact, a great deal of common understanding about what that escalation process should look like and that it would be fairly comprehensive, fairly inclusive and least likely to be captured by any particular group or overly concentrate power in a small subset of the community. So that's -- that's basically all that I wanted to share from the meetings in LA.

---

THOMAS RICKERT: That's great, Jonathan. And if you could stay with us for a moment. Thanks so much. Since we don't have any visual support at this stage, let us briefly try to recap the phases so everyone is clear on that. So the first phase would be the petition phase.

JONATHAN ZUCK: Yes, individual -- an individual petitioner would go to their SO or AC and convince them that they should, as an organization, support an objection -- a community objection.

THOMAS RICKERT: And the next phase would be?

JONATHAN ZUCK: The next phase would be kind of a huddle or call.

>> (Off microphone.)

JONATHAN ZUCK: Oh, it is. Okay. So it would be kind of a huddle or call. And on that, it's just, again, a kind of a level set. In other words, is this group now all out by itself? If it is, then the process dies right there; right? But if there are at least two SOs or ACs that agree that this should go to a community discussion -- and that's all they're agreeing on, is should this move forward, should this escalate up to the next landing of the staircase; right? -- then it moves forward, at which case a community forum is organized and there's a general debate and discussion about this objection, and everyone is invited to this and everyone is

---

encouraged to attend, and everyone is encouraged not to abstain because this is the discussion; right? It's about getting everyone's input and understanding.

And it's probably a physical gathering with staff support; right? This is a big deal.

And then after that, the SOs/ACs, or what we're calling the community council, are going to get together, then, and on the basis of that input try to form consensus about whether to move forward with a community objection. And it's only then, if there's a community objection that's presented formally to the Board, at which point the Board may say, okay. Because sometimes what we hear on the list is, well, the community -- you know, we're having to decide between conflicting interest in the community, et cetera, and I think that's true. So if there was community consensus and a community-presented objection, it's very possible and even probable the Board would, in fact, change its decision.

If it didn't, that very last phase, that next phase, is then engaging in the enforcement mechanisms we've been discussing.

THOMAS RICKERT:

Great. Thanks so much for that clarification. And for all those who are staring at this behind me, you can find the slide in the Adobe room now. So we don't yet have it in the room, but for the benefit of the remote participants as well as for those using computers here, you can see it there.

Just for clarification purpose, I would suggest that we might clarify for the second phase, which you call pre-call, that this is actually the formal petition stage.

---

You know, so should an individual who has raised an objection find their S.O. or A.C., which is their home, basically, to support the objection, then we would enter this phase. This would be going into the community forum.

JONATHAN ZUCK: That's right. So if you're now active, if you keep clicking on this slide, you will see there's some detail below each of these steps.

THOMAS RICKERT: Great. And also, I think it's important to note that the way that I took it away from L.A. is that for the community forum, that is as inclusive as can be. So everyone can be heard there. All views, regardless of whether people are in SOs or ACs, whether they are inside the core ICANN ecosystem or beyond, can be heard. So this is the inclusive part.

Then when it comes to decision-making, we would ideally do a consensus call and establish consensus, and I think it is up to the sub-team now to define some caveats and refine a definition of what is consensus. Because if we're asking for unanimity, then we will never be able to exercise community powers.

So depending upon the community power concerned, I think we should have a combination of consensus amongst all the community. So everyone can chime in, be they legal person -- personalities or not. Everyone can make themselves heard.

But then we would look at who's against this community consensus. And then I think we would need to define levels of opposition or veto, or whatever you might call it, from different groups inside the ICANN arena, and then say, okay, consensus is absent because too many groups object.

---

And what we'd like to do now with you is confirm this approach. So we're not enshrining any opposition level or take stock on that, but let us please try to agree on this methodology as a basis for community decision-making. Let's move away from the concept of voting. It has done so much harm. There might be voting components somewhere down the line in determining the presence or absence of consensus, but I think what we're trying to do is avoid concentration of power, avoid the reallocation of power, be inclusive, and make it work.

So let's try to let us guide by these principles.

And there's a queue forming, and let me just encourage everyone to be as brief as you can. Try not to be repetitive to what your predecessor speaker said. It doesn't do any harm to pass even if you've raised your hand. There's no punishment for that.

First one in the queue is Jonathan. And as I'm conscious of time, let us try -- let's see what the commenters say and provisionally close the queue after Kavouss. See where we are, and see whether we should further engage in the discussion or whether we are okay to take it to the sub-team, because I think we're not going to reach a final result on this anyway this morning. That wasn't the plan. But we would like to agree on some principles.

So first in line is Jonathan.

JONATHAN ROBINSON: Thanks, Thomas. It's Jonathan Robinson. I haven't tracked the detail of this group quite at this level. I haven't been in many of the meetings and so on, so I may be asking a naive or ignorant question. But to that extent, Jonathan Zuck's presentation was

---

very helpful. Taking us through that staircase is very, very useful. It crystallized what is envisaged.

What I would like to think of, though, and I ask this as a clarification question, assuming a GNSO-developed policy came through the GNSO in the normal way, was recommended to the Board, the Board took it on Board in the normal way and voted to accept that, it's then possible that this kind of mechanism could then kick in. Is that right? Could it effect -- be because that's -- and so that's why I thought it may be -- what are the kind of topics that would be -- what would be an example?

I see Jordan shakes his head. So I'd just like to understand whether this is a mechanism by which that kind of policy could be objected to or is it other types of decisions?

So that's the question. Thanks.

JORDAN CARTER:

This is one of those occasions when the Skype back channel has completely let me down.

The reason I was shaking my head was that the subject matter of the example that Jonathan gave isn't subject to the five sets of powers that we've talked about. So that's why I was shaking my head. To the extent this staircase that's in front of us is a process that's designed to explore differences and resolve them before you even get to one of the community powers, then, yes, it is something that could be subject to this discussion.

So, Jonathan, you might want to expand on that distinction that I'm making.



---

JONATHAN ZUCK: Yeah, I guess -- and this isn't something -- I think it's a good question and not one that we've dealt with, you know, in detail before. But I think that this process could get triggered or engaged in if other members of the community had objection to that policy. And so it is something that -- for which that conversation could happen prior to any enforcement-style mechanism.

THOMAS RICKERT: So let me just jump in quickly.

Jonathan, you will remember that when we had these visualizations of the exercising of community powers, we had three phases in there: Petition, discussion, decision. And the decision phase was a voting-based decision-making. What we're trying to do here is establish a process that is not voting but that still allows for the community to make decisions.

And this is a refinement of the petition decision -- petition discussion decision approach. Just a little bit more fleshed out. And it is exclusively reserved to exercising the community powers, for nothing else. This is just the community powers. Let's not be confused.

>> So it's not for GNSO or any other S.O.-based policy at all. It is for budget, strategy, bylaw changes, and Board removal/recall. End of story.

JONATHAN ROBINSON: Thank you. That's very helpful to be a reminder. I was very clear on the mechanics, and the mechanics were articulated very well.

---

For me the question was one of scope, and you've answered that. That's helpful. Thank you.

THOMAS RICKERT: Jorge.

JORGE CANCIO: Hello, good morning. Jorge Cancio for the record.

I will be very brief. I think I stated sometimes in our discussions that we agree very much with the idea of consensus, or new consensus. Consensus is not only a result. It's both the process and the result. A process of discussion and of consensus building. That's why we have also been very eager to participate in refining the community forum because we think that's a key place for building consensus and having the opportunity as a process to have a discussion where everybody can participate and taking into account how the different parts of the community have different ways of expressing their views, and consensus is also a level of support. It's not only a lack of objections, but it's a required level of support.

And if we are talking about community powers, they have to be exercised by something, by somebody who really is representing a large majority of the community. So it must be a positive support of the whole community or almost the whole of it. Otherwise, we have the danger, and sometimes we've seen it here and in other places that fractions of the community which are especially good organized or especially activist can capture the process.

So we have to be very careful and define consensus not only as a process, which is very important, but as a level of support for the

---

decisions which really represents the whole community or almost the whole of it.

Thank you.

THOMAS RICKERT: Jorge, a quick follow-up question. We will have this phase where consensus is to be determined; right? So my question to you would be I think we should task the sub-team to work on assessing whether there's sufficient support when they do the consensus call, but apart from that, are you okay with this methodology?

For those who are not in the room, he is nodding. I'd say that for a Swiss, he is --

>> He's nodding for the record.

THOMAS RICKERT: -- violently nodding.

So we have the next speaker now which is Steve and then Kavouss.

STEVE DELBIANCO: Thanks. Steve DelBianco with the CSG within GNSO; was one of the breakout leaders in L.A. where we tried to come up with this decision-making method, building on the community forum discussion that had occurred. And I wanted to clarify two things as you walk up this ladder. One is that we had required corporate board participation on the pre-call as well as the community forum, so that they're part of the discussion.

---

I also wanted to suggest that we recommended there be a written explanation very early on from anyone who was intending to oppose, who was really uncomfortable with proceeding. Because it's so much better to have that be written and an opportunity for others to respond to it. Not just a written objection, as Jonathan indicates, but a written explanation for why we're very uncomfortable proceeding with this.

And then finally, within the GNSO, we had been in favor of this notion of split voting where a yes or no from the GNSO in terms of determining consensus could be broken out so that different parts of GNSO could be represented. And I only mean to put a bookmark here so that we understand that within GNSO, which is the supporting organization for most of what ICANN manages, and most of what the policy enforcement is about, GNSO has a diversity of opinions. It makes it very difficult for the GNSO to go off on its own and come back with a yes-or-no as to whether it supports or to come back and say whether it objects or not.

If we don't allow the split, and I understand why that's troubling, if you're just looking for a yes or a no, if you're just looking for the answer to the question, "Do you object? Are there more than two ACs or SOs who object?" in determining consensus. The GNSO at times may have to explain that we came to a very close split decision. And, therefore, a minority report is part of what I would add on the decision call among the staircase. Because if, in fact, GNSO came back and just narrowly approves the procession to the next step or narrowly approves objecting and thereby maybe stopping the consensus, there may be a minority report that would really be important for the community to hear about. So that's why split voting was really adopted. It wasn't specifically to achieve the weighting, but it gave you the advantage of also being able to use it for weighting as Jordan

---

indicated. But I think we can get there. We just have to provide for the fact that there's a diversity of views within the GNSO.

Thank you.

THOMAS RICKERT: Thanks very much.

Kavouss.

KAVOUSS ARASTEH: Yes, good morning. Two things. I hope I have heard it wrongly that people want to define what is consensus. Don't do that. Consensus is consensus, depending on each community and each constituency to decide whatever way they have to decide on the consensus. Not to have CCWG to define consensus. If I'm wrong, okay, don't do it.

And then I see why surprise why you're talking about optional voting. Try to avoid as much as possible to the voting.

Thank you.

>> Can I quickly respond? The voting point is well taken. In terms of there's no intent in this discussion to define how the individual SOs and ACs are making the decisions at all. That is not within the remit of this discussion.

However, we are discussing within the S.O. and A.C. circles what is the level of support or objection that would enable to reach a conclusion that there is a community veto or a community positive decision.

---

So we're not defining the way the GAC or ccNSO are making the decisions; however, at the SO/AC level, we're trying to address the question whether an objection by one S.O. or A.C. would be sufficient to block the community power or not.

And so we think -- there was some discussions that said would probably not be acceptable that one S.O. or A.C. would be sufficient to block the community power. That's our definition.

THOMAS RICKERT: Follow-up question, Kavouss?

KAVOUSS ARASTEH: Yes. It was briefly presented that because currently whether, according to ICANN, we are well representing the community or not, but this is what we have. We have seven communities and we mentioned that not more than two against. So one singly should not be to put everything into the basket. No more than two.

Thank you.

JONATHAN ZUCK: Which Kavouss is, in fact, defining consensus; right? So in the context of the community council, as we've called it, we need to define what consensus is. We don't need to go further than that into the individual SOs and ACs.

THOMAS RICKERT: Okay. In terms of a procedure, we didn't give you any hope that we would resolve this during this session, but what we try to do, and this is why I had closed the queue, because we're a little bit

---

behind schedule already, is to make these requirements. Optional voting, I would even say try to avoid voting as much as you can or let's remove it entirely.

But if you agree with this methodology, let's agree that we make this a term sheet for the sub-team to flesh out tomorrow. And the sub-team led by Jonathan is going to be -- yeah. He's surprised now. So we're making him happy today, is tasked with coming up with operationalizing this approach for all the community powers.

Right? So unless you have issues with taking that route, you're invited to speak, but if you have niceties to add to how this can be operationalized, but if you agree with this notion in principle, then I think we -- you should be joining the sub-team tomorrow.

All right? So in the light of that, can I ask you to clear your hands or keep them up?

If you have objections to agreeing on this methodology as a term sheet or terms of reference for the sub-team to work tomorrow.

And I'm just talking about those who have raised their hands. Please lower your hand if you are okay with the methodology and if you can add your criticism or your points to the discussion sub-teams tomorrow.

So a couple of hands are still up, and I'd like, you know, keep it to 30 seconds max, I'd say.

Bruce is next.

BRUCE TONKIN:

Thanks, Thomas. It's Bruce Tonkin.

---

Just one observation on the issues where this process would be invoked. Examples of that have been budget approval and bylaws changes. So generally what the Board does for either of those things is we have a public comment period, and typically we meet with each of the supporting organizations and advisory committees and the stakeholder groups at public meetings. So there's already quite a bit of discussion that's happened.

Then assuming this process is kicked off, I think perhaps you might want to add a last sort of bit in your ladder, a dialogue that then happens with the Board. Because, really, this would happen -- this would assume the Board -- some failure in our initial process, because normally we try to avoid this ever happening. If it does happen, it means somehow we've misread all our discussions with the community prior to making that decision, which can happen.

You might want to give consideration into the last point of that letter that there would be a community dialogue, then, with the Board to try and resolve the problem and then how that might happen. In other words, just think through what's the best way for that dialogue to actually happen in the last point of that diagram. Because I think that's probably the most important piece. You know, the community has identified there's an issue. What's the best way to have that conversation between the community and the Board? Because hopefully, that can resolve it before we get to any kind of lawyer-based dispute resolution processes.

JONATHAN ZUCK:

Thanks, Bruce. And in fact, that was the intention of that last rung in the ladder. In other words, nothing in this document has anything to do with enforcement. This is just the mechanism for



---

the community to reach consensus and make a presentation back to the board.

So in the sub-team tomorrow, we'll do the very thing connected describing, which is to look at what that might look like, but that isn't what -- that's what this last rung is meant to represent.

BRUCE TONKIN: Yeah. That would be helpful. I'm happy to help in that. But really --

JONATHAN ZUCK: Right.

BRUCE TONKIN: -- just basically making sure that the --

THOMAS RICKERT: I'm sorry. We're talking so much about detail. Let's -- we really just want to agree on the general approach, and certainly we can add and that's a nuance to the process that the board can be part in the deliberations and it should be in order to mitigate friction, right? But that -- that's more for tomorrow.

Alan?

ALAN GREENBERG: Thank you very much. And I'm not objecting to what is here, but I will not be able to participate in the breakout tomorrow, likely, and I would like to add a couple of comments to be considered, so please indulge me.

---

Number one, we have been talking about things like --

THOMAS RICKERT: Can you send them to -- send them to Jonathan?

I mean, we really need to be conscious of time today, so if they're requirements, if you --

ALAN GREENBERG: I will stop talking then.

THOMAS RICKERT: This is just about agreeing on the terms of reference for the sub-team.

I see you're upset. Okay. Go ahead.

ALAN GREENBERG: You're spending a lot more time telling us not to talk than letting us talk. I don't think that's appropriate. Thank you.

THOMAS RICKERT: I just invited you to speak.

Avri?

AVRI DORIA: Thank you. Mine is a quick question, hopefully, of clarification on the detail.

You said basically that it is only applicable to the powers. I wanted to ask about, in relationship to, for example, AoC recommendations and such, including the one of separability:

---

Does this process apply to them or are you excluding them by saying it's only the specifically enumerated powers?

Thank you.

MATHIEU WEILL: Just can you clarify your question for clarification?

[ Laughter ]

You're -- the process you're talking about is --

AVRI DORIA: Right. This.

MATHIEU WEILL: -- there is -- there is a review team recommendation for separation, for instance, right? And what you're asking is: If the board refuses to implement this recommendation, would that process apply?

Give me a couple of minutes to review the report on that and we'll provide the answer.

THOMAS RICKERT: Next speaker is Sebastien.

SEBASTIEN BACHOLLET: Yes. Thank you.

Just for the framing of the question, I really think we need to find a way to talk about the forum -- the community forum, to try to find the consensus.

---

I still think that keeping everything into our silo organizations is not a good way to go, and if we express that at the end it must be the SOs and ACs who need to have one say, it's shrinking the way this organization can -- is diverse and behave and discuss the discussion -- the point, and it's why I think it must be at the level of the community forum globally. Thank you.

THOMAS RICKERT: But this is not about discussing or defining the community forum. Let's just be clear. This is about the decision-making part. So we have a separate discussion on how to refine the community forum.

Tijani?

TIJANI BEN JEMAA: Thank you, Thomas. Tijani speaking.

I don't think that one size can fit all, so I heard at least two objections.

I don't think there is only one level of consensus. There is a lot, depending on the powers. So I don't think we will use the same level of consensus for all powers.

THOMAS RICKERT: Thanks, Tijani.

Let's hear Eberhard first. Kavouss you already spoke, to let's move to Kavouss afterwards.

---

EBERHARD LISSE: I object to having such breakout sessions tomorrow. I'm on record on this. I just want to make sure that you are aware of it.

THOMAS RICKERT: We are indeed.  
The last speaker is going to be Kavouss.

KAVOUSS ARASTEH: Yes. Perhaps I was not clear. With respect to the advisory committee, if not all, most of them, I suggest not to put objections but saying that "advised to the contrary," because it might be possible that the advisory committee maintain their advisory capacity and give advice but not objection as such, and that advice should be anything.

So to maintain the situation as has been mentioned by ICANN, by NIA -- NTIA, by many other people, perhaps they remain the status situation that they have, so when you say no objections, say "or advised to the contrary," so we maintain the option of advice. Thank you.

THOMAS RICKERT: Thanks very much, Kavouss. And let's now take stock and move on to the next session, so I under- -- Mathieu? You owe the response?

.>> (off mic)

---

THOMAS RICKERT:

Okay. Then the idea of this discussion was actually to reach agreement on this approach to be fleshed out, and Alan, as you know, your input is always highly appreciated but we deliberately did not want to have a discussion on how these individual powers can be operationalized, but let's now see whether there's any objection to tasking the sub-team to work on the basis of this approach as terms of reference and they will then be asked to come back to our group and report on their results, so hopefully we can then take stock on that.

We note Eberhard's objection to the breakout sessions as such.

If there are more objections to this approach, please make them heard or write them in the chat, but we think that there is value in using the face time that we have tomorrow in having different sub-teams working very focused on different open questions and then bringing the results back to the -- back to this group.

So I don't see any objection to this approach so I think this is a first big success of this meeting because we say, "Well, we have removed one of the major concerns with voting and we're now looking more closely at alternative ways, being cognizant of Jorge's suggestion that we must not only look at the level of objection but we need to make sure that there is support in the first place." And with that, I'd like to end this -- this agenda item and we should now move on to the next agenda item on the community mechanism, which is actually the enforcement bit, and for that, I'd like to invite Jordan again to update us on the public comment analysis.

Over to you, Jordan.

---

JORDAN CARTER:

Thank you, Thomas. Hi, everyone, again.

This is the -- the detail here is on the community mechanism as sole member part of the PC analysis from Work Party 1 and I can't remember what page it starts on. I think it's on Page 24. There you go.

And so, you know, there was a strong appreciation, I think, for the need for enforceability of the community powers. The idea that they would just be a kind of "nice to have written down in the bylaws" without any particular mechanism to enforce their following, no one's really suggested that. Everyone's been talking about different models of enforceability. And I'll just restate what that diagram showed.

The enforceability is right at the end of the process. We keep talking about it a lot because we have to define the end of the process because that's the bit that doesn't exist today.

In the feedback, there was sort of broad support for the sole member model as being an improvement from the SO/AC membership model, the individual UAs that we had proposed in our first-draft report, and there was support for community decision-making that led to the enforcement of those powers.

There was also support in the comments to be as kind of restrained as possible. People didn't want us to sort of start sort of flicking switches and trying to change ICANN for the sake of it, and that's something I think that the CCWG or the vast majority of us would happily agree with.

But there were some areas of concern and divergence as well, and we've written that down for you in the report.

---

We've talked about some of them already that are in this section of the comments, but there is some questions about the enforceability model.

And what I want to say is that in all of this, I keep coming back to the requirements that we have as a group for the enforceability, and the balance of how -- how far we need to go down the route of legal enforceability.

And what we've had all through the dialogue is a kind of clear understanding that we have to be able to workably enforce all of the community powers, so the five powers that we've got in respect of budget, standard bylaws, fundamental bylaws, and so on, and the separation review that is part of the stewardship transition.

And we know that the model that we proposed has got -- the public comment from the CWG stewardship was that the model that we've proposed met their requirements, so it isn't a holdup for the stewardship transition. But we had some pretty direct comments from some other stakeholders that the membership model, rightly or wrongly, creates concerns for them.

So the question the co-chairs asked me yesterday was where did I think we could work our way through this. And to me, the answer to that is a designator approach, a single designator approach. And the reason for that is that the key ability to enforce removal of board members and to prevent changes to the bylaws together represent a considerable improvement in ICANN accountability compared with today. If you can't change the rules of the game by yourself and you're subject to removal if you try, that's at the end of this point.



---

So saying that a designator model might be something to consolidate around doesn't say that the other community powers aren't important and it doesn't say that the needs to be able to deal with the budget question isn't important, for example.

We've talked about the fact of building community processes to deal with all of those.

But I wonder personally whether we might be able to come to an agreement around a designator approach here as the best way not to compromise, because our job isn't to compromise -- we're not here to negotiate, we're not here to try and come to some crappy lowest common denominator settlement -- our job here is to focus on our requirements and we've accepted a principle of simplicity, and so if we can achieve our requirements to an adequate degree with a simpler model, that's the process we've been following. That's the process we should keep following.

So I think that's what's on my script, which I wrote.

[ Laughter ]

THOMAS RICKERT:

Yeah. That's important. We didn't write that for Jordan in a -- what was said -- authoritative co-chair-type manner, so he did that himself.

But before we open it up for discussion, I'd like to comment a little bit on the whole discussion about a mechanism.

We said at the outset that we defined requirements and that we would be happy with whatever model, whatever legal vehicle delivers on the requirements. We said that we would have a

---

feedback loop, we would track -- stress-test what we have, we would take public comments, and then see if it's not perfect, we're trying to tweak it until it's good to go.

So let's please not say that we are abandoning a certain model or that we are giving in on anything, because actually we are following the evolution of our recommendations.

And if you think back, when we started all this, it was Roelof Meijer who said -- and who is now quite alarmed --

[ Laughter ]

He said, I think it was in Frankfurt -- and those who were in Frankfurt will remember this. He said, "We need a big stick to replace the NTIA backstop." And everybody nodded. I mean, I was sitting at the front table at that time and everybody thought that was a very good idea. In essence, we need one big stick to call ICANN to reason if it goes rogue.

Then I think it was Chris Disspain -- he can't object now because he's not in the room but we will be able to tell him -- Chris in fact, said, "Just having a nuclear option, just being able to spill the board, which is the option that we have with the designator model and which is the option that we looked at at the time, just gives us, in fact, this big stick. Why don't we have a more nuanced inventory of sanctions?"

And that led us to considering the membership option.

So with that, we got the more nuanced repertoire, we got what now looks as what we need, but actually what we got, if you wish, as an unintended side effect of this more nuanced repertoire is a plus an enforceability, let's say 120% enforceability, but we found out that this has caused a lot of

---

confusion with different parts of the community who claim that we have statutory powers that we cannot or can control. There's diverging legal advice on that. So we don't have 100% certainty that we will remove concerns, concerns that could lead to a destabilization of the organization.

I'm not taking any sides here. I'm just trying to establish the status quo of where we are.

Also, there was the fear that this could lead to a change -- or to too much change of ICANN's governance structure.

And if you take these points, what do we do? We refine, we readjust, we take the evolution further. And in fact, in this case, we might just consider going back from 120% to 100%, which is the big stick which is provided to us with the designator model.

And even further, even more, we had a legal memo that said, "Well, in fact, ICANN is a designator organization at the moment." I mean, this is not a brand-new idea, but we got sidetracked with the idea that we should go with membership because it gives us this nuanced repertoire. And let's be clear. We are going to get the community powers. We're going to get them. We're going to put them into the bylaws. It's all going to be there. We're not taking the community powers away. We're just taking -- changing the enforcement regime to one that gives us what we need -- i.e., the big stick -- but it doesn't give us a set of smaller sticks that originally, at least, Roelof hasn't asked for, and I'm sure that many others didn't ask for many sticks but they were asking for a big stick. We want to replace the U.S. government backstop. And, therefore, let's not view considering the designator as having failed in pushing through what we wanted. In fact, the community pushed back on what we proposed, the root cause of that being in voting and other areas

---

as well. But if we can preserve meeting the requirements, which was our original goal, and remove concerns -- remove the concern of reallocation of power, remove the concern of potentially statutory powers going out of control -- then I think we deliver exactly what we promised to do procedurally.

And now let's open it up for discussion, and I suggest that, you know -- or at least we've tagged this as the community designator model that we could use.

So the community would be the designator. They could put people on the board. They could take people back from the board, should they so wish.

How this is exactly done, we're going to discuss in different areas of this session -- right? -- but that's the general idea, and I hope that this will at least make Alan a little bit more friendly with me again because the designator model is actually something that he favored and that he brought up. Robin Gross was a fan of the designator model. So let's not -- I think this session is not to discuss the niceties on how we operationalize a community designator model. Let's get back of this -- let's get rid of the historic issues that we had surrounding the various models. But let's -- can we please agree that designator is something that could fulfill or will fulfill the requirements, that will remove the concerns, and that we can all work on fleshing out so that we all like it.

So there's a queue forming. I think that Bruce and Eberhard's hands are old hands because I haven't seen them going down earlier, so next in the queue is Tijani. Please.

- 
- TIJANI BEN JEMAA: Thank you. Tijani speaking.
- Jordan, you spoke about the designator model. I hope that you are speaking about sole designator model because I oppose strongly against full designator model and I support strongly the sole designator model.
- MATHIEU WEILL: Yes. That's -- clarification for the record. Nodding is not sufficient. This is about the single or sole designator model where the community -- the community gets together and is the designator for the whole structure.
- THOMAS RICKERT: Thanks very much. Let's move further down in the queue. Kavouss is next.
- KAVOUSS ARASTEH: Yes, Thomas, I think I have heard you referring that we have failed. No, we have not failed at all. We are more determined than before.
- THOMAS RICKERT: That's what I tried to emphasize.
- KAVOUSS ARASTEH: If we receive comments, doesn't mean that we have failed. We receive comment, very good. Multistakeholder, subject to receiving comment. If those comments are valid, we improve our situation. But I can tell you that we are -- that's to say most of them, the overwhelming majority, more determined than before of what we have done. Never (indiscernible) that at all.

Never, ever. So we stick on that, but we improve it. Thank you. Thanks very much, Kavouss, for that reminder. In fact, obviously I haven't managed to put it that eloquently, but that was the notion, we should not perceive reacting to the community's concerns as a failure, as a weakness. This all makes our proposal stronger. Steve. Thank you. Steve DelBianco with CSG. What you have on the Adobe and on the screen right now is essentially what Jonathan Zuck, Kavouss, and I asked the legal team to evaluate about a week and a half ago and the legal team was able to put together the answer to this table, to fill in every cell. And it's just not -- it's not complete as of now and it isn't suitable for display in Adobe and it contains nothing you haven't already seen. If you recall for the past several months we've looked at comparisons between single designator and single member, the far two right columns. And the first column, the first column displays those required community powers we've talked about all morning. The second column through the fifth column display options. Options for the community, CCWG, as to what we think is the minimum enforceability we need to get at the point of transition. And this is why Kavouss, Jonathan, and I asked the legal team to frame it in a way that all of us could consider where we need to end up. And what Thomas just talked to you about is if you look at the column saying single designator, the second to last column, asking us to consider whether that's the appropriate place to be at transition or, as I see in the chat, should we be all the way on the right edge of single member at the point of transition.

The other two columns, the enforcement with current bylaws, you'll be -- you won't be surprised to understand there isn't any enforcement there. And MEM, which is the column after that, has a very different sort of enforcement focused in the IRP alone.

---

So the conversation we need to have as a group is where do we end up on that spectrum. Because we already know what the particular elements of enforcement are for each of the seven powers as we array them to the right. So I'm just trying to focus us on that. We should try to achieve consensus before the break about where we need to end up.

THOMAS RICKERT: Thanks very much, Steve. Avri.

AVRI DORIA: Thank you. Avri speaking. At this point I'm very uncomfortable with the dais having sort of eliminated the single member for the single designator, and it's especially because of line 7 there. Remembering that we're here to replace the NTIA's capability to do a separation, to separate the IANA function. That is not a capability that we have, as I understand it, in the single designator other than by eliminating the Board.

Now, eliminating the Board is just -- I mean, it's a wonderful thing to have in there that makes a lot of people feel good, I think, but it is not a practical solution. And not having a direct solution to enforceability of that separability decision seems to me a fundamental blocking problem to backing down to the signal -- to the single designator. Thank you.

THOMAS RICKERT: Mathieu.

MATHIEU WEILL: So that question, Avri, is providing me an opportunity to respond to your earlier point which was clarifying what happens

---

in the current second report of the CCWG. In the event there is a separation review triggered, it recommends separation, and then the Board doesn't follow up on that. So the current report states in its paragraph 101 that this decision by the Board not to act or to refuse to act would be -- could be subject to IRP challenge. That was responsive to your earlier question. So in the second report, it's not the escalation process we've seen earlier that applies but an IRP challenge that is possible. It is up to us to adjust that if we are comfortable with that. Okay? That's the earlier question.

Now the question you're raising now, Avri, is still about the separation. I think that's very important and very -- obviously central to our decisions. In the single designator model can we achieve -- how can we achieve enforcement of this in case the Board would not defer to the -- to the separation review team recommendation or to the IRP decision. And I think that this is certainly something we need to make sure we're comfortable with. This -- my understanding so far is that there will be at least indirect enforcement through Board removal, Board recall. I mean, the whole Board can be recalled in the single designator model. But maybe -- but I think that still needs to be fleshed out and worked out because it's absolutely critical and probably in our report at this point it's not clear enough how it works. But I would just like to have a quick nodding or quick response by our counsel Holly, whether there is -- or Rosemary, whether there's any red flag on separability enforcement in a single designator model. I'm not asking for the fully pledged answer obviously, but if we have sufficient confidence to move forward on this.



---

HOLLY GREGORY: So I think when you consider that staircase of escalation, that would certainly apply in all those community processes to this decision. And there would be several opportunities through that escalation staircase that was explained for the community to weigh in and let the Board know of its views. At the very end of that escalation process would be an IRP.

If the Board then still refused to take the will of the community on this point, then you would move to your indirect enforcement mechanism which would be a community consideration of whether to recall the Board.

>> Thank you, Holly.

THOMAS RICKERT: So I see that you had a follow-up question and then we go back to the queue.

>> Sorry, I think this is a really important question to tease out. So you refer to the indirect enforcement there. Can you just compare that with what the direct enforcement would be with a member?

THOMAS RICKERT: Holly, before you do so, Avri also had a follow-up question on this one. So I suggest we hear that first and then Holly and Rosemary answer the two.

- 
- AVRI DORIA: Thank you. Avri speaking again, and thank you for giving me the follow-up question. With the first answer that Mathieu gave which is that the separability question does not go through that escalation process but goes directly to IRP, I wonder how that mixes with -- with Holly's response that there would have been a chance to interact through that process because Mathieu's answer was that the community escalation process was not inclusive of a separability issue. So I -- I'm confused still. Thank you.
- THOMAS RICKERT: So now the burden is on Holly and Rosemary to clear up the confusion -- all the confusion.
- HOLLY GREGORY: Well, I think that we probably need to get some clarity around this point. I don't know that the current second draft proposal speaks to whether it goes directly to an IRP. I thought in most instances going to an IRP was supposed to be after an opportunity for an escalation process including reconsideration. So I may have made a wrong assumption. I'll let Mathieu clarify that.
- MATHIEU WEILL: I think there's a need for greater and greater clarity on this, looking at every step of the process, both in the current report and in possession changes that we would -- adjustments that we would make to the current process. What I'm hearing, though, is that it's not totally -- there's not a big, big gap between the current report on that matter and the way -- the proposal to move with the single designator model in terms of capability of

---

enforcement on the separability. But the issue we're having is that we need to be very, very clear how it works. And I would -- I would certainly flag this for further work probably in the breakout sessions. But I'm not hearing anything that says don't move with this option of single designator because it's not going to work on this, which is really what I -- I want to make sure we're having here.

>> Your turn.

ROSEMARY FEI: I think that Jordan had asked us to compare the directness or how the enforceability would work. So Holly clarified that under a sole designator if you went through all the escalation steps and an IRP and you still had a problem, you would go to the recall.

If you had a single member instead, it would be all the same up through the end but the difference is that because you have a member that can make a decision at that point, you don't have to recall the Board. To go to court and be -- and enforce the IRP and not -- not have to worry about the fiduciary duty of the Board at that point. Because the member will have made the decision that separation should occur and that would be a reserved power. That's the difference. We can't reserve that power for a designator, but under California law we can reserve it for the member.

THOMAS RICKERT: Okay. Let's now go back to the queue which I'd like to close after Robin. Roelof.

---

ROELOF MEIJER: Thank you, Mr. Chair. I would first like to react to what Avri was saying. And I would like to submit that in my opinion, separating IANA from ICANN far better deserves the non-nuclear option than removing the Board. I think the -- we cannot even begin to think what the consequences of such a decision would be. So I think it's perfectly legitimate that if the community wants the IANA function to be separated from ICANN and the Board refuses to implement the decision, that the Board is recalled. What other option would there be? Okay, we can take the Board to court, force them to -- to execute the separation, and then they will continue to be the ICANN Board? To me that's -- sounds crazy. And in fact, it sounds crazy for most of the options when we think that we need this possibility to take the Board to court. I put it on the email list. I think if you have an executive board that refuses to do what it's being told by its bylaws, that that board deserves -- deserves nothing else than to go.

THOMAS RICKERT: I'm inclined to agree with that. Alan. Alan, you get an extra 30 seconds now to make up for the --

ALAN GREENBERG: I don't think I wanted an extra 30 seconds. I support strongly what Roelof just said. But I'll point out that in the memo that we received on the conflict between fiduciary duty and arb -- enforceable arbitration, divestiture of subsidiaries and I suspect affiliates was one of the items that was identified as something that we cannot exclude from board fiduciary duty. But I will point out that separation does not mean divestiture of the subsidiary. It means moving the function somewhere else. We can keep on -- have PTI there and simply assign the function to Thomas. I trust him to be IANA and we're going to assign -- PTI is

---

an empty shell. The still there. Nothing is being divested. So there's a lot of mechanisms to effect separation other than divestiture, just to keep that in mind. Thank you.

MATHIEU WEILL:

Just a quick response on the word "fiduciary duty" here. I think it's clear that no separation of IANA, considering the importance of IANA and the assets that are associated with it, could be undertaken without the Board's formal approval. Because it's such an important part of ICANN and so it's not IANA has the fiduciary duty or divestiture is the fiduciary duty. The Board must make a decision. It needs to make this decision with the duty of care and everything and so on. But it's -- it's -- doesn't mean that the Board cannot approve this decision. The Board can approve this decision after doing its fiduciary duty, which is the duty of care, investigation, and thinking whether it's the best thing for the global public interest. But the Board can approve it. So we're not forced into going into these enforcement mechanisms. If there is a separation review that says on consensus basis we need to separate IANA from ICANN, there's probably a good reason for that. And so we can hope that the Board at that point would say, well, we understand the reasons. We're now mature enough or the world has changed, whatever, and it's perfectly okay with us. Okay? So that's just the clarification I'd like -- I wanted to make on this, and let's not use too much fiduciary duty. But it's clearly within the Board's remit to make a formal decision on this.

THOMAS RICKERT:

Thanks. This is important. I saw that Holly and/or Rosemary wanted to comment, and let's see whether your questions are still open afterwards, Alan. And then we'll move to Cherine.

---

ROSEMARY FEI: This is Rosemary. So what we wanted to clarify is that it -- everything that Mathieu just said is absolutely correct, that the Board could, within its fiduciary duties, make this decision. They go through the process, et cetera. If you had a member then it would be possible to give that decision instead to the member. You can't do that in the designator model.

THOMAS RICKERT: Thanks very much, Rosemary. So now it's -- still a follow-up question, so we need to get the right. So Cherine, sorry again. You have to wait a little longer. Alan.

ALAN GREENBERG: All I was pointing -- trying to point out was that the legal memo said, in the case of divestiture that was one of the examples of something which does -- is included in fiduciary duty and can't -- perhaps cannot be overridden by an outside arbitration. I was just pointing out that separation does not require divestiture. It can be done by more subtle reasons, which are therefore not necessarily mutually exclusive. Thank you.

THOMAS RICKERT: Thanks very much. And I think we have Roelof (indiscernible) in the room, so Kavouss made a suggestion to maybe visualize the process for easy understanding. Maybe Roelof can look into that. Cherine, thanks for waiting patiently.

CHERINE CHALABY: Thank you. I have a question regarding the single designator model. From everything you said about the community consensus decision, I'm assuming that all of these powers

---

through -- under the sole designator model will be powers exercised by a community consensus decision. Is that correct or not?

THOMAS RICKERT: That is correct.

CHERINE CHALABY: So my follow-on question, therefore, does this mean you agree with the principle, therefore, that individual -- removal of individual Board Directors would be a community consensus decision?

THOMAS RICKERT: I guess that's the area that Mathieu mentioned earlier. We have too many moving parts at the moment. So let's try to nail this now. And I think the question that you've asked is still open. And we have a separate discussion which is going to follow this one on the agenda where we talk about individual board member removal.

CHERINE CHALABY: But it's a matter of principle rather than mechanism. The principle with a single designator model is all the empowerments, all the powers are consensus decision. One of the powers is the removal of individual director. Do you hold to that principle.

MATHIEU WEILL: Hold on. I think just a clarification on this. So this is on the next agenda item, so we are intentionally not answering. What I want

---

to state, and -- is that it's going to be our decision in a single designator model, the two options are possible to be implemented in the bylaws. It's going to be technically the single designator just like in the single member, with a single member which will remove board members in the extreme case where that happens. Technically it will be. But the process by which this decision is made, it's an open question for us to address in the next agenda item, whether it's a community consensus decision on this or if we defer -- the community body just takes one SO or ACs view and then just ratifies. So it's still open. We have the two options. I'm not taking a side here. But the single designator model does not preclude this decision. Thank you.

THOMAS RICKERT:

Cherine, we're not making you happy with this, are we? I think if you wait another 90 minutes we will be more -- we will have evolved this more. But I guess the take-away message is that this model would allow for both options, depending on what we come up with. Bruce. Where do we have the roaming microphone? So we deduct that from your time, Bruce.

BRUCE TONKIN:

Thank you. Just one thing to notice in the way consensus policies are enforced through the current gTLD registrar agreements, there's a combination of bylaws mechanisms. So bylaws is policy gets developed and the board approves the policy, and then there's also contractual mechanisms. The fact that a registrar or registry in the gTLD world abides by that consensus policy is actually through contract. And I think when we look at the IANA function, you probably want to use a similar combination. So on one side you have a bylaws process. So



---

there's a bylaws the community reaches some view in that bylaws for separation, for example. Then there -- if the Board doesn't follow that, then there's a dispute process, and then if the Board doesn't follow that dispute process there's an enforcement mechanism such as removal of board directors.

So that's one flow. The other flow you want to build in, then the contractual flow, which is that the users of the IANA function, being the gTLD and ccTLD organizations, the Regional Internet Registries, and ISOC IETF, should have in their contracts with ICANN that ICANN will also abide by that process. And those contracts can be enforced as well.

So I think you -- for something like the IANA separation, you should build it into both the contracts for the users as well as in the bylaws. And jointly, that gives you strong enforcement.

THOMAS RICKERT:

Thanks, Bruce, that's helpful. And I think you've proven to be an eligible candidate for the sub-team for fleshing this out.

Malcolm.

MALCOLM HUTTY:

Thank you. I heard earlier Thomas say that he hadn't heard anyone raise that there were any red flags that have been identified as to why the single designator model might not achieve these listed powers. Now, I don't know if I correctly heard that or interpreted it, but I would say that having read the legal advice, I do see a red flag in relation to line 6 regarding the IRP specifically when it comes to the issue of requiring ICANN to enter into binding arbitration.

---

The memo on default judgments does call into question whether a default judgment by an arbitration panel could be effectively enforced against ICANN.

Now, in the cases of single member, the remedy for ICANN refusing to enter into the IRP process is that the single member has the power through a derivative action to obtain a court order to require ICANN to enter into the IRP. That's not available in the single designator model, and that I consider is a red flag if default judgments aren't available or might not be available.

THOMAS RICKERT:

Thanks, Malcolm.

I suggest that we hear the other commenters and then hand over to Holly and Rosemary to answer the questions. But let me just check. I think we have remote participants. We haven't had a single remote participant in the queue asking for being able to speak. So all you remote participants, you would make my day if we could hear a remote voice; right? So please join the discussion not only in the chat, chat is much appreciated, but I think it would be great if could you speak as well.

Next in line is Jordan.

JORDAN CARTER:

Thanks. I realize that it can be annoying to ask questions of the lawyers, but I think there's a -- as I have been a (indiscernible) strong supporter of a single-member model, and the fact that I see a possible consensus forming around a different model doesn't mean that I don't think that, so I just want to be clear.

---

But I do have a question that I need to ask both Holly and Rosemary, so I need to ask Holly to listen.

Sorry. Sorry to interrupt you.

And the question is that in -- There's a lot of jurisprudence and a lot of experience with dealing with membership models, and so there's a lot of case law, and it's a very familiar system in the context of enforceable powers and stuff.

Some of the early material we saw about designator models indicated that designators usually exist alongside members, they're a way of kind of extending membership rights to a broader set of third parties beyond members.

My question is because we have to have a solid legal foundation for the enforceability of these powers, is the designator model more feeble or more impoverished, if you like, in terms of the clarity around enforceability? And the reason I ask the question is that the clearer it is the way any of these powers will play out in court or whatever, the more clarity, the more inevitability about the decision, if you get to that point, the less likely it is that you'll ever get to that point. In other words, it's uncertainty that breeds disputes and leads people to going to court.

So do you have an opinion about that, the different streams and membership models?

THOMAS RICKERT:

Let's hear Robin and Wolfgang first, and then we are waiting for Rosemary and Holly to give us combined answers to the questions.

Robin.

---

ROBIN GROSS:

Thank you. This is Robin Gross, for the record.

I also have a question, mainly for our legal advisors, and that has to do with our concern about fiduciary duty under the designator model and the extent to which board members could override some of the community powers by claiming fiduciary duty or in the interest of the global public interest, because it sort of sounds like if a board member simply utters those words, "This decision was in the interest of the global public interest," that there's very little we can do to change that decision.

So how -- My question is really about how can we constrain that, or can't we? Or are there any limitations that we can put on that? Is it not the case that claiming "in the global public interest" is carte blanche to do whatever action they want?

So just some clarification around that would be really appreciated.

Thank you.

THOMAS RICKERT:

Thanks very much.

Wolfgang.

WOLFGANG KLEINWAECHTER: Thank you very much.

I want to continue what Cherine has raised, and Mathieu gave the answer we cannot answer this. But I think that's a key question, you know, whether the five designators, you know, act in -- on a consensus basis or just, you know, in an agreement basis. So this is really a key point for me. Because if you go back

---

to the reform in 2002 when the new mechanism was introduced, the basic argument behind this was we have to have a redistribution of power. No single group can capture the Board. That's why we have five different designators and a stakeholder process in the NomCom. So that means, you know, every year, the Board is reshuffled and you have a new group.

I know that some board members, you know, are already there for a long time, but, you know, they had -- go through a process of checking, and then they were reelected.

So that means the decentralization of power is a key factor for ICANN. And whatever we do, we cannot remove this or reduce this. And so far, you know, to answer these questions, whether this can be -- needs consensus of all groups or whether this is just, you know, one group raises the issue and gets rubber stamped by the others is an important point.

And let me add another experience when I have the microphone. For me, it's deja vu in Tunis 2005 when we discussed in the WSIS four models for ICANN oversight. It was ICANN oversight with the new corporation model in the final negotiations. And, you know, there was, you know -- it was midnight and after midnight that then people realized, okay, we will not agree on a model. What we can agree is on a process. And it should not be a new one; that we should base the process on what we have, on the existing mechanism. We have to enhance this. We have to make better. And the outcome was rather creative language.

And this is what I hope we will achieve here in Dublin, that we create, really, something new. So that means to use old language you which has also some historical baggages, you know, is sometimes risky. So that means let's open our own mind and to be creative and to come out with a language which

---

enables that everybody agrees on the basis of this distribution of power.

Thank you.

>>

Just two clarifications because the historical perspective, I can comment on that.

So what we've agreed in the first part of this meeting would be to investigate a process for decision-making of the community. That is moving into consensus-style decision-making. So that's answer to your initial question.

As I said in response to Cherine, we might -- we still have to refine this in terms of individual board director removal, but that's the exception, if you want, into this.

And the one -- the other thing I want to clarify on the record is that this community body, single designator or member model is the same thing. It is not a superboard. It is not a body that is mirroring the Board. It is not mirroring the Board's attributions. It only has power to just say no or yes. It doesn't redo decisions.

So it's not an oversight body that is going to be micro managing the Board. I think that needs to be very, very clear. This is not how this is going to play out in any way, whether in the single-membership model or in any model, actually, because it has only five or six powers, and you can only say yes, no. That's it. So that's important, I think, to remind in light of this historic retrospective.

---

THOMAS RICKERT:

So there's a new queue forming with Kavouss and Steve, but I suggest before we have too many questions for Holly and Rosemary, I suggest that you answer them, and we should then try to find a way to capture this with Roelof's help, maybe, so that we come up with a set of issues that you saw. And I'm sure that the community would have the same questions. So should we pursue this path, I think we should have slides ready for the engagement session where we spell out all the different scenarios and say what effect this model would have.

So Holly, Rosemary, I'm not sure who is going to go first. Over to you.

HOLLY GREGORY:

So I'm going to speak first to the question that was raised about the default judgment memo. I want you to recall that that memo was provided in the context of concerns about the MEM that the Board had proposed and concerns that arose in the community about whether or not the Board -- what would happen if the Board didn't want to participate in an IRP in a binding arbitration. And the response had been from some in the community that not to worry, default judgment is readily available in arbitration and in court.

Default judgment is available. It's complicated. It's not automatic and that's what we were pointing out.

So we were sort of pointing out you don't want to have to -- while that is available, it's not the simple if they don't participate in the arbitration, you just go and get an award in your favor and it's guaranteed. That was the whole point of that memo.

---

The next question you asked was about the clarity around the membership versus the designator model from a legal standpoint. And I'm going to turn to our California expert, Rosemary.

ROSEMARY FEI:

Okay. So, Jordan, you were asking whether it was -- the designator rights were somehow feeblers. We can't give designators the same rights we can give members. So I suppose in that sense it is feeblers.

In terms of the enforceability of the strength of going to court, you're right that there is a much larger body of law involving membership rights, and the statute does specifically give members standing. Designators are not specifically given standing, but the bylaws are consistently, under California law, treated as a contract for certain purposes, including the ability to enforce rights that you are given in the bylaws.

So although it's not as statutorily bound and there isn't the same body of case law, I do believe that the designator should be able to enforce their rights. They can't have as many rights as members.

And then Robin Gross asked the question about whether we -- I guess I would describe it as constrain the fiduciary duty to define what the global public interest is so that the Board has -- has to come to the same conclusion as the community about what is in the global public interest. I believe we answered that fairly thoroughly in the last -- one of the more recent memos on fiduciary duty. I don't think you can. And so I think you are really left with, in the end, if the community's view of what's the global public interest and the Board's view of what's the global



---

public interest diverge, and you are not in a membership model, then you have to rely on recalling the Board.

THOMAS RICKERT: Thanks very much.

Kavouss, Steve, and then Becky.

KAVOUSS ARASTEH: Yes. I think my distinguished colleague referred to WSIS 2005. That was a multilateral discussion. It's quite different from the multistakeholder discussions. There were government involved with the pull of politics, and here we are not too much with politics. We are thinking with techniques and procedures and administrations, number one.

Number two, (indiscernible) entirely different in 2015 than 2005. Entirely different.

Thirdly, we cannot leave the model and just talk about the process. They are part of each other. This is identity of the process. So we have to have that. I'm not supporting a particular model at this stage, but they are connected to each other.

Thank you.

THOMAS RICKERT: Thanks, Kavouss.

Steve.

---

STEVE DELBIANCO:

Thanks. Steve DelBianco, CSG.

I want to remind us that we have to select a column from that diagram on the board. We have to select a column like SD versus SM. I don't think we can select column four for options one through three and column five for options -- for powers numbers four, five, six and seven. I think we have a slider -- I mean, if you can put up a slider on there, we have to slide between single member, which is what we proposed in our second draft report, and slide -- do we wish to slide one to the left on single designator? And because of that, the sub-team that Thomas has talked about, and I, would desperately like to know if the chartering organizations here in the room have a particular community power -- which of course is the seven rows; right? If the chartering orgs as well as the CWG have a particular community power which they believe requires us to be in column five? Since if somebody has something for which they have to die in a ditch over, it would be great to understand that for powers four, five and six, they require the enforceability of single member, well, that pulls all of that chartering organization's preferences into column five.

So by displaying it as a chart, I didn't mean to mislead us into thinking we can pick and choose. We have to pick an entire column. Our second report picked column five, single member. The co-chairs have teed up the idea what if we slide to the left one to single designator. And I'm afraid the discussion -- Asking Holly and Rosemary to inform us as to the differences only gets to the critical question what do the chartering organizations feel we have to have prior to transition? And we need to get that surfaced in this conversation or the sub-team will be blind about what it needs to come back with.

---

THOMAS RICKERT:

Thanks very much, Steve.

Becky, you have lowered your hand, so you're passing? Okay.

I guess the question for us now is how to proceed with this. So there are no hands raised. I hope that -- that all questions have been answered that you have now.

I would suggest that should you have more questions, particularly legal questions that you would like to get responses to, send them in by email and we will try, as good as we can, to encourage Holly and Rosemary to respond quickly to them. So we will not answer them ourselves, because we don't want to second guess on what's legally sound and what not.

But I think that in terms of chairing this effort, we have made a good-faith attempt to see what the potential be way forward after having analyzed the comments would be.

So I would strongly like to suggest that this group does not go and tries to analyze all of these columns, but let's see whether we can live what's in column number four.

Let's see whether we can make the community designator model work. Let's try to answer any remaining questions there might be and let's try to operationalize it.

I think if we want to make this ever, we need to settle on a model.

And if we -- if we do settle on the model, then we have something that we can put our head around and lean on when fleshing out other details.

So it's crucial that we take this as a -- as a basis for our deliberations. Right? That we're brave enough to say, "This is

---

what's, from now on, our reference model. Let's see if it works." And we would do, as we always do. If we see things that don't work, we need to revisit what we're doing.

So I -- Kavouss and then Malcolm.

Malcolm?

MALCOLM HUTTY: Thank you. I disagree with that approach. You are asking us to change --

THOMAS RICKERT: Noted.

MALCOLM HUTTY: You are asking us to change our reference model that we have developed at some considerable length and that we have put out to public comment, and that most of the public comment has been essentially supportive, with important dissents.

I think that our correct process should not be to suddenly switch to a new model on the basis of really a very short discussion, but instead, to work through our model, working through the comments that have been put in the public comment that we've received against our model, including the board's comments, so as to establish which features of our model might have elements that have raised concerns, and what the capability is to adjust those features of the model to accommodate as many of those concerns as possible so as to build consensus.

Simply -- the mere fact that the board has proposed an alternative I don't think causes us to simply abandon our

---

proposal in the way that you described and adopt a new reference model at this moment.

MATHIEU WEILL:

Thank you, Malcolm. Mathieu Weill speaking.

I think that we need to remind ourselves that what matters is the requirements first. We are not married to any implementation model and we should not be. Requirements first.

And what's -- that's why I think our proposal, after a second public comment, has drawn some feedback on -- and concerns about the member approach, which was one aspect of our proposal. Only one aspect. And this feedback is not only from the board.

So our analysis shows there are wider concerns than just the board, and we've --

>> ASO.

MATHIEU WEILL:

ASO, for instance. I mean, some of the -- not ASO, but some in the numbering community have expressed concerns, some in the technical community have expressed concerns, ALAC has expressed concerns. There's significant feedback on the member aspect of our second draft proposal.

That is one of the reasons why we are suggesting to adjust to the column next to it, which has one absolutely extraordinary benefit, based on our work. If you take the slides that we used for the Webinars on our second report, look at them. Imagine

---

what they would be, how much an adjustment it would be, to go to the column next to it on single designator.

It's basically about changing one letter or one word in the whole 25 set of slides that describes the requirements of our work.

So I don't think it's -- it's getting away from our second report at all. It's adjusting one aspect.

And one other aspect. Because it's so close, except for some corner enforcement cases in terms of enforceability, it's going to be easy to shift back if at the end of our work we say, "Well, we're having a problem with separation," for instance, "and only the member can solve it, so since we are not meeting the requirement, we need to shift back."

So that's the approach we're suggesting to have because we're hearing some concern and because it's very close, so it enables us to keep 95% of our work achieved so far intact.

THOMAS RICKERT: Thanks very much. Tijani?

TIJANI BEN JEMAA: Thank you very much. I will not repeat what Mathieu said, but I would like to remind that in our first report, we proposed the full membership model and people didn't tell us, "Go to single membership model," and yet we get there. We choose the single membership model.

This means that if people didn't tell us to change, we don't have to change. We did. Thank you.

---

THOMAS RICKERT: Thanks, Tijani. And the queue is closed after Jordan.

Next is Roelof.

ROELOF MEIJER: Okay. I'll be brief.

I'm not sure but I don't think that we specifically asked the community if they feel that each and every power, as such, should be legally enforceable.

I think most of the consensus we got was on the powers and on the principle of enforceability, and I think that all the models give that, but the difference, I think, is that one model gives us enforceability of each and every power separately, and the sole designator model gives us enforceability on the most important one, which is the nuclear option, so to speak, but through that, we can enforce the other ones.

THOMAS RICKERT: Thanks very much. Next is Jonathan. And can you please state your name and affiliation before speaking.

JONATHAN ROBINSON: Hi. It's Jonathan Robinson. I guess GNSO affiliation. Also co-chair of the CWG, as many of you all know.

I guess -- I'm not going to speak to the detail. I've got a reasonable grasp of many of these issues. I mean, I can feel where the lawyers are shifting, where some of you -- but it feels like -- I guess just my sense is that you're at a moment here where you can see something and the chairs are delicately trying to say, "Look, can we -- is there something we can grab hold of?"

---

And my feeling is that it's very, very challenging because you can sense around the room there are some people who have got some very, very strong positions and some well thought out and firmly held positions. I mean, I'm sure Malcolm's going to come with one of those after me. But it just feels you're at a moment here where you can either grab something and start to move towards something or not.

So that's all. I'm not making a firm position on one or more of the models or, in fact, on the details behind them, but I just feel in the room now you've got an opportunity to start to grab something, and so I'd just encourage you to do so. Thanks.

THOMAS RICKERT:

Thanks for this innuendo which I think has been very clear. Thanks very much.

Next is Malcolm.

MALCOLM HUTTY:

Thank you. And thank you for being patient to hear from me again.

I strongly support -- sympathize and support the comments that Mathieu made about this is not being wedded to a particular model; it's about ensuring that it provides the solution that we need and satisfies the requirements that we have.

But as a matter of process, we have gone through this over many months, and we had decided that we believed that the single member model was required in order to satisfy some of those key requirements and that we had considered and rejected the single designator model as achieving that.



---

Now, that's not to say that we can't go back on that decision. That's not to say that we shouldn't reanalyze it. But to simply launch now to say that we will assume that the single designator model does satisfy these and it is now up to those that think that the single member model is needed, to go back and reprove those many months' worth of discussions I think is an abuse of the process.

It is more proper process to work through the reference model that we have identified at this time and to identify what are the things that need to be improved about it. And if it then, in the course of that discussion, shows that actually the things that are done cannot -- that some things cannot be solved with the single member model and must be done by the single designator model, and that the -- and that that can then be shown to satisfy those other core things, then we should switch.

But to start from a new baseline here I think prejudices the discussion that we're going to have over the coming week in a way that does not show fair respect to the many months of work that we have put into this and to those that have engaged in the public comments in good faith on the basis of the baseline that we had previously put.

THOMAS RICKERT:

Thanks, Malcolm.

And I have to say that sometimes in these discussions, we have -- just have to acknowledge that we can't agree on every aspect, but I think I would like to push back a little bit on the notion that the volunteer time spent on working on the model was wasted. We wouldn't be here if we didn't have all that thorough work over the months.

---

And to be -- to be very clear, I think what we've envisaged -- and I think Tijani will support this -- there was a lot of confusion surrounding the notion of membership. There was a confusion - - a lot of confusion surrounding the notion of statutory powers and derivative lawsuits that could be exercised by members. And even if we can smooth out a lot of the minor concerns, it is our perspective that we will not be able to entirely remove concerns, or at least doubts, about potentially destabilizing the organization if we stick to the membership model.

And I think if we want to be persuasive at the global level, if we want to have a model that can easily be explained and easily be understood, it's potentially far easier to say we have a community that is a designator that interacts with the -- with the ICANN board, and that can remove it as it can -- as a people can replace the government if they're not happy with what the government does.

That's far simpler in terms of explaining. And you will remember that in L.A., there was no opposition to agreeing that simplicity of the proposal is a key factor in what we're doing.

We need to get everyone on our side.

And so while I appreciate your point, I think it -- we are following process because we made very clear that after the closure of the public comment period, we would look at concerns and try to remove concerns.

So again, I don't see this as changing models. I see this as taking our model, our ideas, to the next level by refining them.

And, again, I think the -- the exercise of looking at the visualization of the second report and just looking at that

---

through the lens of a designator model will clearly show that we're not changing a lot in terms of what we've achieved so far.

So George hasn't spoken so we're going to hear Jordan, but after that, we really need to close and take stock.

Roelof, Jordan, then George. And Sebastien. Sorry.

>> (Off microphone.)

THOMAS RICKERT: What's that?

>> (Off microphone.)

THOMAS RICKERT: Then Jordan.

JORDAN CARTER: I think Roelof was an old hand so -- I wouldn't swear -- swear to it.

THOMAS RICKERT: Yeah.

JORDAN CARTER: But I -- I completely disagree with Thomas that membership would be destabilizing ICANN, so let me just put that on the table. I think that's a nonsensical argument. I totally disagree

---

with it. I will never agree with it. It doesn't stand up. So I wish that you hadn't said that.

THOMAS RICKERT: I -- let me just be very clear. I said that we won't be able to remove doubt.

JORDAN CARTER: Right.

THOMAS RICKERT: I did not say that I share the sentiment. I read all the legal memos, I have a personal opinion on that, but I think we need to make sure that we move forward.

JORDAN CARTER: Thank you for clarifying that.

The second point I'd make is that once again, my interpretation of why we got to member was in the first draft report when we were looking at each SO and AC being an unincorporated association and being able to exercise the powers, we said, "Well, if you're going to do that, if you're going to go to the trouble of making these UAs, there's no reason not to go to the membership option because it just goes -- you know, it's more complete, if you like, it's more familiar."

And as we -- as we -- that created problems, as we know. That's why we went from multiple members to the single member in the second draft proposal.

---

So I think -- and in that, the question is a kind of pros and cons thing that we need to look through, and maybe that's what the -- the small group is going to focus on.

Because there are some up sides to the designator model and there are some up sides to the member model, and we need to understand them both.

You know, we -- I would like to see some more -- you know, this two-minute intervention thing is so unhelpful in getting a real understanding going, but I would like to see more discussion, more comprehensive discussion, about the enforceability of all of those powers under those models.

You know, because we have to answer the points that Avri made.

But I don't think we're breaching the process if we end that.

The last point I'll close on is if we do stick with the single member model, we -- if we can get consensus for it based on the requirements, we'll have a cleaner and quicker run to finalizing and closing this work out.

If we change the model, there are implications in terms of the consultation side of stuff and that will slow us down.

THOMAS RICKERT: George?

GEORGE SADOWSKY: Thank you. A couple of quick points.

First of all, I really appreciate the comments regarding the importance of the goals and the principles.

---

If we can -- if we can establish what those are and meet them, that's the important thing.

The means will -- of achieving them will fall out.

And I think the comment on simplicity was also important. The simpler this proposal, the more chance it has of being accepted and understood after its acceptance. Thank you.

THOMAS RICKERT: Thanks very much, George, and thanks for being brief.

Sebastien?

SEBASTIEN BACHOLLET: Yeah. I would like very much that we try to keep the name of the proposal to the single designator and not to change the wording because sometime it's "community designator," sometime it's something else, and I really think that as I don't consider that it's a concentration of power but it's a way to be all together in one place, that's where -- historically where we move, we move to a single, and the fact it was member. Now we are going to the next step with "single designator." We are just going one step further.

But keep the "single" as a very important word in this description. Thank you.

THOMAS RICKERT: Thanks very much, Sebastien.

I guess that's a good point. We came up with the notion of "community designator" in order to not have any -- previously encumbered term, right? But the idea -- or that's what we're

---

hearing -- is that if we want to avoid concentration of power, if we want to be fully inclusive, then it's good to see the community as holding the power and not a subset of the community being the designators, and I guess that's the -- that's maybe the part that we should still build on from the previous proposal.

So thanks for pointing that out and that's certainly a point that we can -- that we can pick up.

Steve, and after that, I'm really going to close the queue. We're two minutes over time.

STEVE DelBIANCO:

Thanks, Thomas. Steve DelBianco with the CSG.

Jordan just talked about the notion of achieving consensus within the CCWG with respect to the columns. And please understand, this is the enforcement model of the column.

The discussion we opened today with was Jonathan Zuck and all of us talking about the decision-making method that the community would use. Community forum, consultation, pre-call, getting rid of the notion of voting and waiting.

All of that would apply, no matter which column we picked, okay? So that was the idea of teeing that up.

So if -- when Jordan asks the question of trying to get consensus on enforcement, if what you had in your head was, "I have a concern about voting" or "I have a concern about weights," "I have a concern about voting versus consensus" or, as Bruce Tonkin indicated, the representativeness of the ACs and SOs and capture, all of those concerns we need to address in the

---

community decision-making process, those concerns actually don't have relevance to our selection of our enforcement model.

So I do think it was constructive -- we tried to tee it up that way this morning -- for us to have a sub-team working on the decision-making process that we have, and then this selection only affects the escalation, the ultimate escalation of having to enforce a power.

So we can separate those decisions, and I think by breaking this up it's more easy for us to achieve consensus on enforcement versus consensus on the decision-making model.

So I'm just trying to achieve some clarity that we have two separate parallel tracks of sub-teams and their work will meet at the end in the selection of what our enforcement model is.

THOMAS RICKERT:

Thanks very much, Steve.

Now it's time to take stock and we've heard some criticism, we've heard some -- about some questions and concerns, but we also need to move forward and try to work on fleshing out more details.

So with your agreement, I would like to task or have us task a sub-team for tomorrow to look in more depth at the single designator model and specifically speak to the issue of IRP and separability, because I think those were the core concerns with the model, and then revisit this path to see whether the requirements that we've established are met.



---

But I think that we really need to do some more deep-dive analysis on that and task the sub-team, with legal help, to flesh that out more.

MATHIEU WEILL:

Can I just say that what we need the sub-teams to come up with is very -- a lot of clarity on the processes that would be taken on, so that we identify the various steps -- the escalation, the staircase, the three steps of -- the three "E's" that Thomas highlighted, and then see whether we're comfortable with the way it's looking.

And we've definitely identified, thanks to this discussion, the core areas of concern that we need to prioritize in terms of a specification.

THOMAS RICKERT:

And again, I think it's crucial for us to really give a model a chance. Let's jointly try to make it work, and if we come to the conclusion that it doesn't, then we need to revisit, as we've previously done. But let's see this as part of the evolutionary process.

So with that, I --

JORDAN CARTER:

Sorry. Can I -- so in this subgroup, which I'm intending to be part of, I want to make it really clear that it has to look at the merits.

What I hear you tasking us with is looking at the merits of the single designator and single member lines on the enforceability and seeing if it meets our requirements.

---

THOMAS RICKERT: Well, I would go even further and say let's take the single designator model, see what it can deliver on our requirements and whether we can remove the concerns that have been expressed by this group with legal assistance.

>> Okay. But in the absence of that analysis and discussion of it, I just want to be clear some people are saying this to me, we're not taking the single member model off the table. We're analyzing the requirements against the single designator model.

THOMAS RICKERT: What I said is let's give this model a chance by looking at it more closely. We're not taking a decision today but we're authorizing ourselves to look at that. Because it actually could be a way forward removing many concerns, yet meeting our requirements, and have something that meets our overarching requirements of not destabilizing, avoiding concentration of power, avoiding capture, and, you know, the things that we've -- we've spoken about earlier. But we will work more on refining the terms of reference for the sub-teams and also where they're going to meet and the logistics about that, so you'll hear more about that through the day. And while staff can please bring up the slides for the next agenda item and Jordan is going to prepare -- I think George's hand was an old hand or -- that's an old hand. So Kavouss and Tijani. Yes, Kavouss and then Tijani. And if I could ask you both to keep it brief.

KAVOUSS ARASTEH: Thomas, we are in a very critical moment. It is dangerous to concentrate or push or opt for any particular model at this stage.

---

We should save one, the transition process, which ICG is working for that, and among that we have heard the concerns of the two operational communities, numbers and parameters, that they are totally frustrated. That they are waiting for 15th of January and they had no problem with any model at all and everything will be postponed if we do not decide properly. Second, we should say what we have done. Instead of concentrating on the model, we should concentrate on the actions, powers that need to be implemented in order to have the accountability required for transition and accountability that we have worked and put or create a step at this stage, should we go ahead with that one and having the provision to review of the situation, including the governance. So please, at this stage, kindly do not conclude that we push for designator model. Thank you.

THOMAS RICKERT: Thanks. Tijani.

TIJANI BEN JAMAA: Thank you very much. I would like very much to be on this subgroup tomorrow but unfortunately perhaps my duty as an ALAC member will prevent me to be there. That's why I would like to say and to stress that I have strong support for the sole designator model. We already talk about that with a lot of you. But I don't know how to -- how to split ourselves between two meeting rooms. Thank you.

THOMAS RICKERT: In which case I'd like to ask you to send emails with concerns or questions that you have so that the sub-team can work on that. Again, we're not making a decision today. This is just to agree

---

on a way forward. Are we good to go for the next agenda item? Which is going to be the -- no, not that one. We're going to talk about the board removal, and over to you, Jordan.

JORDAN CARTER: This is going on to the edge of rapporteur abuse but anyway, hi, everyone. Jordan Carter for -- that's Jordan rapporteur abuse. Let's be specific.

>> (Off microphone).

JORDAN CARTER: I'm sure it is. So in the comment document in terms of removing individual directors I think is the one we're looking at rather than the entire board, unless I'm deeply confused, or are you unsynced? Oh, okay. So what's on the screen in the Adobe room is right and what's on the screen in the room room is wrong.

So this is going to be very brief on my part. Once I find it in my own document. The removal of individual directors is on page -- whatever page that is. Page 8 of the document. And the key public comments here are issues that we canvased at some length in Los Angeles. So you'll -- many of you will be already familiar with them. But it's important to kind of restate the feedback that we got. People are in favor of the basic premise. The largest block of comments voiced unqualified support for the proposal as it was presented, that appointing SOs and ACs could remove the directors they appointed. There was consensus in there and in the Los Angeles meeting about documenting rationale for removal. So if you were going to

---

remove the director, you need to say why. You don't just sort of go, we're sick of you -- well, actually that's a why, isn't it? You don't just go sayonara. So those are consensus areas.

In terms of clarification or refinement, there was some comments in favor of criteria for the removal of directors as Work Stream 1 items. And there were some -- some other detailed points that are listed there.

In terms of areas of concern and divergence, again, you know, is it the SO and AC that appointed them that makes the decision or is it the entire community? The way that we reconciled that in the second draft proposal was to say yes, it is the appointor that removes but there is this mandatory dialogue step in the community forum which is really important and we've added on to that layer the need to present a reason. So not cause. When you hear cause or when I hear cause, I hear a list of criteria that's set out in the bylaws and if you can't objectively justify your decision against those criteria, then the person you're trying to fire can take you to court. That's an employment-style relationship, in my view. That's not what's being proposed here. Not what's being proposed here. It's providing a logic, an explanation, a rationale. And a director confronted with that would either go, I'm not going to be dragged through a discussion on that in the community forum, I'm resigning, see you later, or they would. It would be a very public process of discussion.

So that cause thing is an important discussion, standards of behavior and so on. And the -- another commenter noted the idea that there maybe needs to be a cap on the number of people who could be dismissed, otherwise you referred into the recall the whole board thing. That's something that Work Party

---

I haven't analyzed that would need to be treated carefully if there was an ascending threshold that applied once a certain number of directors had been removed. You are creating an unfortunate incentive on people who have concerns with their directors to be the first remover because it might get harder later. And I'm not sure that that would be anything other than a destabilizing instinct. So that would need to be thought through quite carefully.

And so the options that WP1 presented back were that there should be an explanation of these questions that I've raised. And I'll hand it back to Thomas.

THOMAS RICKERT:

And we would like to open it up for questions. So Jordan, should we maybe go through -- ask for confirmation on the various options?

JORDAN CARTER:

In terms of the options, do you mean the sort of options for the CCWG to discuss that we put at the bottom of our paper? Right, we could do that just as a way to spare discussion. That's on the bottom of page 9. And if you were to scroll to that on the screen, I think you should be able to see both of those options on the screen. I mean, the two and principle discussions are ones that we've had more than once, and we've resolved the same way more than once, which is that it's the appointing body that removes. There's a very clear weight of sentiment behind that, and we've decided that twice. And the other is the question of objective standards that have to be met versus explanation. There's been a clear body of support and twice we've decided to have it as an explanation but not list of causes. So these options

---

kind of place that in front of you again. The other one that's come up in the discussion is this idea, do you have a cap on the numbers who could be removed. So I guess what I'm signaling is that having discussed this a number of times, the lack of hands going up in the room might signal that other people are also slightly exhausted by this discussion.

THOMAS RICKERT: Chris.

CHRIS DISSPAIN: Well, I will just plus one to Jordan about being slightly exhausted. I just wanted to talk briefly about the concept of the number. I think if I remember correctly in the Board's comments we suggested that if you used -- if you -- if there was going to be a different standard for the removal of an individual director or -- then there is for the removal of the board, which is as it should be, leaving aside what those standards might be, then you should probably set a level at which the removal of the individual directors is tantamount to the removal of the whole board. Otherwise you could find yourself in a situation where you were removing people at a lower level of requirement than you required for the whole board.

Now, Jordan, forgive me if I'm -- if I'm asking -- does this address the nominating committee removal or not?

JORDAN CARTER: From my memory, and is Mike Chartier here in the room? Hi, Mike. Nice to see you. Mike did the direct analysis of the comments that led to this part of the paper. So I think I might actually ask him to answer that question, if that's all right, or if

---

you want to come up to the front table. Either way. He's asking for a roaming mic.

CHRIS DISSPAIN: Just to be clear, my question -- that's a split question. So I'm asking, does the individual director removal that you've just talked about deal with how the nominating committee would do that or are you only talking about in respect to the SOs and ACs?

MIKE CHARTIER: Only with respect to the SOs and ACs.

CHRIS DISSPAIN: Excellent.

JORDAN CARTER: So to supplement that, we didn't get many comments and as far as I recall that dealt with the NomCom process that we set out in the proposal.

CHRIS DISSPAIN: Understood. So -- thank you. So if it's all right, that brings me back to my point. So I would argue that if you were to remove all of the elected directors from the board through a process of going through the individual removal, that is probably a point at which you should be saying -- we should be saying well actually, that is in effect board removal because there are distinctions made in the bylaws between the appointees from the nominating community and the appointees from the board. There are distinctions made about there always having to be more people from the nominating committee and so on. Given



---

that those distinctions are already made, I think we should talk about whether there is a tipping point at which you say removing that number of board members individually through the individual process is tantamount to the removal of the whole board. I don't make any comment about what that number is, but I think there's a logical breakpoint in the sense that you've got your nominating committee and your elected directors.

THOMAS RICKERT: Mathieu, would you like to respond?

MATHIEU WEILL: I'm just wanting -- it's a clarifying question. Is -- what you're saying is that you would see an escalation whereby after a certain number -- if a certain number of removals are undertaken in a certain period of time then there would be a tipping point upon which the next one would be -- would have to be exercised with the extra caution or extra thresholds that would be required for the board recall and then it would trigger actually the board recall, is that what you are saying?

CHRIS DISSPAIN: I think I'm saying that -- in essence I think what I'm saying is look, if the ccNSO removes me and Mike and then six months later the ALAC removes Rinalia or whatever, that's fine. I'm not talking about that. If there is in effect a concerted SO and AC effort using the single board removal criteria to remove what amounts to half of the board, then I think that's problematic and that we should look at that as being --

---

MATHIEU WEILL: Just to make sure, is your -- are you suggesting that a limit of individual board removal is set or are you suggesting that this concerted effort be the board recall process? You can see both ways.

CHRIS DISSPAIN: Yes, I agree. So I think we need to talk about that. But I'm saying it's a subject of discussion we need to discuss.

MATHIEU WEILL: What's your personal view?

CHRIS DISSPAIN: I think my personal view is that you set -- I think my personal view is you set a number. I don't think you can say because we've done six, now seven and eight have to be a higher threshold. I don't think that works. I think you actually say, if there is a -- if more than -- these are just numbers I'm making up. So we have how many electors? We have four, right? We have ASO, ccNSO, GNSO, and ALAC. If you said, if three of those -- again, I'm making this up -- if three of those processed to remove their individual directors at the same time, that would be deemed to be X. You could say four of them. Then that's, I think, a possible solution. But I'm not suggesting it would ever happen. I just think we do need to cover it because removal by stealth is a challenge.

THOMAS RICKERT: Jordan, you wanted to respond to that as well?

---

JORDAN CARTER: It was just to sort of suggest one way to operationalize that in the scheme of our second draft proposal would be to say that if there were three active petitions that happened at the same time to remove three directors, that that would then be deemed to be a remove the whole board petition instead. But we would need to think all that through.

THOMAS RICKERT: Yes, but I guess we need to think it through at some point in the very near future. And also let's remember that we have board members being seated in intervals. So I think maybe we can just settle on saying no more than three in a year. I'm just throwing out an idea. I think we need something concrete for the group to say yes or no to. Saying, you know, we need to discuss this at some point in the future I think will take us nowhere. So if somebody is brave enough to come up with a concrete suggestion as we discuss, I think it would be great. Maybe we could take stock of that.

Let's move on with the queue. And I'd like to close it after Greg and see whether we can add more people to the queue in terms of time, when we come to Greg. Christopher.

CHRISTOPHER WILKINSON: Thank you. Good morning, everybody. Christopher Wilkinson, for the record. Just to mention that my comments on the nominee committee appointees removal have been made there on the record and Jordan did not refer to them. For the rest I defer to Alan and Chris Disspain.

THOMAS RICKERT: Thanks. Tijani.

---

TIJANI BEN JAMAA: Thank you very much. You know very well my position regarding the removal of individual board members by the appointor -- the appointing bodies. I will -- I oppose strongly from the beginning, and I still opposed to that. But we -- we found a way to make it lighter, to make it better for me with the forum. But I still find it is -- it is better that the community remove the individual board members. I will not repeat the reasons that I gave, but I can tell you that in our second report we proposed the sole -- the sole membership and this model, it is the right of this sole member and only the right of the sole member to remove the directors. So -- but we found acrobatic -- excuse me, acrobatic ways to make in the bylaw the sole member obliged to implement the decision of the appointing body. I think that I am not comfortable with that and I prefer that really the sole member, but now if we go to the sole designator, the sole designator will be the one who will remove the board members. I will not repeat the reasons. If you want me to repeat them, I am ready to repeat them. Thank you.

THOMAS RICKERT: I think we -- we still have fresh memory on your thoughts on this. But thanks for your contribution. Next is Alan.

ALAN GREENBERG: Thank you. Just in response to a couple of the previous comments. There was a proposal in the current -- the current proposal does talk about removing NomCom appointees by the community and it is correct, we got very few negative comments on that. So if we have a process, let's not change just for the -- for the -- for the hell of it. The ALAC was the one that commented on removing too many directors. Certainly we don't want to remove one by one and end up having only one director

---

or zero left with the exception of the CEO. But I'll point out, when we talk about this, let's remember there's a difference between removing directors -- a director rather that has been removed and a director that has been removed and already replaced.

Just because we remove three and replace them two months later, that shouldn't -- the three should not count against the count. The real concern is a Board that is too small where we have essentially disenfranchised the Board, and I think we need to be very careful how we do that, and that we do need some sort of limit to make sure that we haven't removed the whole Board. Exactly the mechanism we need -- that we need to do that with needs to be discussed in detail, and it's something we haven't focused on yet.

Thank you.

THOMAS RICKERT: Thanks, Alan.

Kavouss.

KAVOUSS ARASTEH: Yes, the reason I was not in favor of the removal of individual board member by their designating community or constituency was this sequential actions that they remove the Board one after the other may happen because the threshold is lower than removing the entire board, and sometimes we may reach a point that we totally destabilizing the action of the Board and we do not recalling the whole board because we do it one by one. Therefore, all of those procedures for the removal of the entire

---

Board is not in place, and this de-stability and paralyzing the situation will happen. We have to put some element.

The issue of removal works individually separately, but if you put the whole things together and having a picture of that, we see that there are many deficiencies to that if we do not put some element, some threshold, and some limitation, a matter of time, so on, and so forth.

So currently, that is the difficulty. That is what I suggested that if that is the case, it go to the community, that community be aware of the consequence of this sequential removal of the Board one after the other.

So we need to do something if you want to have this removal of individual board member. Currently, doesn't work.

Thank you.

THOMAS RICKERT: Thanks very much, Kavouss.

Next in queue is Cherine.

CHERINE CHALABY: I want to go back to the previous session when we talked about the community consensus decision under a single-membership model. And Mathieu said we will have a discussion here; you are open about the two options.

You talk a lot about avoiding concentration of power. And I would say that removing a single board member is probably one of the most powerful decision the community is going to have. And if you leave that power concentrated in one S.O. and A.C.,

---

that is a concentration of power which I think will have a detrimental effect on Board behavior and what's happening on the Board. This is my personal view, and I will repeat only very -- the three things I think will happen.

One is you will end up with, over time, a dysfunctional board because there will be two classes of board members: Those appointed by the Nominating Committee, and the Nominating Committee is representative of all of the SOs and ACs, and, therefore, when they decide to remove someone, it's a representation, a consensus of the community, more or less, to remove a Nominating Committee member, whereas the others, it is not. So they, the Nominating Committee members, will have more freedom to act in the collective interest of all stakeholders rather than in the single interest of a single stakeholder.

Secondly, the Board will become much more a representative board, where Board deliberation and decision risk being driven to a large extent by subjective goals and personal compromise. So I really urge you to involve the community in the removal of an individual board director to avoid concentration of power.

Thank you.

>>

Thank you very much, Cherine. That's exactly the kind of thorough view that is needed at this point to help us move forward. So I think Cherine's point deserves to be considered completely, and if -- one of the discussions we need to have is whether we move forward with such an approach or stay with the current second report approach. Obviously there have been some concerns raised in this group before, and even from you,

---

Cherine, and so that's something that we need to have the discussion right now. And I suggest we move back to the queue about it. And I think the next is -- is Sebastien next in the line? Sebastien?

THOMAS RICKERT: Yes, Sebastien.

SEBASTIEN BACHOLLET: Thank you.

Thomas, you asked for proposal. I just want to remind you that both in the comments of the first draft and on my minority report on the second draft, I made a proposal how to put together the removal and the spill of the whole board, and how will solve also the question of how to replace and how to still have a board functioning.

I just want to remind you that each year, we may change five -- up to five member of the board, the community as a whole, and that's why I made the proposal to add seven possibility for one single year.

I will not repeat my proposal, but I just think that it seems to be that we need to find a workable solution and not to completely destroy the Board. Even if we talk about the nuclear option, first I don't like the nuclear bomb and I don't think ICANN deserve to have this type of thing doing. That's not to say it's not a good stick. It will still be a good stick.

Thank you.



---

THOMAS RICKERT: Thanks.

Greg.

GREG SHATAN: Thank you. Greg Shatan, for the record.

Responding to a couple of things that have been said. First, I think with regard to the concern about concentrating power in having an S.O. or A.C. remove the director which it appointed, we have the same concentration of power when it appoints that director in the first place and when reelect them or decide to not reelect them. It's really just a question of timing. So I think that's a bit of a red herring because their selection is still in the hands of that particular A.C. and S.O. It's just a matter of when they exercise it, if they exercise it at an extraordinary time or at the ordinary time.

And I think with regard to the issue about kind of serially spilling the board or self spilling the board, I'm concerned we're getting into edge cases here. I'm not saying it's impossible but I think we need to get back to first principles. This is about accountability. There really needs to be, I think, an issue where this would happen. And I think we're kind of mistrusting the community if we think that this is at all likely to happen. I'm not saying we shouldn't spend any time on it, but I don't think it's a key factor in choosing our methodology. And I think we get too stuck on edge cases, and this is one of them.

Thank you.

THOMAS RICKERT: Thanks very much, Greg.

---

Next in line is Athina.

ATHINA FRAGKOULI: Yes, thank you very much.

I agree with Greg's point. I express it already in the chatting room.

I'm going to speak as an ASO representative, and we believe that the power to remove individual board members should be a decision of the individual SOs and ACs and I'm going to bring an example here is the ASO example. The ASO selects their board members pretty much based on their expertise, which is a very specific expertise. It has to do with numbers. The community has an expertise, of course, but it's not so much for numbers. It's for names. And we don't see how the community can judge on the expertise of an ASO board member.

That's our point. Thank you very much.

THOMAS RICKERT: Thanks, Athina. And just for you to know that we are cognizant that we've been in this room for three hours now. Let's try to take this a little bit further, to have fleshed out the areas that the sub-team tomorrow should be looking into more.

So I think we can potentially find a solution for the open issues. Let's try to have a finite list, terms of reference for the sub-team for its deliberations tomorrow.

Next one is Mike.

---

MIKE CHARTIER: Thanks. I just wanted to point out that the comments, as all the comments, were received in the context of the single-member model where you had discrete or nuanced enforceable powers as Thomas said. And if we're going to be looking at the single designator model, the ability to remove individual directors retains one of the few areas of nuanced power. So that's just something to keep in mind for the discussions tomorrow, to think about it also in the context of a single-designator model where you're left with the single nuclear option of recalling board members.

Thank you.

THOMAS RICKERT: Thanks very much.

Jordan.

JORDAN CARTER: Thanks. Jordan here. Just not speaking as a rapporteur or anything.

I'm interested in Cherine's point about the concentration of power. At the moment, a key part of the distributed power in the ICANN community is that different groups designate directors. So each of the three SOs can appoint directors, ALAC can appoint a director, the NomCom appoints a director, so five appointing parties, if you like.

I think it would be a concentration of power to compress the removal power into one body, into one grouping, into the whole community. I actually think we preserve the kind of individual choices that Athina just talked about for the ASO, for the focus

---

that the ccNSO wants to bring, by allowing the removal to be parallel, to be consistent with the appointment.

In other words, I think logically speaking, if you say that the whole community should be making decisions about who directors are and about who they aren't, you should also take that position with respect to who they are.

So I don't support abolishing the right of SOs and ALAC to appoint their directors, and I join the strong support that there is in the public comments to suggest that the removal process should be parallel with that.

THOMAS RICKERT: Thanks, Jordan.

Mathieu.

MATHIEU WEILL: Thank you, Thomas. Mathieu Weill speaking.

I think what we have here is -- is two different requirements. One is from the A.C. and SOs, the requirement that they are -- they have the ability to select their own members and keep them in place, and one is that the board members act be in the interest of the community as a whole. And we're trying to reconcile them.

And actually, in the escalation process we discussed earlier, we have several steps. So I would like to suggest that we can probably combine both concerns or requirements by actually using different steps and picking an approach for one step and another approach for the second step.

---

Let me explain. That could be that -- the two steps are petition and decision, and in the middle there's the discussion. It could be that a petition, I think that's been suggested in the comments, could be to remove -- let me remove Chris Disspain, for the sake of the argument.

[ Laughter ]

It's -- I don't know.

CHRIS DISSPAIN: Removing me for the sake of the argument is not a good enough reason. You're going to find another reason.

[ Laughter ]

>> Chris, you're just afraid we could have full consensus on that; right?

MATHIEU WEILL: So it could be -- we could acknowledge Athina's concern that ASO or others have the ability to pick who is on this, if, for instance, the petition right to remove Chris Disspain as ccNSO appointee would be reserved to the ccNSO. And then the decision would be a community decision. Or we could do the other way around. We could require that the petition comes from another S.O. or A.C., but the decision is reserved for the appointing body. I think there's more -- probably more -- it's easier to understand with the models we're discussing if it's the first -- the former than the latter. But I think we can probably accommodate both concerns if we play with these two parameters and probably look whether that would be practical

---

in terms of process and whether that would give rise to risks of capture or concerns, specific be concerns.

So that was my suggestion forward.

THOMAS RICKERT: Thanks very much.

Tijani.

TIJANI BEN JEMAA: Thank you very much. I understand very well the concern of Athina, and I think that any board member is appointed to the Board not to -- especially for this appointed body but for the whole community.

If this body make -- made a mistake about his competence, if you want, his skill, means that, for example, this Board -- convinced the Board to take a decision which is not right regarding the security and stability. So -- or, for example -- no. Concerning the numbers. So the ASO may ask for his removal. And in any case, anyone can ask. The petition can be done by anyone. But the whole community will see and will listen to the people who asked for the removal of the board member, and the decision will be of the community why? Because if it is really a problem of a technical problem, they will follow and they will accept it.

But it is only for a narrow interest of this body. The community will not accept it.

Coming back to the concentration and distribution of the power, if the community take the decision, the decision would be distributed among the whole community. It will not be

---

concentrated in one part of the community. It will be distributed on the whole community. So I don't think it's concentration of power. At the contrary, it's a distribution of the fair, a fair distribution of the power.

Thank you.

THOMAS RICKERT: Thanks very much, Tijani. And I'd like to close the queue after Roelof.

Let's here Cherine, Kavouss, and then Roelof.

CHERINE CHALABY: So I kind of -- I agree with Mathieu. Mathieu, your proposal to use the escalation process for the removal of board members is something that I would feel a lot more comfortable with and would make a lot of sense. And also, in a way, you are saying what's good for the Board is good for the community.

So the escalation process is an accountability measure, so that should apply to individual SOs and ACs making such a critical decision for the removal of individual board member. And that is a fair and balanced accountability, in my view.

So I support what you just said, and I hope people will work around that and try and find a way forward.

Thank you.

THOMAS RICKERT: Thanks, Cherine.

Kavouss.

---

KAVOUSS ARASTEH: Yes. I also agree with Mathieu. Both versions is possible. Perhaps we need to reflect a little bit on that. More logically, coming from S.O., supported by community, it's more logical but inverse also. It works.

The only thing we have to think is what is the legal process for each of these which is more stronger. So we have to see which one is more stronger from the legal point of view as far as the law you of this corporation in California state is concerned. But both is possible.

Thank you.

THOMAS RICKERT: Thanks. Mike, that was an old hand; right? But now that I mention your name, are you okay with taking care of the sub-team tomorrow for the breakout?

Thumbs up. Thank you. He's nodding for the remote participants.

Roelof.

ROELOF MEIJER: Thank you, Thomas. Roelof Meijer for the record.

Personally, I have a preference for individual board member removal by the community as I feel -- it's my opinion, at least, that every board member should serve the community and not his or her constituency. And I think by introducing the notion that it's the constituency that removes the board member it elected, that we bring in this notion that the board member is



---

actually serving and is responsible to the constituency that appointed him or elected him or her.

I have some experience in this matter with -- within my own organization because we have one advisory board member that is nominated, not appointed, nominated by our council of registrars. And there have been occasions when, after some time, they were not very happy with that particular board member because he or she was actually serving the interest of the organization and the wider community and was not, in the opinion of the registrars, not enough defending the specific interest of the registrars only.

So there is this risk. I don't think it's very big. I think we can manage it, but it's -- I just want to put this in, that there is a risk that we communicate unwillingly that board members are responsible to their constituency only and not to the community, and I think it should be a community process.

THOMAS RICKERT:

Thanks very much, Roelof.

So I think that the main arguments have been exchanged, so we even heard some repetition of arguments which is why I think we have good chances of closing early for lunch. I think you've all deserved that. But let's just try to agree on some terms of reference for the sub-team to work on tomorrow.

So I think the most important point is that the sub-team should be looking at how to operationalize this community power and not question it entirely. I think there is no discussion about whether we need it or not. We just need to make it work, so that there's -- there are as little concerns as possible.

---

The sub-team should also look at the question of who can petition, who -- whether there should be a deliberation phase and in what shape or form the deliberation or discussion phase should take place, and then the question is who makes the decision, ultimately, on the removal.

We should be talking about the NomCom appointees, what treatment shall be given to them, and lastly, whether there should be any threshold in terms of numbers where individual board member removal would actually turn into a total board recall and what the limits on that should be, as remote -- as Greg rightly pointed out, as remote as the scenario might be in practice.

But, you know, if there are concerns, if we can just put in a sentence or two clarifying that there is a ceiling to that or that a different process is needed if you reach a certain threshold, why not put it in there and remove that concern?

So unless there are -- there is disagreement with this approach, I would suggest that we break early for lunch. We're going to reconvene at 13 hours. So we have 77 minutes now, and I hope that you're going to use the --

>> (Off microphone.)

THOMAS RICKERT:

Well, you -- I would have some tasks for you if you want to -- those who are -- who are suffering from too much spare time, approach me and I'll find some work for you.

Kavouss, you have raised your hand again.

---

KAVOUSS ARASTEH: Yes. Not disagreement but comment.

If you say you put threshold, suppose you put threshold from the third and fourth removal, so I as an SO try to give first, to have lower threshold and removal, and then not to be the fourth to have the higher to removal, so we should think of that one, unless your threshold is defined differently. Thank you.

THOMAS RICKERT: Kavouss, I was just making the point that this item should be reflected by the group tomorrow. I was not suggesting that we would need it, but that it should be considered as a piece of homework for the sub-team.

So with that, I think we can say we made decent progress this morning. You know, at least we have some points that we can now try to firm up and have less moving parts, so continue the conversation over the lunch break and we're all looking forward to seeing you again in 75 -- 77 -- 76 minutes now, and let's -- remote participants, we try to be punctual when we reconvene. Thank you so much.

Hello. Hillary, would you like to do some housekeeping announcement? Are you here, Hillary, or Alice, would you like to do it?

HILLARY JETT: Yes, lunch is outside in the foyer.

THOMAS RICKERT: Can we leave things in the room?

---

HILLARY JETT: Yes.

THOMAS RICKERT: Yes, we can leave things in the room. Hillary, anything else? Ladies and gentlemen, I give you Hillary Jett.

HILLARY JETT: Hi, everybody. Food isn't going to be ready until noon, so even though we get a little bit more spare time, it's still going to be about 10 minutes until food is going to be ready.

Once you get your food, you can either find some -- a high-top table outside to sit at or to stand at or you can bring it back in the room here. We're trying to see if there's another space available, but for right now, that's our options. Okay? Thank you.

THOMAS RICKERT: Thank you very much, Hillary, for making this happen.

[ LUNCH ]

---

THOMAS RICKERT: I respectfully summon Jordan and probably Jonathan to join the table for the next agenda item. Jordan, yes?

Congratulations, Jordan, you've been the rapporteur for the budget discussions.

Should we invite Jonathan?

>> Zuck? Where is Jonathan?

THOMAS RICKERT: Jonathan Zuck, Jonathan Zuck, please join the table now. This is the last call for Jonathan Zuck.

JORDAN CARTER: I don't think you should tell him it's the last call. He might miss the flight.

THOMAS RICKERT: Good. Let's get the recording started. And here we -- here he is.

So as everyone takes their seats, we are now moving to another area where different views were expressed in the public comment, which is the budget and strategic veto power, and we will start, just like we did for the earlier agenda items, with a recap of the public comment analysis and then see how we can move this forward.

Jordan, are you providing the recap or handing over to Jonathan or -- right away?

---

JORDAN CARTER:

Oh, I'll just start and then I'll throw it Jonathan's way when I get bored. I mean, busy.

So the budget, strategic plan, operating plan has been discussed a number of times and the public comment report that we've provided that's on the screen in front of you looks at the areas of consensus.

So there is broad support in the comments to have a power relating to these items.

There are areas that need refinement or that commenters think need refinement but that have already been refined. So the first one, as an example, that endless loop, we've already said there are only a maximum of two vetoes in the second draft proposal; that there are some escalation thresholds, you know, because there already is one.

So, you know, people sort of form a quick impression and sometimes the comments don't match the substance of what we've proposed.

But if you look down, the discussion has really moved on a bit beyond the second draft proposal based on the conversations that happened in Los Angeles, as well, and that's been about the kind of counterproposal around veto.

So that the board proposal was a different way of engaging the community in the discussion. And some of these questions come to the enforcement level that's involved.

The options for the consideration of the CCWG -- and they're on the bottom of Page 3 -- are five, and I'll hand over to Jonathan to talk them through. Actually, there are seven of them.

---

Are you happy to do that?

>> (Off microphone.)

JORDAN CARTER: I think so. I mean, all -- people, I can assume, have read the paper that we've done.

In terms of the areas of agreement, the refinement, and so on, the refinement ones are not substantive things that need to detain us here because they aren't the hard issues. I guess at a high level, the hard issue is related, in part, to the enforcement model. Is this a veto or is it a kind of consultation process.

There needs to be some clarity around the -- they're counterfactual, I guess. You know, if a budget is in whatever dispute process this is, what happens to preserve the operating integrity of the company? Everyone's agreed with that goal.

So there are a lot of sort of more important "how" questions than "what" questions. But Jonathan, you did the public comments now, since you led that group, so, you know, feel free to add whatever you think needs to be -- have attention drawn to it now.

JONATHAN ZUCK: Thanks, Jordan. And I too don't want to bore anybody with conversations with which they're already familiar. I will say that I'll harken back to my first slide about sort of where we consider our responsibilities in Work Stream 1 because there are a number of comments that continue to appear in the public comment process that are akin to "Wouldn't it be nice if we

---

could just improve the process of developing the budget in the first place?"

And I think that there's -- just as there's broad consensus about empowering the community with some kind of veto power, I would say there's broad consensus that improving the process on the front end is ultimately the best thing for everyone, but probably falls outside of where we are in terms of Work Stream 1.

And so to some extent, we give short shrift to those discussions because I think they'll be ongoing and that we'll be talking about them into the future, Work Stream 2 and beyond, but that was one of the characteristics of the comments is what we really need to do is get better community involvement, engagement in the -- in the budget process up front, and I think that there's consensus around that point that we need to do that, but I think we think that it falls outside of our remit for Work Stream 1. So that's the only thing, I guess, I would harken back to in terms of one of the things that came up.

The -- as far as the issues in which there was some concern, I would say that the two areas that rise to the surface is a concern about, again, voting an allocation in the sort of tyranny of the majority. In other words, is there a way that a bunch of SOs/ACs gang up on one of them or something like that and is that an issue, is that a problem we need to address.

And then another issue that gets raised is about what is the extent to which we're locking up the corporation.

As Jordan said, we deal with that with the two round trips, but what is it that happens, you know, at a stalemate between the community and the board.



---

And so there still seems to be some combination of concern and misconception about that that we probably need to delve into, as well, as we discuss this.

But as Jordan said, there were some options that were thrown out by folks for consideration to address these concerns, and so I'll jump right to that section, the options for CCWG consideration.

One of them was a line-item veto, so that -- that came up. AFRALO, in particular, suggested that we should have -- do a line-item veto because then you wouldn't hold up the entire budget associated with it.

Then this notion of limited round trips, and we've talked about that, and what would happen at the end of these two round trips. Is it adopting a 10% increase from the previous year? Escalating to alternative accountability measures, which is the arbitration or board reorganization? Or is it picking out individual initiatives -- and this is sort of equivalent to a line-item veto at that point -- picking out individual initiatives that we think fall outside ICANN's mission and preventing those from going into play?

So those are sort of three things that are discussed in the context of limiting the round trips.

There's discussion of vote allocation, and that's a pretty persistent conversation across the board here, but there were conflicting issues expressed around this.

There are some that believe that most of this policy is -- affects the GNSO and that they ought to have a stronger position in this process because of that, and then again there are others that

---

have suggested -- ALAC, in particular -- have suggested that there's a concern that just a straight majority rule might lead to a particular group being discriminated against in the process.

The fourth suggestion that has been posed is creating sort of causal boundaries around an objection. In other words, that you have to have cause for a community objection of an annual budget. And I guess we'll talk about that particular proposal in a little bit more detail, but the idea being that there should only be certain types of budget items that -- to which the community can object and it would be on the basis of them somehow being outside of the five-year plan or outside the core mission and purpose of the organization, and that that would be then the basis for that veto.

So that suggestion was made as well.

Do you want to scroll down? It doesn't like I have scrolling ability here.

Okay. So number 5, again, this is something that came specifically from the board, which is about drawing the distinction between the five-year strategic plan and budget and the annual plan and budget and treating them differently.

And so that proposal essentially suggests that the community would have an outright veto at the five-year level but would not at the annual level where it's more operational and there's more need to maintain sort of operational readiness of the organization and that the risks of deadlock are higher.

So the proposal was to make a separation between those two, and that came from the ICANN board.

---

Number 6 is an issue about course correction, and again, this was raised by the board as well, which is that the board should be able to maintain the ability to allocate funds on an as-needed basis on the off budget cycle. You know, as the year progresses, if something comes up that's particularly urgent, the board should maintain the ability to fund that particular initiative. And I think that will have some discussion as well.

And then finally, in number 7, there continues to be a very large discussion about making sure that PTI is separate, that IANA is separate, and I think that there's, again, consensus around this.

As we talk about the specifics of this budget veto mechanism, I think we'll start to flesh out what it really means for it to be separate and the extent to which the demands of the CWG impact the demands of the CCWG, and we'll have to have that conversation, I think, here in the room.

But the -- there was a specific suggestion about what the process might look like for the PTI, you know, separate budget allocation process. But I think there's some discussion about whether or not there might still be indirect impact on the IANA budget from the ICANN budget generally, and that we have to deal with that indirect impact as well, and so we might not be able to so clearly separate the two of them that we treat them as completely parallel tracks.

Thomas asked -- it's not in the document because I was charged in the document to make this sort of completely an objective analysis of what existed in the comments, and so as we've talked in the sub-team and we've worked through this a little bit, it appears that there is still broad consensus for the community to have a veto power over the annual budget, that there's broad

---

consensus around that power and empowering the community to stop the board from going down a particular path.

I think that there's some concern about deadlock that I think is largely unjustified for a number of reasons. One is that the budget sometimes goes longer today and it hasn't led to the collapse of the organization. And so if we come up with clear time lines and really time-box this process, I think we can prevent anything catastrophic from occurring because the community has become activated on a particular budget item.

I think I would also say that there seems to be broad understanding in the community that this is an extreme thing to do, that no one would want to actually do it, and so the fact that it would have some consequences might not be entirely a bad thing because it would actually provide an incentive for everybody to be at the table and to make changes in a timely manner so that whatever catastrophic outcome that we're all trying to avoid doesn't occur.

Then finally, I -- the -- again in discussions with the community, this notion of -- of making this causal requirement for objections to the annual board has -- annual budget has some complications as well.

If you recall, there were several comments -- and one came from Chris Disspain -- on the first draft of the CCWG proposal, and that led to a discussion about whether or not we would ever want a situation in which an outside body was making a substantive decision about ICANN. And there was very broad consensus that we would never want that. That all we ever wanted to be arbitrated outside ICANN was about the process and was that process followed and were the powers exercised in a reasonable way.

---

If we, instead, say that a budget item needs to be specifically -- can only be rejected if it's outside of the five-year strategic plan or outside the mission of ICANN, we're putting that decision, which I would consider to be substantive, in the hands of an outside arbiter, and I think that there's some danger associated with that and there's broad consensus around that.

And so I would say that with all this input and with discussion among the community, I think there still remains a broad consensus that there should be some form of veto of the annual budget by the community and that we've done a great deal to address the concerns that are in place but we can do more to get to the specifics, but that we probably shouldn't restrict the community veto of the annual budget to a specific set of criteria because those criteria then would be measured by somebody outside the organization. Okay?

MATHIEU WEILL:

Thank you, Jonathan.

We are launching the debate right now. Obviously we've gone into some suggestions.

Jordan, did you have an extra -- I think you mentioned you had an extra comment and then I'll try to recap and we'll open the door -- the -- it to the room.

JORDAN CARTER:

It's something that isn't in the paper and that I've raised once but wanted to raise again in the room with people, which is, in respect of the -- dealing with the IANA functions operator budget, we are all agreed that if anything happens to the ICANN budget in terms of veto, the IANA functions budget has to carry on, regardless, and the caretaker -- you know, in other words,

---

there should be no interference in the IANA functions budget through any decision on a general ICANN budget. But what we haven't discussed and I don't think -- haven't considered quite as well as we might, is that these powers are all set up for deployment through the community mechanism, whatever it is, and we've talked about the ICANN SOs, ACs, by consensus means, as we discussed this morning, making decisions about that.

But those SOs and ACs include the numbers and names communities. They don't include the protocol community. And the protocols community is one of the three IANA customers.

So I don't know how to raise this properly, so I'm just going to say it. There's a question, I think, about the IANA functions budget, whether there needs to be a different set of decision-makers that involves names, numbers, and protocols for dealing with that budget. And I'm just going to put that on the table. I hope I haven't derailed or confused anyone by doing so.

JONATHAN ZUCK:

I want to add something too that I -- sorry -- I dropped out from the beginning.

One of the concerns that was raised by ALAC, also, that I want to make sure gets mentioned in the document is that we need to account for the issue of a budget shortfall and how do we deal with the fact that we don't actually have enough money for the budget. And so -- but last year's budget plus 10% is the wrong solution if we don't have enough money. So that's one of the things that we want to keep on the table for discussion and I wanted to make sure that I hadn't dropped it.

MATHIEU WEILL:

Thank you. So what I'm taking from this report from the work party is that on the budget and strategic veto power, there's a lot of common ground. There's broad agreement that the up-front process needs to be re-enforced. Everyone agrees?

There's agreement about a five-year strategic plan and budget being subject to veto powers?

That seems to be unsaid, something we've achieved.

The PTI budget, there are some refinements but it's globally agreed that it would require a veto power from the community.

There's a couple of refinements in terms of cost correction which needs to be assessed.

And then we have the most -- probably the one aspect that still requires discussion is the one-year budget and operating plans where, as Jonathan has said, there was in the comments taken as a whole a rather broad support but certainly cannot be considered unanimous, so we would need to assess this and starting with a discussion, obviously.

And Jonathan was suggesting two important ways forward, more clarity on how to constrain this process in terms of timing so that it doesn't create powerlessness for the organization. That's what I heard Jonathan say.

And there was a suggestion to use rationale for this -- specific rationale for this type of veto which Jonathan -- where Jonathan pointed out that it was raising specific issues about whether that would induce the need for assessment, whether the rationale -- it was creating a new process and new process issues.

---

So I think my suggestion for the discussion going forward is if the areas that we've described as that it's globally agreed, you think it is not agreed, then point it out and then let's try and focus as much as possible on finalizing an agreement or proposal that do not raise -- that everybody can live with, let's do that, everybody can live with for the one-year aspect.

And with that, I'm turning to the room. And, Alan, you are first in line.

ALAN GREENBERG:

Thank you. Two comments. Jonathan mentioned I think explicitly that ALAC was one of the ones that said we should look at reinforcing the process so we don't get to a showdown. And that is clearly a workstream 2 process. But we strongly feel that this report should be a little bit more specific as to where we're heading so it gives people a warmer, fuzzy people that it's not saying something we should be working through.

And simply pointing to last year's process alone with some details probably will do that. So we're not looking for any change in the recommendation but some verbiage that makes it clear to everyone what we're talking about so we never have to get to the showdown part.

Number two, something that I -- someone I think just alluded to but didn't say quite clearly, if we end up with a one-year budget veto, we really have to consider the situation where the projected IANA budget was going to have a significant increase and continuation of a budget from last year's would not allow that, and that's a really serious problem. The day we have to think about DNSSEC 2 or some other major investment that IANA has to make, we really need to make sure that's protected and



---

isn't cut off by some other process going on in parallel. So just a note of that. Thank you.

MATHIEU WEILL: Thank you, Alan.

I would note that DNSSEC investment cycle in the past has not exactly been a three-process already.

ALAN GREENBERG: And not one you want to defer by a year either.

MATHIEU WEILL: It has been deferred several times at the IANA level as well for years. Investment cycles in the IANA type of technologies are not three-month cycles. This is not a startup kind of business, but that's my personal assessment.

The point you are raising about the sudden raise of cost is wider than that and certainly is worth taking into account.

Next is Kavouss.

KAVOUSS ARASTEH: Yes. I emphasize on the last point that Alan made with respect to the IANA budget. I don't explain it more.

Now, coming back to the issues mentioned by the board as a point of divergence, I look into the area of the budget approval of many governmental, non-governmental, and many others how to do that. They have the strategic plan for six years. In order to implement that strategic plan, they have a financial

---

plan. And in order to link the financial plan to the strategic plan, they have the operational plan.

What those organizations, no matter government or non-governmental, they do, they have a wording on the four years or five years or six years. But they leave some degree of maneuver for the annual budget or operational annual in order to allow the executive power to properly respond to the situations.

What the executive should do is to remain within the ceiling of those five years or four years or six years. But you give them degree of flexibility. You do not go to the last thing.

So I don't think that the veto of the annual budget is appropriate. You could ask for reconsideration for particular topic or particular area of budget, but veto is not appropriate.

But in the five years or four years, whatever you have, you could have the power of the vetoing. With respect to few others of these things, I think all of them are positive. You could take all the positive element of those, not having unlimited number of the veto and so on and so forth about escalation threshold. You could do that about overly broad and so on and so forth. So you could make a combination of this. But this veto on the annual budget does not seem to have. Thank you.

THOMAS RICKERT:

Thank you, Kavouss. Next is Steve.

STEVE DelBIANCO:

Steve DelBianco with the CSG. So I'm referring to the second item up there on limiting round trips. That was important to CSG members and BC in particular. Of the three options listed, this is not an opportunity of introducing anything new. But this morning's discussion on the community forum, the decision-

---

making method, the question for Jordan and Jonathan, if the community forum convened on this particular power, could the community forum say the default is last year plus 10%? But the community forum could suggest, since this is an expenses reduction year, revenues have dried up, could we structure it so that we solve Number 2 by allowing the community forum in its consensus decision to exercise the power, to exercise the power with a reduction instead of an increase of the budget, to recognize the fact that the corporation has less revenue, not more?

MATHIEU WEILL: Thank you, Steve. Not sure we are going to the simplicity aspect.

Sorry, Jonathan. I was not seeing your hand.

JORDAN CARTER: I realize we are using the F word a lot in this conversation, the fiduciary word. And the idea that you'd have the community forum telling the board what the overall limits level of the budget should be is one that makes me really uncomfortable. We've tried to be very -- we've tried in developing this whole part of this to be very respectful of the responsibilities that the board and directors have. And that's why this power was structured not as a line item veto, not as the community can pick and choose in the budget but just an up or down -- in fact, not an up, just a down. Like, the only thing we're saying is that that budget isn't acceptable and here's why. And the why is based on something we said to you in the consultation. So it isn't a surprise.

---

If we -- and you can put an automatic cap in the bylaws or whatever that says for your interim budget that you are going to operate while this veto is resolved, you cannot spend any more than 110% of last year, that's all easy.

But if you try to give the community forum the rights to determine what the budget is overall, to me personally you've stepped over that line and you've created an impossible situation for the board.

So from my logic, that is why this was an up or down or just a veto, that that was cleaner and more respectful of fiduciary responsibilities than having a sort of finger-poking, "Oh, hey, we are taking away the budget from you guys and making it ourselves." So that's teasing out the logic that we had.

MATHIEU WEILL:

Thank you.

Quick follow-up, Jonathan?

JONATHAN ZUCK:

Yes. I guess I agree with Jordan. My primary concern with that recommendation is that we get back to -- if we are not constrained, then the community can decrease the budget even if there wasn't a budget shortfall. In a sense, it's too empowering. And if that then went to arbitration, we would be back to the same problem, which is making a substantive decision about how much money is being spent.

I think there's a danger in creating too much power in that intermediate group.

---

STEVE DeIBIANCO: Thanks for answering the question. And, yet, I'm not sure whether you're looking for ideas to solve Number 2 because you brought up the fact that a budget reduction could be necessary. Or do you have an idea to solve that and want us to consider that idea? Are we here to come up with ideas or to vote on a preferred way out?

JONATHAN ZUCK: That's a good question. I think the subgroup at this point believes that if you froze a budget from the previous year that was actually higher than revenue justified, that would be a temporary situation and the board would be incented to make a correction quickly because of it.

I don't think the community needs to make a direct -- I wanted to concede that the point was raised. I don't think it was the position of the community to make a direct correction to that fact. I think the fact that that's the case that the budget is having an overrun would be credit by the board because of their fiduciary responsibility.

STEVE DeIBIANCO: You think option A solves it?

JONATHAN ZUCK: I do think option A solves it. Thank you.

MATHIEU WEILL: Thank you.

Next is Cherine. Thank you for your patience.

---

CHERINE CHALABY:

So I'd like to bring this point to you. If you had the power to veto the budget this year, this is what will happen. Not much.

Now, let me tell you why not much. This year's expenses are \$180 million. Over 94 million of those are expenses that virtually we can't do much about it. We have to pay rent. We have to pay salaries. We have to pay insurance. We have to pay these meetings here. We have to pay for travel. We have to pay for everything.

When you take this out, then what's left are some discretionary items including language services, AoC reviews, other things, for example, outside legal counsel this year is 7 million of that. What are you freezing?

What you are in, in fact, doing, you are hurting yourself because also in the discretionary items are all of the SO/AC requests for activities in the beginning of the year. So let's say the ALAC has a summit this year beginning in October, in September, or something like that. And then you veto the power, they have made commitments. They have invited people. Are you going to freeze that? That doesn't make sense.

Plus, if you freeze the budget, you have no quarterly reporting on that because once the -- once the CFO is operating in the blind without a budget, he receives statements. He receives invoices. He receives bills. They have to pay, but he can't report against a budget. So all of the effort we put in the last five years -- sorry, in the last two or three years in sort of moving this organization from an expense kind of reporting to a proper reporting around project, around balance sheet, around P&L, around all of that, you are freezing that as well.

---

So you are really switching the light bulbs off, and the community will operate in the dark for period of time. That's one point. Please understand the consequences of this. You are hurting the community. And I'm one of the community. And, frankly, I'm telling you, you are hurting us as a group.

The second point I want to make, the budget is not a board budget. This is the ICANN budget. It's developed by the community with staff. It's not developed by the board. You are not really the board. It is not a power. It is a power over the corporation, which I understand. But the real power you want is you want to make sure the board, the corporation, does not do something that you don't want them to do, right? And I heard the example of NETmundial several times. That's the one that people bring. Fine.

So let's find a mechanism for you to stop the organization undertaking those initiatives, right, that the community doesn't agree with rather than freeze the budget.

So I really urge you, please consider this. That if you just go for freezing the budget, you are not going to achieve the objective you want to achieve. Whereas, if you set powers to veto new initiatives that you are not in agreement with, you will achieve your objective. Thank you.

MATHIEU WEILL:

Thank you, Cherine. I think it's important that we have clarity on the objectives and certainly the one you're mentioning has been mentioned several times in these discussions, about new initiatives. But we are also facing a requirement from the CWG stewardship to have a power over ICANN budgets and not only PTI but the ICANN overall budget. And I think that particular

---

one, I'm not -- I would not speak for the CWG but it doesn't seem to me that it's about new initiatives only. And maybe it's the right point to turn to Jonathan Robinson as co-chair of the CWG to ask maybe that we give clarity about what's the goal behind the CWG requirement for that. Because we can't go into solution building until we have this clarity about the requirements. And I'm sure the CWG's an obviously one but there may be others in this room as well. Jonathan?

JONATHAN ROBINSON: Thank you, Mathieu, and others. It is Jonathan Robinson for the record.

I can certainly give some insight and some thoughts as to where we -- how we derived from what we were doing. I actually pulled up the proposal and I looked into this a little bit this morning, aware that someone might ask after this.

[ Laughter ]

I mean, we made it very clear that our proposal was significantly dependent and expressly conditioned on the accountability work. And we talked with -- myself and Lisa, talked with the three co-chairs up there on a regular basis. And this was in a sense baked into our whole process from the beginning, as you all know, and in many ways was viewed as a form of leverage associated with the transition. We've all expressed this explicitly. If and when the transition goes ahead, we need to ensure that there's enhanced accountability that goes with it.

So we then went on to say in our proposal that if these changes were implemented as envisaged, they will meet the requirement. And then specifically with respect to the budget,



---

what we did is we had a bunch of design teams that did some work. And in this case, the design team was design team O, and we specifically put in what design team O's requirements were. And they are detailed in the proposal here.

When you go back and look at it, it says the CWG stewardship recommends -- and it goes on to say IFOs, comprehensive costs, IANA function operators. Comprehensive costs should be transparent. ICANN's operating plans and budget should include itemization of all IANA operations. So I think one almost needs to separate out all of those specific requirements that were made up and worked on in design team O, recommended to the group and then baked into our proposal. That was what was the design team wanted and required.

Now, as to vetoing the budget or not, I mean, in some ways -- and I guess this is a personal interpretation. I haven't discussed this with our group at all. But in some ways, this is a sledgehammer to crack a nut because we had a bunch of requirements from the design team, what the design team required. Sure, if we could veto the budget, that appeared to meet the requirement.

But I think one does need to at least tease those two apart as to the underlying objective that was made up within the design team and the overarching mechanism which certainly provided what was required but probably -- and this is where it goes into my interpretation -- wasn't a necessary condition to meet the design team's requirements.

So I'm happy to have that discussion further, but I hope that kind of illustrates a little bit because I was forced to go back on the history and say, what was really happening here? And I think there was an understanding that there were seven mechanisms

---

being developed, which we had talked about regularly. But I think that it became clear that those seven mechanisms would meet our requirements.

In this case, the question is: Did they exceed our requirements? Possibly yes. But they certainly met our requirements. And so that's the challenge that we now have.

But, I mean, I think the proposal is explicit. It's very clear because it goes on -- it's a particular paragraph where it talks about the ICANN and the IANA budget. And it goes on very clear to say the CWG stewardship recommends blah, blah, blah, and details exactly what came out of that design team and what was required by that design team.

MATHIEU WEILL:

Thank you, Jonathan.

I think -- I'm sensing that's giving food for thought for many in the room. So we will give time to settle this in.

Cherine, did I see you wanting to -- Cherine, not Cheryl -- did I see that correctly that you wanted to follow up?

CHERINE CHALABY:

Not now. Give others the opportunity. I might come later. Thank you.

MATHIEU WEILL:

Thank you. And is that an old hand? Yes, probably.

Tijani.

TIJANI BEN JEMAA:

Thank you very much. Three points. Jonathan, in the morning, in the -- during escalation, you said clearly that in this group, we were focusing on the enforcement much more than on the other phases, which are very important for our work. I think that we are doing the same now. Since we are talking only about the budget veto, we are not speaking about what we can do before. What can be done before? And you have the emphasis on it. I think you have to formalize the interaction between the community and ICANN regarding the budget so that we avoid this possibility of veto.

Second point. You said also, Jonathan, that giving the right to the community forum to propose either reduce or augment the budget, is giving much more power to the community or something like this. I don't think so since the -- the community forum will include the board. If we are obliged to go to this kind of power, I think that the community forum may have a role. And the community forum includes the board, too.

Third point, if the requirement of the CWG is to veto the budget, we have the big stick to do that. We have spilling the board. So we have the possibility to veto the budget by this way. So we don't have to be really enclosed in some, how to say, manner of thinking and say that we don't have any other alternative but veto the budget. Thank you.

MATHIEU WEILL:

Thank you, Tijani. Jordan. Or Jonathan wanted to respond maybe or --

---

JONATHAN ZUCK:

Sure, I don't know how -- we may be about to say the same thing. You mentioned three points, right? And the first was that we need to make sure and codify the practices of interaction and engagement and that's similar to the point that Alan made that we should at least assure everyone that we plan to do that. And I don't think there's any objection to doing that. I think the issue is not letting that process cloud this one. In other words, Work Stream 1 was specifically about creating sufficient leverage and power on the part of the community to effect change going forward, right? And so I think sometimes it will result, as Jonathan described, in some of the powers being a sledgehammer to crack a nut. And I'm not sure that's a bad thing. This is about empowering the community in fairly quick order in order to allow transitions to take place, right? That's why there's a focus on that. Codifying the other part or assuring the community that we will codify the other part for the budget development process I think is a very good thing. I think it doesn't have anything to do really with whether or not we have a budget veto.

Your second point, I just want to clarify, you said that I said that the community forum suggesting a decrease in the budget would be too much power, and I think that's -- I think you answered your question in the way you asked it. I didn't say that suggesting it would be too much power. I think what Mr. DelBianco was suggesting was that they might actually have the power to impose a decrease in the budget as part of this veto power, and that's what I was taking some issue with. I think they would very specifically in their rationale for the veto explain what they think a better budget would look like and the areas where they have an issue so that recommendation component you're talking about would, in fact, be a part of that veto. It just

---

wouldn't be the ability to impose a smaller budget as a community role. So that's -- that's sort of the slight distinction.

And then the -- the third question about --

>>

The big stick.

JONATHAN ZUCK:

The big stick, right. And this comes -- this is going to come up over and over again today about whether or not everything should be resolved by spilling the board, and I -- I for one think that to go -- to harken back, you know, to Roelof's intervention earlier, I think a budget veto isn't the end of an organization or end of a board. It may be in some cases that you're absolutely right, that wow, this board is just useless, we need to get rid of them. But I'm not sure vetoing a budget is an equivalent of this. I think this is in particular one area in which this is operationally something that could happen. Not something we would want to have happen by any means, but something that could happen and the board would survive it just fine out the other side of it.

MATHIEU WEILL:

Thanks, Jonathan. And I'm going to close the queue after Jonathan Robinson now. So I'm turning to Jordan.

JORDAN CARTER:

And I wasn't going to say anything that Steve just said, which is good. Jordan Carter .NZ, for the record. I wanted to come back to something that Cherine said before about the sort of what the impact of a budget veto is. And we keep going around the loops on this. And the priority for me is that when the community has

---

raised concerns of the draft budget through the consultation process and those concerns haven't been taken on board and so they're all on the table and the community through this proposed power says no, the budget isn't approved, go away and look at it again. We've said at a high level that there needs to be a caretaker situation put in place that doesn't have the consequences that Cherine described. And I haven't heard anyone say the impact of a budget veto should be to make ICANN descend into chaos. If anyone here does think that should happen, please put your hand up. Only one government rep is sort of putting their hand up, and then Chris Disspain put his hand up a little bit more. But it's just because he's a chaos sower.

So it's a trick question, but it's a point that sometimes we get a bit ridiculous. So I just want to bring us away from the ridiculous. It is ridiculous to consider -- conceive that this working group would create a position where people are being fired or the bills were not being paid. That is not what is being proposed. And so we need to find better language to work out what would happen where a budget has been vetoed. And some suggestions that I started floating on the -- the last WP1 call that dealt with this, at least I think I did, I may have been asleep at the time, is that if a budget and operating plan is vetoed for the year the board has an obligation and must put in place an interim operating plan and budget. And the rules around that interim operating plan and budget would be that the total spending can't be more than a 10% increase from last year and that interim operating plan and budget should not advance the key point on which there was disagreement that led to the veto.

Now, that does not leave any room for chaos. It does not leave any room for breaking ICANN. And that's the whole point. The

---

point of a veto like this, as far as I'm concerned, is that it is a less strong slap than firing the board. You say we don't like the plan, you didn't take account of our feedback, we're not going to sack you, but this is really serious. Pay attention. Try again. Not hey, Grace, you don't get paid this week. You know, that's not what we're trying to do here. Not what we're trying to do here.

>> (Off microphone).

JORDAN CARTER: So I hope that makes the point adequately. I'm sure that we need to have a little working group on this tomorrow. We must be able to come up with a way of representing the interim state - - sorry, I chose you guys because I knew you'd turn around and look at me. We can find a way to make this work. But we've got to stay away from any argument that this has to destabilize things. It just doesn't.

MATHIEU WEILL: Thanks, Jordan. I would add that the current way we're framing it is still about a consensus-driven decision across all the community. So that's -- that would be still a very strong responsibility for -- from everyone in the community to take because I would expect that the consequences would be very well laid out before -- before the decisions are made. But I think -- and I'm going to turn to Roelof in a minute, important to me is that we identify a need for the one-year budget and operational plan's veto that is based on new initiatives coming up that were not in the five-year plan which we've agreed there could be a veto on, a veto power on. I really encourage -- we've heard

---

Jonathan Robinson describe with more clarity, although it was on a personal basis, what he understands the requirement on this one-year operating plan, budget veto power was. That's very important to me because it's the first time I've heard it framed like this. And if there are other key requirements -- and I'm speaking of requirements here or objectives or goals -- behind this power at the one-year level, it's important that we record them before we defer to further work probably tomorrow on this process. But it's really important that we can list them in the terms of reference for the group that will be working on the process.

So next in line is Roelof.

ROELOF MEIJER:

Thank you, Mathieu. Well, maybe first to Jonathan. I think you misunderstood me because I'm not against -- I'm not a big fan of a budget veto but I'm not against it. I'm just saying that it's useless to have that veto legally enforceable on itself. So that's a different thing. You can put in the bylaw that is the community has the power to veto the budget. But if the board doesn't respect that clause in the bylaws, I think then it's useless to take the board to court, get the clause in the bylaws enforced, and still keep them. That's my point.

Reaction back to Cherine. If we get the mechanism right to use such a power, I think it's the opposite. The community will prevent the board from hurting the community. And the power itself will not hurt the community. It will prevent the board from doing it.



---

MATHIEU WEILL: Thank you, Roelof. Just before I return to Eberhard, I had closed the queue after Jonathan Robinson in an attempt to move us forward. I see that Sebastien and Tijani, you raised your hand after that. May I give them the opportunity to consider seriously whether they think this is really absolutely necessary. And then I'll come back to them later. Next is Eberhard.

EBERHARD LISSE: Eberhard Lisse, for the record. I just want to be short. When I hear from somebody who sits on purse strings and says, if you shut us down you will hurt yourself, I always get confused. Well, if that were the case, that's good. Then we will take this measure much more carefully. Never mind that threatening us with not having an ICANN meeting is not really something that will be the end of the world as we know it. At least for most of us. Then I occasionally note this stupid way the U.S. government is shutting down or threatened to be shut down all the time. I don't want to go into the underlying mechanism because that's the real stupid part of it. The government -- the Congress authorizes spending but doesn't -- and then the President, for example, has to spend it but then the Congress says we don't give you the money for it. However, the way if a furlough happens, and it happens a few times, is that there are certain parts of the government that continue to keep functioning and get salaries, like Grace, for example, she would continue to get her salary but most certainly the ICANN board members don't need to get their sitting fees. So we can -- so I'm not trying to be overly funny here. It would be totally against my nature.

[ Laughter ]

---

But we can -- we can -- if we -- if we actually structure this -- no, no, the bottle is empty. You won't achieve much. The point is, if we were going to do this, we can design essential services that will not be affected by this. We can design essential -- non-essential services that will hurt the people who wield the power. And we can assign non-essential services that don't hurt the people who wield -- wield the power but incite the decision-makers to take this more serious. If I hear it cannot be done, I'm sorry. That just tells me, it can be done.

MATHIEU WEILL:

Thank you, Eberhard. I fully support your idea to stop funding some initiatives as a matter of hope rather than concern for something, including this one. Jan Aart.

JAN SCHOLTE:

Jan Aart Scholte, accountability adviser. Two questions. I don't have a particular position on this but one to Jonathan perhaps on the CWGs requirement, is what was wanted to block the IANA-related part of the budget, is that what was wanted? Or was it just in terms of the requirement, not -- not that I have a view one way or the other, but was the requirement to block the IANA-related part of the budget or was it to block the whole budget?

And I was also imagining a little bit how this would work in practice if one went through the process that was described this morning from an objection to a petition, to a pre-call, to a face-to-face community forum, to a community council, to a submission of a written objection. How does that map onto the budget cycle?

---

MATHIEU WEILL: Okay. I don't know, Jonathan, if you want to answer, but what I can say in response is it has been the CCWG accountability's interpretation of the CWG requirement that there was -- so far, that there was a need for a budget power for the community over the IANA budget, the PTI budget, as well as the overall ICANN budget. That was our understanding of the requirements. Jonathan has provided some clarification which I don't remember, the sledgehammer for -- to crack a nut kind of metaphor, which is bringing use into this analysis of requirements.

But so far, that had been our interpretation.

JAN AARTE SCHOLTE: Yeah, but a couple of my own conversations in CWG circles suggest, although I haven't talked to the whole CWG, but that perhaps a narrower objection was -- objective was --

MATHIEU WEILL: So that's the progress we're making in this consensus-building exercise.

I am informed that I skipped Asha, whose hand went down, so Asha, you're in the line.

ASHA HEMRAJANI: Thank you, Mathieu. Asha Hemrajani for the record.

So I wanted to make a couple of points on the budget.

Jonathan, you mentioned formalizing the community involvement falls outside of our remit and that should be Work

---

Stream 2, and I respectfully disagree because I think this is very much something we have in practice. It's been working really well in FY16. It's really easy to enshrine those in words. We can do it fairly easily. I'm willing to work with you on that, to put that in words, because it's something we have working today. We have it success- -- we have it successfully done and demonstrated. You had Tijani comment on that on the email. It's been described well, so I think it's worked well, I think we can enshrine it and so I don't feel that we should postpone it to Work Stream 2.

On the IANA budget, we all heard what Jonathan Robinson said.

You had a comment, Jonathan Zuck, about there might be some line items within the main ICANN budget which are related to ICANN -- which are related to the IANA budget which may not be that obvious.

I don't think -- and I'm speaking now for myself. This is something, of course, we should check with staff on. But I don't think it would be too difficult to take out those items related to the IANA budget and list them out separately, so that we can -- we would be able to carve out the IANA portion from the ICANN budget. That was my second point.

I think the sledgehammer to kill a -- to kill a nut, to break a nut -- what was the --

>> (Off microphone.)

ASHA HEMRAJANI: Crack a nut, yes.

---

I haven't been able to eat nuts for a long time so I cannot remember the last time I ate a nut.

But anyway, that, I think, is a bad thing in this particular instance because, you know, we have bigger -- we have other issues, bigger more important or more serious issues to worry about. This is something where I don't feel we -- I feel if we -- as long as we are able to address the concerns, which is, number one, that we want to make sure that the -- you have -- the community has say over the IANA budget, which we are saying we don't have an issue with, then why use a sledgehammer to kill the rest of it?

I still -- I still don't understand that part.

So I would rather look at it from a positive perspective, enshrine the community's rights, enshrine the community's rights to have a view from the start, enshrine the working process from the start, instead of doing it from the other way around.

I don't -- I agree with what Jordan was saying that -- and we all know this -- the purpose of a veto is not to create chaos. We all know that. We're not children here. We know that. But I would again reemphasize my earlier point, which is: Why not use a positive way to ensure that the community has a say? Thank you.

MATHIEU WEILL: Thank you, Asha.

JONATHAN ZUCK: Could I respond?

MATHIEU WEILL: Yes.

JONATHAN ZUCK:

Yes. Thank you.

And Asha, thank you for your intervention.

And I'm certainly not opposed to the inclusion of enshrining the existing system into the bylaws as part of Work Stream 1. I think it's more of a question of just bandwidth. So if it's easy to do, then let's by all means do it.

Where I think you and I really differ is in treating these things as somehow mutually exclusive; that the -- that the installation of a last-resort veto of the budget somehow precludes the use of the more positive mechanisms that you're describing, and it doesn't.

And it isn't -- there's no circumstance under which a veto would be used in place of those things.

So the truth of the matter is, they've improved greatly, as I think we all agree, the process has improved a great deal, and we should never get to the point to where we need to use the veto. And that would be great. But that's no reason not to make it available as a last-resort mechanism for the community.

The fact that we may never need to use it is not a reason not to have it.

So, I mean, I -- so I think it's great that we enshrine the existing processes and we continue to develop them and we focus our attention on improving community involvement in the formulation of the budget. There's broad consensus that that's where we should focus most of our attention. But we're not taking attention away from those things by implementing a

---

community veto of the budget. That's a last-resort mechanism that is about who has the last word. That's all it's -- all it's about. And so it's not like it's something that I can choose to use instead of the existing processes. I can't run to the veto and say, "I'm going to just veto the budget." There's -- all those other processes would have to happen and fail before the budget would even be -- the veto would even be available as an option.

MATHIEU WEILL: Thanks, Jonathan.

And I'm now turning to Cherine. And I would encourage both questions and answers to be as concise as possible. Cheryl? Cherine?

CHERINE CHALABY: I just wanted to correct two statements made. One that says the board hurts the community. I never said that. I said the community hurts itself by using the veto budget. And the other one said cancel annual meetings. I didn't say that. I said, to the contrary, these will take place anyway and the veto power will not have any effect on those. Thank you.

MATHIEU WEILL: Thank you, Cherine.

So Jonathan Robinson, you're now in the line. I'm seeing a hand still raised after Jonathan, but Jonathan?

JONATHAN ROBINSON: I think I should apologize for introducing a native English speaker metaphor that seems to have --

---

[ Laughter ]

JONATHAN ROBINSON: But maybe it will characterize elements of the meeting.

I think I probably don't need to repeat anything on the CWG requirements but just to -- I mean, although I gave my personal interpretation, I referenced directly to the proposal and the work of the design team that set out what their requirements were. I think the CCWG's plan would have -- would be -- was more than sufficient to meet those requirements, which is why it was acceptable.

And I guess at a very personal level, I understand frustrations with what appears to be, at times, the opaqueness of board decisions or frustrations about the way things go, but I'd just make a personal observation. I think the points made by people like Asha and Cherine are -- they seem -- they strike me as good-faith interventions from people who are directors on a board who understand corporate governance and who are genuinely making points, so I -- that they believe in, so I just -- in thinking about the CCWG's requirements for this kind of work, I would take those into account as you do the work. I'd just encourage you to do that. Thanks.

MATHIEU WEILL: Thank you, Jonathan.

And I see Sebastien is still prepared to speak and I -- you haven't spoken so far on this item, so you're very welcome to do so.



---

SEBASTIEN BACHOLLET: Thank you very much. Just to remind you that when you say we are all in agreement with that, no. In the beginning, I was against this veto power.

I think that what is in the discussion today about the fact that we can have some veto power about the five-year strategic plan and the -- the other operating plan for five years is already a very good tool and I really don't think that this matter of the annual budget is a good way to have power.

And sometime maybe we need to also try to find an agreement, a global agreement. If everybody stay on their position on each topic, then we will not be able to find a consensus at the end, and I just want to raise that maybe this one could be one we let go. Thank you.

MATHIEU WEILL: Thank you very much, Sebastien, for clarity on where you see the requirements are.

Tijani? And then I will try to take stock.

TIJANI BEN JEMAA: Thank you. Thank you. Thank you very much. As earlier said, I also am not against the veto of the budget. I am against the empowerment of this mechanism.

When I spoke about the big stick, spilling the board, it was only to respond to people who said we need this power because it is a requirement of the CWG.

That's why I -- I know that it's not the same level of gravity, of importance, as spilling the board, but it is for that.

---

Last point, yes, Jonathan, you said that this veto -- the involvement of the community and the development of the budget will not replace the budget vetoing. I agree. But it will perhaps make us -- make us accept that the -- this power, this mechanism will not be enforceable.

Thank you.

MATHIEU WEILL: Thank you very much, Tijani.

So trying to recap --

>> (Off microphone)

MATHIEU WEILL: No, no. It's easy, it's easy.

We've heard a shift in the requirements around the budget and strategic plan veto power that -- around the CWG requirements.

It's clear that our group has one initial requirement, is the ability to avoid that some initiatives of ICANN would go mission creep or would put the overall financial stability of the organization in jeopardy. That's one aspect.

We also have the CWG-induced requirement of ability to veto a PTI/IANA budget.

Those are the two key requirements I've heard mentioned.

And a concern, which translates into a requirement, that the process we put forward can guarantee also the short-term

---

financial stability and operational stability of ICANN. That's what we're operating under.

Under this, we have -- I have -- I think we can confirm that there's room for improvement in this -- improvement to the process on the front end, the consultation and engagement process that could be taken on board, if it's easy. Whether it's Work Stream 1 or Work Stream 2 is something different, but I think everyone agrees that it's -- the key aspect in budget and strategic planning is the engagement phase, and there are concrete proposals to put that more formally into the bylaws, which is good, and that no one challenged that.

We've agreed -- we -- no one has challenged either the five-year strategic and budget veto power for the community, based on consensus and so on, so that's -- that's also something that I take as agreed on or at least something that we can move forward on very easily.

A PTI-specific process I think has also not been challenged, so that's also something we take out of the -- I will take out of this discussion and certainly something, based on the inputs we've received -- particularly cyber-invasion one which is mentioned in the document -- James, congratulations -- that we should flesh out tomorrow in the session about -- in the subgroups in fleshing out the processes.

And then we need, probably, to revisit how the process for the short-term initiatives of ICANN through the one-year operating plan and budget could be illustrated, how it would look like, how long it would take, how long it would potentially affect ICANN's ability to redefine the budget, so that we get a better view whether we need that power or something, as Cherine was suggesting, that it would just be new initiatives veto right. So

---

that's the second aspect which I think the subgroup tomorrow will have to work on in terms of process. We need to work at it looking at what it would look like and then it will enable us to revisit this to have an informed discussion as a whole group of CCWG whether we want to adjust our requirements, adjust our process regarding the one-year operating plan and budget.

I am seeing -- no. The hands in the room are old hands, so we'll have another subgroup tomorrow on this.

And with that, I think we can move to our next agenda item. I think I was supposed to chair it but I'm happy to defer to Thomas, if you want to, or -- or I can do it as well.

THOMAS RICKERT:

I can do it and then the --

So we're now rotating these points.

The next point is going to be the bylaw changes on -- after stress tests, so I'd like to invite Steve and Cheryl to the podium.

So this is actually the part where we start going into a quicker sequence of changing subjects, so you will remember that Mathieu introduced earlier on that we're going to use a three-step approach: Present, discuss, and then either confirm or defer to sub-team.

So we are not going to have long queues. So I think we need to ensure that everyone in this room understands that this is really to hear about the outcome of the public comment analysis, hear the preference or the preferred option specified by the chairs not in terms of personal taste but according to their assessment what the way forward coming from the public comment analysis

is, and then ideally our group would just say, "Hey, yay, good, good, let's move on."

We would take it off the list, we would put it on a list for tomorrow for second reading, and we could mark it green provisionally in our scorecard.

If we see that there are concerns with the ideas, then we're going to hear one or two people raising concerns, see whether we can remove them and still confirm, but if we see that there are more than a few people opposing to capturing the result, then obviously there's more discussion needed and we will not spend the group's time on that but we'll say, "Okay, those that have concerns are going to meet" -- doesn't have to be for long, probably, but we're going to defer it to a sub-team to flesh it out more and bring it back to the plenary.

And with that, I'd like to hand over to Steve and Cheryl.

CHERYL LANGDON-ORR: Just Steve.

STEVE DeBIANCO: Thanks, Thomas. This is the perfect antidote to day one post-lunch jetlag doldrums because we're going to talk about stress test 18.

[ Laughter ]

MATHIEU WEILL: Ladies and gentlemen, this is stress test 18.

---

STEVE DeIBIANCO:

We have only 15 minutes in the agenda and that ought to be sufficient because despite the quantity of comments that the stress test team accepted and analyzed on two separate calls and three different documents, only one of those issues makes its way to an option that we wish to present to the full CCWG. The others we were able to work out through clarifications and refinements as well as a divergence that we think we've attempted to as well.

So the document that you have in the Adobe and the link that was sent around by staff is version 3 of the stress test analysis and I would refer you to Page 5, where we actually get to the -- you can each scroll on your own to Page 5, where we wanted to discuss the item for your full consideration.

Inside of -- I mean, the way this issue was teed up is what bylaws changes were recommended by stress tests.

You're all aware that Stress Test 14 suggested a bylaws change of bringing the Affirmation of Commitments into the bylaws. We had another one that dealt with the requirement for the board to act on formal advice from an AC.

Stress test 18 is a little different because it talks about the notion that we need a bylaws change to clarify that ICANN board's obligation to try and find a mutually acceptable solution, when it doesn't want to follow GAC advice, that that obligation should only accompany GAC advice that was developed through consensus.

We had 36 comments on the GAC tab, 20 more on the stress test tab, so this was well commented on, and the preponderance of comments were in support of the stress test 18 and the bylaws change that was there. There were four public comments

---

against. This was from members of the GAC stakeholder group. And then subsequently to the public comment, it's clear that other governments shared some -- several other governments shared that. Perhaps as many as a dozen or more shared that.

I will note that that was the only stakeholder group that was uncomfortable with stress test 18 and the bylaws change, but it's important to note that there are many governments who felt that way.

That 80% preponderance in the public comment doesn't count the notion that the NTIA itself considered stress test 18 and the bylaws change to be a requirement for transition, in fulfilling one of the four requirements. That's something that many governments have discussed directly with the U.S. government, but it's not a stretch to understand that if the GAC moved to simple majority voting we could see significantly more advice coming over from the GAC and, worse, that presence of advice would carry with it the obligation of working out the differences among some governments who approved it and others who opposed it in a majority scheme.

And so what the NTIA has said is that in their opinion, that contributes to an increase in the power of governments.

But the CCWG is not NTIA. We're very well tuned to what NTIA it is concerned about. But within CCWG we're focusing on what our proposals were and the rationale for doing them.

So in yellow on the screen in front of you are the two items that the stress test work team wishes to put in front of the broader CCWG for consideration. The first is to recommend removing the example text in stress test 18. And I will quote it to you. It said, The majority of the governments could thereby approve

---

GAC advice that restricted free online expression, for example. So let me, once again, apologize and take full responsibility for that example. I came up with that a year and a half when we were discussing the notion of stress testing, and it certainly captured the imagination. But, inadvertently, it also offended many governments who felt it was a completely inappropriate example. And you are right. And I apologize. And the stress test team very quickly accepted the step that we ought to remove that example from both instances on the stress test.

Are there any objections to the full CCWG to removing that example? Milton Mueller wants to object. Okay. That's noted, Milton.

And the second and final item, which would presumably use the rest of the time we have here, is to respond to requests from many GAC members. And it was made emphatically when we met in Los Angeles where several GAC members said, look, the rationale that the stress test team has laid out for this bylaws change is inadequate. It doesn't really hold together. And so we undertook to rewrite the rationale. And the rationale is in front of you now. It is the simple four paragraphs explaining why it is. First of all, why we decided to add stress test 18. And the second is why did we come up with a bylaws change as a result of the stress test.

The stress test team has drafted that rationale and simply wishes to get conformance from the CCWG to insert that rationale into our document in front of the rationale that we already had.

It really goes straight down to the notion of we were aware -- without much dispute, we were aware that certain GAC members wished to move away from the very strict consensus



---

model that's locked into their operating principles today, that the GAC could move to some other model of decision-making other than the absence of an objection. So we are aware of that. I don't think that's in dispute.

We also understood that our bylaws require ICANN to try and find a mutually acceptable solution to GAC advice, that it doesn't qualify that the GAC advice that brings that obligation need be backed by a consensus.

So this creates a real knot in the sense that GAC advice that's supported by some 60%, 55, 51% of the governments and opposed by 49% could well find itself presented to the board of directors with ICANN's obligation to try to find a mutually acceptable solution. It's hard enough to find a mutually acceptable solution when the GAC as a whole differs from the board. But it's next to impossible to find a mutually acceptable solution when there are two huge divergent camps of the governments themselves and the board. In that sense, it is not even a mutually acceptable solution. It would have to be in some respects a three-party mutually acceptable solution.

We have dealt with comments from GAC members who suggested that the sentiments -- the admitted sentiment of moving to majority voting was no longer so popular in the GAC. And if that's the case, fantastic. But if the GAC is no longer interested in moving to majority voting, well, then, I fail to understand what the objection would be to putting into the bylaws the practice we've always used, is it's GAC consensus advice that brings the obligation to work out a mutually acceptable solution.

So we were aware it was a sentiment among GAC members and it may come back in the future when the GAC members in this

---

room have long since moved on to greener pastures and other GAC members once again become frustrated with the challenge of working out consensus. It is a challenge we are all very well aware of.

The second part of the rationale -- and then I will stop talking and take a queue. The second part of the rationale is then given that stress test, why did we decide we needed a bylaws change? The first and most important reason is not to entangle ICANN's board at working out differences between governments of the world because the governments may have a 60/40 decision. And forcing the board to try to find something mutual there we think would be a recipe for disaster.

Second, we believe this provides a strong incentive for the GAC to continue using consensus for the advice that you do provide to ICANN. And that is already the practice used by the GAC today and if the GAC decided that it also wanted to offer advice from time to time based on majority, have at it. That would be wonderful. But then when the advice comes over, it wouldn't get the same obligatory treatment that it would if it had consensus. So that rationale for why we came up with the stress test and the rationale for why we believe we need the bylaws change laid out, you are all aware of the NTIA's position on this. So our proposal is to insert the rationale and retain the bylaws change that the CCWG has significant majority consensus to support.

So to the co-chairs, how -- do you want to raise objections to that? Or take a discussion?

---

THOMAS RICKERT: Yes. Let's just very quickly see whether we have objections to these refinements suggested by the sub-team. So just a show of hands in the AC room or here.

>> Show of hands for what?

THOMAS RICKERT: Show of hands if there are concerns with the refinements as proposed by Steve.

>> On the rationale?

THOMAS RICKERT: We have proposals on the rationale as well as on the bylaw language. And I just want to do a quick show of hands if there are concerns with this. I anticipate there to be some, right? But just make -- indicate whether there's the need to discuss.

And I've seen Olga and Pedro. So that's reason enough to open it up for discussion. And I think we should have the discussion twofold.

Let's discuss maybe the rationale first, how about the revised rationale. And then we are going to discuss the bylaw language afterwards. So I'm asking for comments on the rationale please now.

Kavouss has raised his hand.

---

KAVOUSS ARASTEH: Thank you, Thomas.

This is a super sensitive and delicate issue that you cannot take show of hand or room temperature. There are very few people interested in the subject in this room. We have 152 members of the GAC. I hope some 80 to 100 will attend in the GAC meeting on Saturday, Sunday -- or I don't know what day. That must be discussed there. And you postpone decision on this until you receive a communication from chairman of GAC.

Number two, there are many other people in the GAC email that are against it. It is not only Argentina, Spain, France, and Brazil. There are many others. I don't want to quote them. Therefore, I don't think that any part of that you put to a show of hands. It is not show of hands. It is a principle.

I can live with many, many other changes in the Affirmation of Commitments, many things. But this one is sensitive. You have to listen to the views of the GAC. And these views have not been yet communicated to you. So I strongly object to put it in any sort of show of hand or temperature or whatever. Thank you.

THOMAS RICKERT: Kavouss, I was asking for comments on the rationale.

CHERYL LANGDON-ORR: If I may, Thomas. It's Cheryl Langdon-Orr for the record.

Kavouss, to your second part first, we did and quite deliberately make sure in presentations, Steve was very specific to say a considerably larger number of governments have, we believe, also raised concerns beyond those that formally put in public

---

commentary. So we have recognized your second point. We will continue to recognize your second point.

To your first point re: the, inverted commas, temperature of the room, what we are asking for is the CCWG, i.e., members and participants, in other words, the people in this room as to whether or not this version of the rationale is worthwhile now putting into our document to go forward to all of the ACs and SOs for discussion at this upcoming way. So it is in no way intended to disenfranchise any advisory committee and certainly not the GAC.

THOMAS RICKERT:

And just to be perfectly clear, you will see us doing this on other topics as well, to check whether there are issues with the refined proposals. And if there are none, then we can move on. We can tick it green. We wouldn't tick this one green because this one is sort of different.

Next is Olga.

OLGA CAVALLI:

Thank you, Chair. Thank you, Thomas.

I would like to support what Kavouss said. I won't go into details. But I think it's a delicate issue. The GAC is still working on it, deliberating on it. So that's my first part of the comment.

The second part about the rationale and about why is the GAC -- members of the GAC commenting and maybe not many other members of the community, well, it is a bylaw change related with the role of the GAC. So that's obvious that the GAC is the one to comment whether in favor or against.

---

So what else I would like to say?

Honestly, I read the rationale before. I read it again. And I think it does say the same as before. So it doesn't explain much of what we wanted to understand. We think -- I'm talking about Argentina. When you say "Olga Cavalli," please understand that my role here is the government of Argentina. Because I saw my name there, it's fine, I am okay with that. But it's the government of Argentina saying we think this change in the bylaw is not needed. And this is supported by other members of the GAC. But I won't talk in the name of them.

So I think the rationale does say the same as before and we are working in the GAC to try to find perhaps an outcome of our discussions. And that will be communicated to the group at a certain moment. Thank you.

STEVE DelBIANCO:

Olga, thank you for that. I do want to point out when we met in Los Angeles a few weeks ago there was a suggestion that perhaps the GAC would have some text to offer us. And we asked about that a few times and realized that it wasn't ready yet. Perhaps it will be ready this week. But we needed to move ahead and prepare for this meeting. And I noted in the document that we haven't seen the new GAC text yet, but we are happy to see that when it gets here.

THOMAS RICKERT:

Just before we move on, at this point, I would have ended the discussion say we can't get any further in this room, right? So I think the take-away message is that we are awaiting feedback from the GAC. You must understand that this group is between a

---

rock and a hard place. We have an NTIA requirement saying we can't go without stress test 18. We are trying our best to find the right words to make this work for you. Obviously we have heard two interventions from GAC representatives -- or from GAC members that we have not succeeded in convincing everyone that the language is now good to go. And that means we can't go any further.

So both Pedro and Milton haven't spoken. So I'm not inclined to suppress their views. But should you agree with me that we can just end this discussion here, wait open armed for feedback from the GAC, then reopen the discussion and hopefully come to a conclusion on it. Then I would like you to lower your hands. If you still want to speak, I won't deter you from that. Pedro is passing.

Milton, how about you?

MILTON MUELLER:

Just a point of clarification. Yes, it would be nice to have wording from the GAC. But I'm not sure I understand how you can square a circle no matter what wording they come up with.

So the question here is: Will GAC be offering advice based on consensus or not? This seems to be a logical binary. Either you have consensus or you don't. Either your decision-making procedure supports that or it doesn't.

I would be very interested in seeing how the GAC comes down on this, and I think the U.S. Congress will be very interested in seeing how the GAC comes down on this.

So maybe our discussion would be more productive, but it's just -- I don't understand what they're objecting to at this point. I

---

think Steve has put the point very clearly. So why can't we have a discussion of that?

THOMAS RICKERT:

To your point, Milton, if you had asked me ten months back whether the group would be where it is today, I would have been quite hesitant to say that I believe that we would get this far. So I think we have been able to make circles out of squares in certain areas, or the other way around.

But since we know that there's work in the making in the GAC, I think it would be disrespectful of our group to do a consensus call and carve anything in stone without -- as we're sort of like 95.9% completion status in the GAC's deliberations. So I think we should be respectful of that and see whether we can do something with the outcome of the GAC deliberations.

And until that point, I think we should agree that this check box is going to be red so we can't resolve that any further.

So, Steve, back over to you.

STEVE DeBIANCO:

Before we go to Thomas Schneider who is next in the queue there, Milton, it's possible that the GAC would come back and suggest different words for the rationale. We would want to consider that. It's possible the GAC would come back with different words for the bylaws change necessary to address the rationale held by the rest of the community.

But if the GAC merely comes back and says the consensus of the GAC is this is unnecessary, we would receive that with respect and yet suggesting that it's unnecessary is by no means



---

objecting to its inclusion because so many of us in the rest of the community feel it absolutely is necessary, not to mention the fact it is a requirement of NTIA.

With that, I guess we have one more, Thomas.

THOMAS RICKERT: Thanks very much.

Thomas?

THOMAS SCHNEIDER: Thank you, Thomas.

THOMAS RICKERT: Thank you, Thomas.

[ Laughter ]

THOMAS SCHNEIDER: No, I wanted to thank you, Thomas, first, because I think you are all doing a great job, Thomas, and the other non-Thomases.

[ Laughter ]

It's a real pleasure to work with you.

[ Applause ]

So on the substance, I agree with my colleagues that, of course, this is a sensitive issue. But, I mean, many things are sensitive issues. And I just wanted to invite everybody for the sake of trying to mutually understand concerns why something is necessary or is not necessary, that the fact that something is a

---

sensitive issue shouldn't prohibit us from exchanging views, talking to each other, whether it is here at this point in time or later. But I think the GAC is not a closed box in that sense and doesn't want to be a closed box. So don't perceive this as a refusal to talk.

It is a sensitive issue, and there is disagreements in the GAC but I think also outside the GAC maybe at least to some extent. And I just wanted to invite everybody to talk to each other because we will somehow need to find a solution to this hopefully. And without talking, this is difficult. Thank you.

THOMAS RICKERT: Thanks very much. We just thought about giving it another color than red, just saying we are awaiting GAC feedback, which is slightly more optimistic for our group. So let's close this topic now. Thanks so much to Cheryl and to Steve. As always, I think you guys and your team are doing a splendid job on the stress tests. Let's now move to Leon to get us to the next topic.

LEON SANCHEZ: Thank you very much, Thomas. This non-Thomas Leon. We have another thorny issue which is human rights.

CHERYL LANGDON-ORR: Another sensitive topic.

LEON SANCHEZ: Yes, another sensitive topic.

Could we please get the slides that I sent earlier? There are some slides that I sent earlier.

---

That is the one. Thank you.

So if we scroll, please, to the next slide.

So we received, of course, many comments on this track in our second public comment period. And the two areas of consensus that we found in analyzing these comments were that human rights should be addressed as a matter of a workstream 2 issue. This wasn't a comment by all commenters, but the sense of the working party is that most of the commenters support addressing human rights as part of workstream 1.

The other point of consensus we found is that including any kind of a bylaw wording into ICANN's bylaws with regards to human rights should not broaden ICANN's activity or mission. So we should be careful of whatever we propose, what we come up to, would enable to actually deviate ICANN's mission or activities into -- turning it into a policeman of human rights.

So the next slide please.

In the areas needing refinement, we found out that there is a need for refining the proposed language for the bylaws. We actually came up with four options. We began with two and we end up with four. So we are in a good track.

And this is something that we, of course, will put on the table for us all here to consider and whether we should go with one or another option.

There are also some comments that state that ICANN is already subject to respect human rights because we have Article 4 of articles of incorporation. So that is also an area that needs to be further discussed as there doesn't seem to be a consensus on whether this is enough for ICANN to be bind to respect human

---

rights or if it's something that we should also include in its bylaws.

Then another discussion, then its refinement is the one that refers to -- referring to specific documents on human rights. When we thought of the wording or the proposed bylaw that we would be suggesting, there was this discussion on whether this bylaw language should include a reference, for example, to the Universal Declaration on Human Rights or other documents. So this is a discussion that in the working party came to a close. But, of course, this is just the report on the comments.

Then there was also the suggestion that we should use verbatim text of already-agreed language from existing human rights instruments. And this was also -- this was also an option that considered in the working party.

So can we change to next slide, please.

And the points of divergence is that some commenters think that this should not be included in the bylaws. Some commenters said that as things stand, it's okay to continue working and Article 4 of articles of incorporation already takes care of this. Other commenters say this is a workstream 2 issue. Some commenters say this is a premature issue for the CCWG to actually work while others say that there's more work to be done.

And could we go to the next slide?

And for consideration, we'll be putting on the table to revisit the bylaws language and decide on the text to be proposed. As I said, we have four options that arise come from the discussion in the working party 4. To consider the level of support as a

---

workstream 1 issue, whether we should definitely go with this in workstream 1 because some feel that this is either premature or this is not something that is affecting the IANA transition directly so it shouldn't be taken care of in workstream 1.

And then the need for more detail, of course. And clarify the limited mission and scope. When we say -- when we are proposing bylaw text, we are trying to be very precise in stating that these bylaw changes would refer only to ICANN's mission and activities.

Then collaboration with other community CCWGs. We are aware that there is another working group -- cross-community working group that's dealing with human rights within ICANN. So it was suggested that we should also consider acting with them and coordinating so we don't have to reinvent the wheel. I think they have made a lot of progress in this track so we could as a group benefit from what they have done also.

And of course the options some suggested texts? And now we can go to the report on the comments to see the four different options of text so that we can put it in front of the group. It's a little bit further down the document. Further down, please. There we are. Next page. Next page.

Okay, so these are the four options that we were speaking about in this working party. And the first one is, "Within its mission and in its operations, ICANN will respect internationally-recognized human rights." That is the first option. And as a matter of fact, this was an option that was already considered in our second public -- our second draft proposal. Then the second suggested text is that "Within its mission and in its operations, ICANN will respect the internationally-recognized human rights set out in the Universal Declaration of Human Rights." Then the third

---

option is "Within its mission and in its operations, ICANN will respect the internationally-recognized human rights set out in the Universal Declaration of Human Rights, the International Covenant On Cultural and Political Rights, and the International Covenant on Economical, Social, and Cultural Rights." And then the fourth one is "Within its mission and its operations, ICANN will respect the internationally-recognized human rights set out in the Universal Declaration of Human Rights, the International Covenant on Cultural and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights, and will carry out its work guided by the U.N. Guiding Principles On Business and Human Rights." Now this -- whatever wording we agree to actually suggest to be -- or to amend the bylaws would be accompanied by an explanatory note and, of course, a rationale of why we -- why we decided as a group to actually suggest that text to be in the bylaws. But before we do the rationale and before we actually give any explanations we need to come to a closure as to which of these options would be most suitable. And, of course, whatever language we choose to suggest will also go to our lawyers, and I see -- and I hear an echo at some point. So this would be also sent to our lawyers just to make sure that the wording that we are suggesting is legally feasible because I mean some of us are lawyers but our lawyers are better than us. So we definitely need to go to them.

So at this point I would like to open the floor for discussion. I think that the points that we need to refine are whether these are -- whether human rights should be a Work Stream 1 issue. Another point that we need to refine is whether we refer to single or multiple documents in the proposed bylaw language that we want to suggest and, of course, the third point would be choosing one out of these four options that we have come up as

---

a suggested bylaw text. And I see that the first in the queue is Kavouss.

KAVOUSS ARASTEH:

Yes. Thank you. Not to have a comment of Swiss Thomas this time. I won't say it is sensitive. It is an important and fundamental issue and we have to reflect that. However, I think either you take the most simplest or you take the most complete, but not in between. The first is the most simplest. The last is most complete, but not even complete. Most complete as far as we have. But now I have a point. There is no criteria to see whether or not ICANN has respected this. It is good to put in the paper to satisfy the people. Then you go back to our community and we say okay, we have done what we could do. But it's difficult. Perhaps my suggestion would be take the simplest. Thank you.

LEON SANCHEZ:

Thank you, Kavouss. And actually we did go through a poll in the working party to decide whether -- I mean internally in the working party, not as a matter of CCWG decision because of course we would be against our charter. But in the internal poll that we ran through the Working Party 4, the decision said that we shouldn't be referring to a specific document. There were only 5 votes that said yes to referring to any kind of document in this proposed bylaw change and there were 17 that said no. So there was, of course, a broad pushback to referring to any single or either multiple documents in our proposal. So I guess that is aligned with what you suggest of going with the simplest -- the simplest text which would be the first one.

---

So I don't know if there are any other comments and -- or if there would be any kind of opposition that the final text that we include as a suggestion in our next draft proposal is the first option that you are seeing here in your screen which reads, "Within its mission and in its operations, ICANN will respect internationally-recognized human rights." Are there any oppositions to go with that suggested text? I see two hands. And one is Bruce Tonkin and then Greg Shatan. So Bruce, could you please take the floor?

BRUCE TONKIN:

Thanks, Leon. How's that different to what we have in our articles of incorporation? So I'll just read it. It says, "The corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law." I would think that covers point one. Perhaps Avri you're nodding your head, but if someone can explain to me why what we already have doesn't cover point one?

LEON SANCHEZ:

Thank you very much, Bruce. And I don't have an answer for you, but what I've heard from the discussion in the working party and of course through the many comments is that even though the article -- the article 4 of articles of incorporation refers to this kind of concept that you just described, that wouldn't be enough for many in our community to guarantee that ICANN will be actually respecting and taking its activities in respect to human rights. So that is why it is proposed that an amendment to the bylaws is added so that is an expressed provision that ICANN should actually respect human rights in all



---

its activities but within its mission. And next in the queue I have Greg Shatan.

GREG SHATAN:

Thanks. Greg Shatan, for the record. Two quick things. One, a possible answer to Bruce, but I'm not entirely certain. I believe we had a memo from our counsel a couple of months back which opined, or at least took a view, that article 4 did not completely embrace the concept that's set forth of respecting internationally-recognized human rights. So we may need to look back to counsel and to our -- our archives on that, but I think we actually had a written opinion on that point. So rather than belabor it here, we should look to our collective wisdom.

Secondly, unless there is just a general feeling in this room that number one is the way to go, I wonder whether the same poll that we took in our working party should be taken in this group, since the working party is not by itself dispositive, it's just there to make suggestions for this group, but, you know, if there's kind of acclimation in this room for number one, then I suppose there's no point in taking a poll. But just curious what the sense of the room is on that. Thanks.

LEON SANCHEZ:

Thank you very much, Greg. And while I -- I would go the other way, I would suggest that if we don't have any opposition or major opposition, we could go with number one. Next in the queue I have Tijani Ben Jamaa.

TIJANI BEN JAMAA:

Thank you very much. I am not very happy with this proposal. It is very good, but it is -- it gives room for interpretation. Anyone

---

can interpret it as it wants. As he wants. We have to mention clearly that this doesn't have anything to do with the content. This is only about names and numbers, which is our mission. We don't have -- Nigel confirmed that it is like this but it is not written. And people can interpret it as they want. Thank you.

LEON SANCHEZ: Thank you very much, Tijani. And yes, that is why the proposal that we're trying to build here specifies that it's within its mission and in its activities. That would avoid to actually broaden ICANN's mission or to deviate its activities into territories that we are well-known that we want to avoid.

TIJANI BEN JAMAA: Thank you. But it must be clearly mentioned. If it is not, it -- it can be interpreted -- interpreted otherwise. Thank you.

LEON SANCHEZ: Thank you very much, Tijani. Next in the queue I have James Bladel -- no, I'm sorry. Avri, Avri Doria.

AVRI DORIA: Thank you. Avri speaking. Yes, I just wanted to address the question that people keep bringing up. It's one I also addressed in my comments that the articles included it. The articles and -- and I got into detail in my comment. The articles are very specific about if applicable, if as stated in the articles, if as stated in the bylaws. So they're very specific.

As far as I remember, yes, we did get a memo that said there are no applicable human rights to corporations. The applicable human rights are bound on states. States then have the

---

obligation to create laws. They may or may not. So that -- so by putting it in the bylaws, we make the article 4 of the -- we make article 4 applicable because article 4 says, as applicable international law, as included in the articles, as included in the bylaws. Once we have it in the bylaws, it's -- it becomes applicable to the corporation. Otherwise, we have absolutely nothing to hang a human rights respect on. It's just basically it's normative, it's moral. Yes, we ought to do it. We can interpret our values that way. But there is no self-imposed obligation to respect human rights. And that's one of the things that we lose with the loss of NTIA because as the nation state, as the one that's responsible for that, as our oversight, they can be expected to oversee us doing that. Once we lose them, there's absolutely no binding on us to do so. Thanks.

LEON SANCHEZ: Thank you very much, Avri. And I think that kind of answers Bruce's question. And I'm closing the queue now with Kavouss, so Kavouss is last on the queue. But next I have James Bladel.

KAVOUSS ARASTEH: Thank you, Leon.

LEON SANCHEZ: I'm sorry. I'm closing the queue with you, but the next one is James. Sorry.

KAVOUSS ARASTEH: Okay, sorry.

JAMES BLADEL:

Thank you, Leon. Thank you, Kavouss. This is James. So just a couple of points. I think -- and thanks to the working partying for putting these options out so clearly for someone who hasn't followed this issue very closely. I appreciate having it laid out and enumerated like this. But I wanted to say very quickly and I think it's going back to Tijani's point is I think it makes more sense to be as less prescriptive as possible when citing the sources of human rights, not going through all those documents which can change, of course, in the future as well as their depth and breadth of recognition. But perhaps where we need a little bit more expansion in item number 1, which is my preference is now, is expand what we mean by within the mission and scope of operations. And we also need to know what it means to respect. You know, if someone comes to ICANN and say a registry or a registrar is violating my human rights with this contract, ICANN, what's your mission here? What are you going to do? And I think that's where I'd like to see a little bit more -- I'd like to have a little bit more comfort around this language. Of course not getting into a situation where we appear to be coming out against the inclusion or recognition or respect for human rights at all, but we'd like to have a little bit more certainty around the scope of the mission and operations part of that language. Thanks.

LEON SANCHEZ:

Thank you very much, James. Next is Malcolm Hutton.

MALCOLM HUTTY:

Thank you, Chair. I would prefer not to include any of this language, and I have two main reasons. Firstly, by bringing in these references, we are referring to a broad range of rights that are not well understood or well agreed upon as to what their

---

substantive comment means in practice. They're very diverging views. Even noting the statement "within its mission and operations," I think the inclusion of this language would tend to make ICANN a place where people come to seek to vindicate those rights as they interpret them, in a way that will create confusion and pressure upon the understanding of what the limits of the mission and operations are. That would tend to politicize ICANN in an unhelpful way.

Secondly, my second reason, with regard to those human rights which are particularly relevant to ICANN's mission and operations, and I'm thinking here particularly of freedom of expression, freedom of association, due process, those sorts of rights, I'm concerned that the inclusion of this language would actually weaken the much stronger protection that we already give through the core values and other important elements of the bylaws. By including this language, we would be focusing people on the standards that are legally recognized and legally enforceable standards for human rights, which are not always as strong as they could be. And not always as strong as they could be in all places. Whereas we have particular standards that we have set throughout the rest of the bylaws that give much stronger vindication to those interests than are always found in a legally-enforceable fashion. So I think that those that are quite legitimately concerned that we should indeed be concerned to protect, ensuring that ICANN does not encroach upon these rights, may actually be scoring on our own goal in focusing the attention on the legal standards by the inclusion of this language. Thank you.

---

LEON SANCHEZ: Thank very much, Malcolm. Next in the queue I have Alan Greenberg.

ALAN GREENBERG: Thank you. I share some of the concerns of the previous two speakers. Certainly among those four I would prefer the first. But I -- I have a large concern that we are doing this because it is, quote, right but at the same time without understanding the implications, without understanding the potential for frivolously using these to try to do things even if it's not particularly applicable because of the lack of specificity of that first phrase. Moreover, I believe we should be entering into this fully knowing what kinds of things we're talking about. It has been stated, and I believe correctly, that ICANN's WHOIS rules and going along with the registration -- with the RAA have put requirements on registrars which violate human rights in certain contracts. And we are trying to adjust that, as I understand, by giving waivers in certain countries and things like that. But I would like to -- if we're going to put this in the bylaws, to go into it knowing what is it? In what ways are we -- at this point have people claimed that we're violating human rights? What are the implications of us doing this. Not that we shouldn't be saying we're going to honor them. Of course we should. But understand what this means to us and what the implications are if we put these words in. Thank you.

LEON SANCHEZ: Thank you very much, Alan. And finally, Kavouss.

---

KAVOUSS ARASTEH: Yes. Sorry that I misunderstood you first. And I apologize to the distinguished colleagues before me.

As I mentioned at the beginning of my intervention, there is no criteria that you can examine whether or not ICANN has respected or not. It is difficult. Give me one example, then I will (indiscernible). There is no example of any criteria. However, in order to satisfy the big lawyers, yes, put it there. Any qualifier to add, you will make it weaker. But I have no problem you add the qualifier after will, comma, if applicable or where applicable, comma, and continue. Thirdly, this sentence does not have any mandatory application because you use the whole web deterministic of will. That means ICANN will do that. There is no mandatory. Otherwise you have to use ICANN shall respect. So I think in order to satisfy the colleagues, put any qualifier that you want in the middle, at the beginning, at the end, and make it as simple as possible. But there is no criteria to examine. And if ICANN has not respected that, there is no criteria to make any redress or any punishment to ICANN. Thank you.

LEON SANCHEZ: Thank you very much, Kavouss. So I guess my take from this discussion is that we obviously need refinement and I would just call for refining Point Number 1, because that is the one that I think has actually had more traction, and we would take that language and refine it, and from there, we would of course come back to the group.

Is that something that we agree on?

Yes?

[ Applause ]

---

Perfect. I see Eberhard Lisse's hand is up. Eberhard? Can we have a microphone for Eberhard, please?

EBERHARD LISSE:

I have problems with un-absoluting human rights, in particular since I've been live- -- since I'm living in a country where human rights are only allowed for -- since 25 years. And the first statement makes it, for me -- not all of us, but I'm really concerned if we're trying to water this down.

I come from -- and some of us here in this room come from countries where human rights are not as absolute as they are in others, but I'm a little bit astonished that in some countries where human rights are considered sacrosanct, concerns come of what motivations are being made to water them down. I don't think that should happen.

LEON SANCHEZ:

Thank you very much, Eberhard.

Okay. So we have an action item, which is refining Point Number 1 of this language and come back to our group.

So I think that could close the discussion on human rights, and now I will go back to my co-chair, Thomas.

THOMAS RICKERT:

Thank you very much, and I'd like to ask Jordan again. We're going to do the board recall. Now --

[ Laughter ]



---

MATHIEU WEILL: I think he quits.

[ Laughter ]

>> (Off microphone)

MATHIEU WEILL: Coffee break now?

>> (Off microphone)

MATHIEU WEILL: Don't you think we can do the board recall in three minutes?

[ Laughter ]

>> All those in favor of recalling the board?

[ Laughter ]

THOMAS RICKERT: So we should have printed the "Spill the Board" T-shirts, right? Okay. So then we're going to do the coffee break now and reconvene afterwards. Thank you.

MATHIEU WEILL: And don't spill your coffee.

[ BREAK ]

---

THOMAS RICKERT: So this is the two-minute warning. We need to reconvene, please. Please be seated.

Can we ask Greg Shatan to the podium, please. Greg Shatan, we need you for this next session.

>> (Off microphone)

THOMAS RICKERT: Two minutes over.

>> (Off microphone)

THOMAS RICKERT: Greg Shatan, if you can hear me, please do come back into the room.

So if we can get the recording started.

>> (Off microphone)

THOMAS RICKERT: We're going to reconvene now and continue with the next item, which is the recall of the entire board. And I think we're quorate so we'll just call for the consensus.

>> (Off microphone)

---

THOMAS RICKERT: Decisions are made by those in the room, right?

>> (Off microphone)

>> Oh, and the remote participants.

THOMAS RICKERT: And the remote participants.

>> That was the first reading. Let's go for the second.

THOMAS RICKERT: And very friendly hello to our remote participants and --

>> That sounds super-friendly.

THOMAS RICKERT: -- Jordan will introduce the topic and then over to Greg Shatan.  
So Jordan, fire away.

JORDAN CARTER: Thanks. Has anyone told the people outside that we're starting again?

>> No, no. We don't care.

---

JORDAN CARTER: Do they know?

>> No, they don't know.

JORDAN CARTER: Byron, can you get everyone in?

He might be able to do that or they might just be locked out. I'm stalling while he finds my place in our plan.

We're doing the recall of the ICANN board, right?

>> (Off microphone.)

JORDAN CARTER: No, there's no difference. There's no difference.

On the paper, it's starting on Page 10, for those of you who are looking at it.

Greg, do you want to come and join up on the front table? Is that going to be upsetting?

Greg led the collation and analysis of the public comments in this area, and so the overall consensus was in support of the power in the sense of 14 commenters expressly supported it.

There were some areas that needed clarification and refinement, as shown. The headings for those, if we just flick over them, there was the idea of standards for board member recall. There was a quite involved discussion in the work party about the standards that might need to be applied for selection

---

of interim board members, and so Greg, I think, will take you through that.

And there were a couple of times a question asked about what happens if we don't follow the process, if in recalling the whole board the process isn't followed, the deadlines aren't met and so on, and I think there's an easy answer to that which is that the process falls over and the board isn't recalled. But some people may like that to be more complicated. I don't know.

And in terms of the areas of concern and divergence, some people just did not want this power in place.

There were some concerns or issues with the time period for the interim board's existence.

You'll recall that the interim board has a 120-day life, or a 4-month life, and then by that point, people are meant to have appointed their replacement directors.

There's a question about whether the time lines are too tight.

There's the need that we've already been discussing for widespread community support to exercise this power.

And, you know, a number of other questions about the complexity and so on were set -- were raised.

There were some options for consideration by the full CCWG that did emerge, and that's the point where I'll hand over to Greg to just briefly run us through those.

GREGORY SHATAN:

Thank you, Jordan.

Of course now my computer says "Connection Lost."

---

>> (Off microphone.)

GREGORY SHATAN:           What?

>> (Off microphone.)

GREGORY SHATAN:           Yes.

Anyway, these are echos of what you've just heard, clearly, since they are based on the comments that were made.

The first was the suggestion that we have more detailed standards for the selection of the interim board, and that's in large part because the actual second draft is -- doesn't even mention the idea of standards for selection of the board except that it mentions waiving the geographic diversity requirement, so that left some readers concerned that we had no standards.

The suggestion that we developed in the working party was that we would state that we would use the same standards for the interim board as set out in the bylaws for the ICANN board, the regular board, if you will, other than the geographic diversity requirement.

So that seemed logical to those of us in the group. I don't know if it's logical to anybody else.

So I seem to have lost my --

---

>> (Off microphone.)

GREGORY SHATAN: Yes. See if there's anybody in the queue, please.

THOMAS RICKERT: There are no hands up.

GREGORY SHATAN: Oh, okay. Well, I've dazzled you once again.

So I think that seemed fairly straightforward.

The next was, as you say, clarifying the consequences for failing to meet the process requirements. The concern was that -- and these really fell into three different categories. Kind of goals and principles and deadlines. And as indicated, if we do have rigid deadlines and we fail to meet them in the process, that the process simply fails.

That kind of ties into the third suggestion, which is to look at the time lines and time periods and determine if we need to make them less rigid, so that things don't fail just because the multistakeholder process is a little slower and messier than usual. On the other hand, the concern is that if you don't make them somewhat tight, you have the chance that things will drag on and on and you'll have a prolonged period of instability, concern -- which again is balanced against the idea that you may have a situation of capture if you have shorter time lines, and some community -- parts of the community are more ready to work on tight time lines than others, as I'm sure those of us in this room can sympathize. Tight timeliness sometimes do

---

discriminate between those who are -- who can make the time and those who have a harder time.

So the 120-day period for selecting the replacement board is really one of the hard time lines that we had, so the suggestion was to make that a target rather than a hard stop, or perhaps to build in some sort of trapdoor to allow for some additional time as long as perhaps the parties are working in good faith or something along that -- along those lines.

But that was, you know, the major point there in 2 and 3.

Next was the -- there was concern by one commenter that there could actually be a failure in the process to identify the interim directors which are supposed to be identified by the nominating -- or by the designating parties. So in that case, I think we just agreed that we would go back and -- as we looked at this and see if we needed to refine anything around that process to see if we could mitigate or lessen the chance of failure. But, again, as with any failure to move the process forward, if we don't succeed, the process fails.

Next was a concern that the process was, in the words of one commenter, labyrinthian and cumbersome.

We did want to make it -- make sure that total recall of the board was not easy, but it seemed at least to some that it was not only difficult but confusing and perhaps even confused as to the levels and actions that needed to take place.

So, again, there, I think we need to take it back and look at refining it, to see if there's any way that we can make it less -- you know, more clear, even if -- without necessarily making it any easier.



---

JORDAN CARTER: Can I just interrupt with a --

GREGORY SHATAN: Yeah.

JORDAN CART: -- just so people understand why this one is a little bit more detailed and maybe falls more into that category of "too detailed to be easy to understand but not detailed enough to be in the bylaws."

It's because our outstanding lawyers had a go at drafting it, and their drafting was great in providing the level of detail that you might want to define a bylaws process at the start, but we did -- we kind of didn't disentangle it as quickly as we might have done. So this is one of the parts of the report -- this is no reflection on you guys. You did exactly the right stuff. We didn't make it into nonlawyer English as well as we might have done, so...

GREGORY SHATAN: I think we -- basically we took the process that had been designed and put it directly into our report rather than describing the process. We actually, you know, showed the whole process. Which again, you know, shows the difficulty of drafting, you know, both for the rigor of a legal process and for the understandable nature of nonlawyers reading it.

But in any case, I think we can look back at at least simplifying how it is expressed.

Next was the question of whether we should establish minimum standards for board removal. It does say that we are going to

---

leave this for Work Stream 2, so the question is whether we should at least say something about -- about standards, and we discussed standards quite a bit as we were discussing individual board removal, including whether there really should -- there should be standards and the amount of discretion left to the individual ACSOs.

You know, this is different since we're talking about recall of the entire board, so the question is whether there should be a minimum standard for board removal, and we -- whether we should at least outline what that might be in Work Stream 1. As with other proposals we've made, it's a, you know, relatively significant proposal, and to say that we have -- "We won't tell you why we would do it" may fall short of our necessary explanations that we need to make to the rest of the world. Maybe we know why we would do it, but it doesn't really say why we would do it.

Last was a suggestion that there should even be an even higher threshold -- in this case, 80% was suggested -- for board recall. That's something that, you know, clearly we can take under consideration but I think the general sense of the room and of -- and this was a single comment. The sense of most commenters either was that we got it right or they didn't comment at all, so perhaps there's, you know, no reason to move forward on looking at the higher threshold.

So those are the elements for consideration.

THOMAS RICKERT:

Before we move to the queue, can you specify any way forward on the individual topics? You know, so for some, you have made suggestions that you -- you've spoken about, suggestions to

---

make 120 days a target rather than a fixed deadline, but for the 80% threshold I guess that's something that the group doesn't want to follow up on, right?

So hopefully I think we -- we can leave certain areas for implementation -- right? -- but if we could maybe wrap a package that consists of some concrete suggestions, then we could ask for consensus in this room.

GREGORY SHATAN:

Right. Just very briefly, in looking back through the list, in terms of, number one, creating standards for selection, I don't think we need to. We just need to specify that we're going to use the standards that are set forth in the bylaws for selecting the ICANN board.

Section 2, in terms of clarifying consequences for failure of the community to meet the process requirements, in terms of time lines I think we just need to clarify that if you do, in fact, run up against the end of a time line without having satisfied it, then the process ends unsuccessfully.

And making the 120-day period a target, I think we have to specify that there is, you know, work taking place in good faith and that it will be completed, you know, in a reasonable time after the 120 days. Otherwise, there will just be drift.

With regard to the failure to agree on interim directors, I think we -- since that's really a process that has to take place at the individual SOAC level, there's probably not much that we can actually say about it, so I don't think we need to actually respond to number 4. You know, thinking about it, that's a question. If we have SOACs that can't, you know, decide to put

---

up interim directors in the time period, again, the -- our attempt to remove the board would fail fairly --

In terms of simplifying the processes, as Jordan says, I think we have to have just another go at looking at the language and see if we can, you know, make it a little less lawyerly, even for those of us who are lawyers and enjoy reading that stuff. We don't need to impose that on everyone.

So I think that's just a drafting -- another drafting pass at the section.

Number 6, a basic outline of minimum standards for board removal, I think that's one we should talk about a little bit because that's a question about what -- how much -- what are we going to say? We haven't really talked -- we've talked a lot about removing the board and we have general ideas of why we would do it and it's the last -- it seems to be the last resort, potentially, for everything, but yet we haven't quite discussed, you know, something concrete that we would say "The board needs -- will be removed because," in so many words. So that's one I think we should talk about.

And then the last one, number 7, I think we shouldn't talk about.

Thank you.

THOMAS RICKERT: Thanks. Greg --

GREGORY SHATAN: That's my package.

---

THOMAS RICKERT: Jordan, you wanted to answer that?

JORDAN CARTER: Just really briefly to say that a number of you have noticed that isn't -- these aren't clanger issues here, right? Yeah, the big one is actually the standards or not. So that would be the one to test how people feel generally when the CCWG has decided that, it's decided in favor of explanation of rationale but not some list of objective standards that might get us stuck in court. And I haven't heard anyone suggest a coherent argument why that will be moved from.

So...

THOMAS RICKERT: Yes. And I guess that's a good suggestion. But now you've heard the options. I guess that this might be a point where we just ask the group for agreement that we put this into to-be-refined mode, right? So we have it in a to-be-considered mode, but now I think we can advance it to the to-be-refined mode?

I think we can conclude that the existence of this community power for board spill is -- cannot be questioned at this stage, so it's going -- this community power has been requested by the -- the overwhelming part of the community, so I think we should discuss that.

We have a queue request forming with Steve, George, and Alan. I'm going to close the queue afterwards because we've only allocated short periods of time for that. And, again, the goal is to elevate this from to-be-considered to the to-be-refined status, so that we -- we're going to then make the refinements that Greg and Jordan spoke about.

---

Steve?

STEVE DelBIANCO:

Steve DelBianco with the CSG. I agree with the comments that characterize all eight as being relatively small items.

I wanted to speak to number eight for a moment. Greg, you brought up the notion of a threshold.

But I believe we spent this morning discussing how the community -- the ACs and SOs would reach the goal of consensus with respect to exercising a community power, and they might do so through the multistep process that Jonathan Zuck is going to explore in a subgroup tomorrow. It's that group that seeks to achieve consensus for the exercise of a power. This is just one of the seven powers. In that respect, we are currently heading down a path where that notion of 80%, 75% is no longer specifically assigned to board spill anymore but rather if it is the consensus of the ACs and SOs, according to the definition that we come up, then that's what triggers it and there wouldn't be a special percentage anymore. Is that the way you see it as well?

GREG SHATAN:

I think that would be the case. I guess the question is whether we're going to have the same consensus definition for every community decision.

That's the goal.

GREG SHATAN:

I guess that's the goal.

---

THOMAS RICKERT: Thanks. George?

GEORGE SADOWSKY: Thank you. George Sadowsky for the record. First, on a personal note, I'd like to say that my wife was in the room this morning. And she volunteers to work with any group that wants to lessen the standards for board -- for individual board member removal so I can be home more often.

[ Laughter ]

On a more serious note, I want to address the threshold question also at a slightly meta-level.

If the entire board is spilled, it's relatively cataclysmic. And the post-spill ICANN may behave very differently than the pre-spill ICANN. Maybe that will be good. Maybe that will be bad. But it will certainly be different.

And I'd like to echo the advice of my colleague here in the room, Jorge Cancio, when he said, We cannot define consensus in this context using a no-objection standard. It is too important. I would urge you to require positive assent by way of a supermajority of some strength to make any such decision.

Thank you.

THOMAS RICKERT: Thank you, George. Good points. I understood that the terms of reference for Jonathan's group would include exactly that. I think that's an excellent reminder. Very much needed for this community power.

Alan?

---

ALAN GREENBERG:

Thank you. A number of quick points. On the interim board, my understanding was a prerequisite for supporting the removal is to provide the interim director. So there's no issue of what if you don't name someone. And my other presumption -- because I don't think it's stated -- is the interim director serves until replaced. So if a group does not make the 120-day deadline, then their member/members stay until they are -- each of them stay until they are replaced. So, again, there's no penalty but there's a presumption that you will do it quickly.

In terms of standards, I really worry about standards. How do we define standards? I'm not quite sure how you do it. But if we have a very heavy consensus -- and we've always assumed there will be different levels of support. On the budget veto, for instance, we set different levels for the first and second one. I suspect here, too, we may need different levels of consensus for the different powers. So that's something I would support.

Lastly, there was a comment the ALAC made on both types of board removals that it now strikes me was never discussed this morning on the individual member but it applies in both cases, and that is some level of waiver that the bodies, the groups that are kicking out board members are not going to be liable for defamation suits or something like that by the people removed.

And I think that really needs to be something that we have to look at.

THOMAS RICKERT:

Thanks, Alan. I guess that's a good point for the pen holders to include in their refinement work. I guess the good news for us is that we can -- I haven't seen any opposition to us moving that,



---

elevating this from "to be considered" to be confined -- "refined."

Also, I think that sort of direction to the pen holders or to the sub-team would be having criteria might be a difficult task. So I think as we -- as when we discussed individual board member removal in L.A., it's more about providing a rationale rather than coming up with a catalog of reasons why you can spill the board.

So I guess that's good news. So with that, we should end this topic and we will move to Mathieu now for workstream 2 items.

Mathieu.

MATHIEU WEILL: Thank you very much, Thomas. This is Mathieu Weill speaking.

THOMAS RICKERT: Sorry. Thanks, Greg, Thanks our super rapporteur Jordan. He is double, triple booked as rapporteur today. Thank you for that.

MATHIEU WEILL: I think you are done for the day, Jordan. You are not going to the table anymore.

JORDAN CARTER: I hope you're right.

CHERYL LANGDON-ORR: We will come up with something.

MATHIEU WEILL:

Next agenda item is workstream 2 comments we have received. This is a paper that has not been discussed in substance before this meeting. We've obviously had other things to focus on.

But to keep a broad overview of the comments we've received about workstream 2, really they showed that there was a fundamental misunderstanding between what -- between two things, one is workstream 1 implementation. For example, implementing, setting up the IRP and the workstream 2 items, which would be discussed in principle. And whether we would recommend improvements or not is still very much open after -- or at least our discussion would not close before the transition happens. That was really a misunderstanding on our side and something that we did not communicate adequately. But the comments showed there was misunderstanding a lot.

Second is the scope -- so the scopes of workstream 1, workstream 2 were sometimes confusingly interpreted. And there were also a number of comments regarding the need to keep workstream 2 as focused as possible. And even some commenters suggesting that many of these items be moved into the regular continuous improvement cycles that ICANN is so familiar with, with the review teams and everything.

And I'm going straight to the proposals here because it's already been a long day and we only have a small amount of time. Proposals for your consideration. First of all, clarify exactly the difference between workstream 1 implementation and workstream 2 in our report.

We've had suggestions including by the government of Brazil to clarify the scope of the jurisdiction issue in order to make clear that the core discussion point is about the jurisdiction for the settlement of disputes. This suggestion is something that we

---

need to consider and I think actually is a helpful suggestion to make sure that our workstream 2 discussion on the issue is not, number one, misinterpreted and, number two, is more focused and, therefore, more efficient.

Then there's the discussion about the scope of workstream 2 where we've had on the one side people saying all of workstream 2 could go into the continuous improvement cycles. On the other side, we've been coming up with a recommendation that workstream 2 includes a certain number of items which is, yes, slightly impressive. We're touching about the ten items, so that's ten subgroups and everything. And we need to consider something called volunteer fatigue. I don't know if you are familiar with it. I have never encountered it. Really, never. It never touched -- even remotely -- close to it. So the suggestion that I'm putting for consideration, that we're putting for consideration here, would be to focus the CCWG workstream 2 efforts to those items that are absolutely key to the foundations of the accountability framework; namely, the transparency issues including the enhancements to the DIDP.

It was touched upon this morning on the chat when we discussed designator, it's true that designators do not have the same right of access to documents as members. So if we were to do that, then that reinforces the need for clarifying the transparency issues in workstream 2.

SO/AC accountability we'll discuss later about work party 3 outcomes on this. But it's been clear in the public comment that many raised some concerns about whether the SOs and ACs were representing the global Internet community. And that's key accountability discussions we've had from the start. So I think that's a fundamental one.

---

Diversity, same reason.

And jurisdiction with the clarification provided if we take on the comment from Brazil is also a very fundamental accountability topic about dispute settlements around contracts and everything. So that's certainly fundamental.

Which means that some other items which may be are already rather easily addressed by the continuous improvement cycles would be -- would be moving to other -- beyond the CCWG. Doesn't mean they're forgotten or discarded. They would include the whistleblower policy, transparency about ICANN interactions with governments, which was one of the inputs we've received in the comments -- in the two rounds of public comments.

Audit and certification requirements for I.T. systems.

Enhancements of ombudsman's role except for what relates to the enhancements to the requests for reconsideration obviously where that is already a big chunk of extra work for the ombudsman. So we would focus on this in the CCWG and leave it to further work for the rest.

And, of course, I was making a note in the document that depending on the outcome of the human rights discussion, we might have some follow-up work, whether it's implementation of workstream 1 or workstream 2 is still open in my mind, but I think we need to relate it to work party 4.

And there was an item which actually not relevant anymore when we finalized the report but stayed on about further assessing enhancements to government participation in ICANN

---

which actually didn't have any substance behind it, so it was pointed out by some commenters. So I suggest we remove it.

And that's both a summary and a proposal where we want to test whether this approach raises concerns and objections and whether we move into a status of we have an agreed way forward, green -- remember, color of Ireland, green -- or if there are significant concerns about it in the room.

And I see Pedro and a queue has been formed. And Pedro is first.

PEDRO SILVA:

Thank you, Mathieu. I just wanted to clarify one thing you mentioned here concerning the comments from the Brazilian government actually. In our comment, we have expressed what was our main concern with respect to the issue of jurisdiction. But we didn't necessarily ask to limit the discussion of jurisdiction to that subject. Of course, other members, participants of this group may have other concerns with regards to this topic. We remember that in our initial discussions, we agreed to consider this a multilayered issue with different, let's say, areas. So I think probably we should keep it open to the topic of jurisdiction to be considered, still to be considered as multilayered.

But considering that for the government of Brazil, the issue of settlement of disputes is the main concern.

MATHIEU WEILL:

Thank you, Pedro.

The next is Avri.

---

AVRI DORIA:

Thank you. Avri Doria speaking. And at least through part of this, I'll be wearing the ATRT type of hat. I'm sort of uncomfortable with the moving of the transparency and whistle blowing out of workstream 2.

Part of it is they have been in the continual improvement.

In other words, does it look like you were moving into the continual improvement track, which is important. But these have been issues that have come up in almost -- in the two ATRT reports and, therefore, should really, I think, stay -- you know, we had talked about them at first perhaps being in this one and then, okay, we've moved them. So I would caution against doing that.

And then taking off the ATRT hat in terms of the human rights, I think that how we take it, I think we'll have to do some work in workstream 2 as opposed to just, you know, leave it that we've got this now and everything's fine. I think there will be a lot of work that we need to do in terms of understanding how it all happens. So thanks.

MATHIEU WEILL:

Thank you, Avri. I will follow up on your suggestion and say maybe what we can do is reinforce the transparency -- 3A point which is already meant to address the transparency -- the fundamental transparency discussions that are needed for a proper set of accountability mechanisms but not only focus this on access to documents, the DIDP, document information disclosure policies, but also add the whistleblower and interactions with governments in the scope of this item because I take your point. If it's already been tried in a continuous

---

improvement and it hasn't worked, then let's take it back on. I take your point.

And I seize the opportunity that Robin is the next in line to ask whether that would be satisfactory. Robin?

ROBIN GROSS: I'm sorry. Can you hear me? This is Robin Gross for the record.

MATHIEU WEILL: Yes.

ROBIN GROSS: You asked if what was satisfactory?

MATHIEU WEILL: So if we bring back whistleblower and transparency about ICANN interactions with governments, in point 3A about transparency as a whole. So it's brought back into workstream 2.

ROBIN GROSS: That would make me very happy and make me remove my objection and turn over the time back to the chairs.

[ Laughter ]

MATHIEU WEILL: Excellent, Robin. That's what I like!

Malcolm.

---

MALCOLM HUTTY: Thank you. Those that have been working on the IRP know that there's the potential for significant continued improvement that will be needed beyond that, that we thought was necessary to do in WS1. In particular when receiving comments, one of the things that's been mentioned repeatedly is the cost of actually accessing the IRP and the need for some means of support for those that can't afford it.

We've repeatedly said that's a workstream 2 issue; we can come to that later. It doesn't have to be before transition. But I don't think that taking that out of future work and saying, Oh, well -- and leaving it would be a good idea. So I don't know whether you're focusing thing is intended --

MATHIEU WEILL: To me, that's workstream 1, implementation, and not the workstream 2 discussion. That's the distinction I was trying to draw between the necessity for us to implement fully the workstream 1 proposals. And workstream 2 items which are topics we haven't fully discussed on what the recommendations would be and we'll need to discuss -- and this discussion will go beyond the transition. So what you're describing, the cost of the IRP and the way we implement the IRP is workstream 1 implementation. And we need to put that in place before the transition can happen.

MALCOLM HUTTY: We haven't said that before. Before we've said that certain aspects of it we would actually be happy to defer to after transition. For example, the idea that has been raised of having a fund to support the financial costs of impecunious claimants. It hasn't been discussed properly. It's not really an



---

implementation issue. It is a further reform for, yet, further improvement. There needs to be place for that kind of thing somewhere.

MATHIEU WEILL: I would defer this discussion until when we have finalized and heard about work party 2 and IRP. But our list can certainly be -- remain open to anything that comes from the other discussions that suddenly -- were suddenly another item for workstream 2 discussion that needs consideration.

So certainly if the work -- if the IRP analysis of comments shows that there is a need for a fundamental new break in the accountability framework, that needs to be discussed, then we'll bring it on. Certainly I think that's perfectly legitimate.

Yes, Thomas?

THOMAS RICKERT: I hope we can agree, though, that we will mark this green because we have agreement on the list with the addition on transparency that Mathieu just outlined. That is not to say that we can't add to that list, but let's demonstrate to the community that what we have on the list is our current state of play.

MATHIEU WEILL: And I hope our last two speakers -- because the queue is closed - - are going to confirm this. I'm now turning to Alan for confirming his agreement.

ALAN GREENBERG: As usual I will ignore you and say what I was going to say.

---

[ Laughter ]

[ Multiple speakers ]

But I'll be very quick. As a recovering ATRT addict -- sorry, member, who is now watching almost two years into implementation our transparency requests not being acted on at all as far as we can tell, at least I can tell, I support Avri and Robin keeping those items there, please.

I would be delighted to move them to some other process if we had any belief that they would actually get done. Thank you.

I am subject to burnout perhaps as much -- or more than anyone else so I do support the concept of lessening our work, if we can.

THOMAS RICKERT: Thank you, Alan. We are sympathetic for you, your burnout.

Kavouss?

KAVOUSS ARASTEH: Yes. Perhaps to some extent, it's editorial.

In the second bullet, you say "Planning process to guarantee the ability." No one could guarantee the ability. Maybe to enforce -- not enforce. To foster or enhance, but not guarantee the ability. There is no guarantee for the ability.

And then in -- after that group, you have "Further assessing enhancement to government participation." That means there are already enhancement and you want to assess that enhancement? What are those enhancements?

---

THOMAS RICKERT: That was the item I said was totally void and needed to be removed. There was no substantial -- so that's removed. Consider it removed.

>> (Off microphone.)

THOMAS RICKERT: Thank you. So I think we are going to turn this part of the scorecard into green.

>> Greenwashing.

THOMAS RICKERT: And -- no, it's not greenwashing.  
[ Applause ]

THOMAS RICKERT: It's what, it's 4:00 p.m. and we got a green.

>> Yes!

THOMAS RICKERT: So I'm now turning back to Leon for the next agenda item with Becky, and I would deeply encourage that we aim at green as well.

---

LEON SANCHEZ: Okay. Let's see if we can come to green.

And our next agenda item --

This is Leon Sanchez, for the record.

Our next agenda item is "Refine wording of mission and core values based on the public comment feedback," and for that, I will turn to our superstar rapporteur, Becky.

BECKY BURR: Oh, with an introduction like that, apologies. I am a victim of volunteer burnout and I'm sort of losing my voice, so I hope you can bear with me here.

What I have done is taken the comparison of the proposed mission commitments and core values compared to the red-line, comparing it to the existing bylaws, and I have highlighted the areas where we have comments and need clarification and/or reconciliation.

So I'm not in the Adobe room. I need to get in the Adobe room to be able to move this.

The first area -- and this was really the largest area --

I'm moving it, but it's not moving here, so could we go to -- further down to, "Without in any way limiting"?

Keep going.

Stop.

So you will recall that we spent a lot of time in both the first and the second round talking about clarifying that ICANN's powers would be limited and enumerated, and --

---

I sent one updated version from this. I -- can we get the updated version up? Hold on one second. Bear with me, guys.

So one of the concerns that we heard in the first round of comments was that the limitation on ICANN's regulation of the -- or its attempt to regulate the services that use the Internet's unique identifiers or the content that those services carry or provide could be interpreted in a way that would preclude ICANN from pro- -- from enforcing either consensus policies or voluntary commitments such as commitments made in new TLD applications or in PICs, public interest commitment statements. And that was not the intention of the group.

We -- between the first and the second round of draft proposals, we believed that the language was clear enough, but based on the number of comments that we got again in the second round, that it was important to expressly clarify that ICANN can and should enforce both consensus policy and voluntary commitments.

And keeping in mind that the language -- language that we have proposed here is -- I just sent it a couple minutes ago -- is -- okay, sorry -- is not intended to prohibit -- that the language we have proposed here is not the final legal language, and that legal counsel will be sitting down and clarifying the language and putting it into final form, the -- based on the discussions that we've had, the approach that makes the most sense is to ask the council, when they're doing it, to clarify that we do not mean to prohibit and, indeed, ICANN should enforce voluntary commitments that registries make and consensus policies as those are adopted in this.

What's going on here?

---

So I think that that is something that I think that we do have consensus on. We can open that particular one up for a brief discussion, if anybody wants to talk about it.

The other thing that I will -- if you could just go down a little bit and make the -- that paragraph.

So there's the paragraph.

The other two things on this one paragraph which was the source of significant discussion is that we had two wording changes from the -- from the second draft report that people suggested would clarify, so it's "ICANN shall not engage in or use its powers to regulate services that use the Internet's unique identifiers or the content that such services carry or provide." So it's a combination of just disambiguation language, but, again, the question here is are we agreed that, in fact, what we should do is ask the lawyers to clarify that this prohibition, while important, is not intended to in any way interfere with ICANN's ability to enforce its contracts and consensus policy.

LEON SANCHEZ:

Thank you very much, Becky.

So are there any opposition to proceed forward as Becky has just suggested?

Steve?

STEVE DelBIANCO:

Steve DelBianco, CSG. Not an opposition. It's a point of clarification.

---

So as I understand it, the blue text is our instructions for our attorneys to come back with language to achieve the objectives.

The second part of your objective was the notion of voluntary, so I wanted to bring up something that's rather timely.

The business constituency and the noncommercial stakeholders group, just two, three nights ago, filed a reconsideration request on the question of whether the new contracts presented for renewal of legacy gTLDs -- .TRAVEL, .CAT, et cetera -- whether when those contracts were laid on the table and were signed by those parties to get their renewal, they contained things that didn't come from the bottom-up process. The URS, namely.

So that the reconsideration request under today's bylaws is whether or not that was appropriate, but under your proposed -- and I support this proposal -- would it be voluntary if, upon renewal of my TLD, ICANN puts a contract in front of me that includes new terms I haven't seen -- sorry, new terms I've never agreed to before and that were not the result of a bottom-up process? Is it truly voluntary to include them in a propose- -- to include them in a contract that's sort of a take-it-or-leave-it as opposed to voluntarily suggested by the registry operator like the PIC specs were?

BECKY BURR:

So I hate responding to hypothetical questions.

>> (Off microphone.)

---

BECKY BURR: Well, so the U- -- I would say, for example, that the UDRP is clearly within the picket fence consensus policy as defined by specification 1.

STEVE DeIBIANCO: So nothing hypothetical. The URS was what I brought up, and the reconsideration request we just filed was over the URS being included in .CAT and .TRAVEL's renewal even though URS has never been a bottom-up.

BECKY BURR: So I don't want to speak to the specific situation in terms of what that was.

The registry contract -- and I -- and I don't remember exactly when the URS came into the registry contract negotiations.

The fact is that generally these things are not just laid on the table for the first time. They're the product of a discussion and a negotiation and a process.

I think -- I think it's a question if these are just demands that are -- that have not been formalized by consensus policy. I -- I mean, I do think that it's possible to argue that the URS could be made a consensus policy, that it fits within the -- and that are not voluntary, but I -- other than that, I don't want to prejudge the specific situation because I just haven't been party to those discussions.

STEVE DeIBIANCO: All I asked was let's ask our attorneys to clarify what "voluntary" means as specifically as they can.



---

BECKY BURR: Well, let me just tell you I think that's an important piece of this, but -- but let me just say that the -- you know, things like new gTL applications contain lots and lots of commitments that are the basis on which gTLD -- gTLDs are awarded.

Those things that people put in their applications, those are voluntary, and, you know, if you come up with PICs for your application, those are voluntary.

I think those were the things that we were definitely talking about including, and -- and then consensus policies.

But -- so, I mean, the notion here is that consensus policy, by definition, should not constitute a regulation because that is what we're -- what we're talking about.

Okay. Going down to commitment number 2, I have highlighted -- and this has been in for a while --

>> (Off microphone.)

LEON SANCHEZ: I'm sorry, I'm sorry. We have a queue.

BECKY BURR: Oh, I'm sorry. I apologize, Kavouss.

LEON SANCHEZ: Thank you very much, Becky, for your comprehension. And next in the queue I have Kavouss, Alan, Malcolm, Jorge, Greg, and Pedro. So I am closing the queue with Pedro. I am closing the

---

queue with Pedro, again, so nobody else in the queue after Pedro.

And Kavouss, you have the floor.

KAVOUSS ARASTEH:

Yes. This is -- don't take it, Becky, as a criticism. I have full confidence -- I have full confidence in your ability and competence and so on and so forth, but I took this four times and still I am not happy because nothing was changed.

The first one, it seems to be very awkward.

There is the plate and there is the mouth. You take the food and put it here but not turning around three times and then put it here.

What does it mean that "ICANN shall have no power other than acting in accordance to its mission"? That means ICANN has no power to walk? ICANN has no power to talk? This is what we say. We should say "ICANN shall act in accordance with," so on and so forth, "but shall have no power other than" -- this is a very awkward language.

And then you put two qualifiers there, "reasonably appropriate." First of all, what is appropriate, what is inappropriate? Being an engineer and at the same time having a legal background, it is very difficult to say what is appropriate, what is not appropriate. It's subjective.

Adding another subjective issue, "reasonably," why is it there? So you make it totally weak. Either we don't put it or if you want to put it, put it in a proper manner.

"ICANN shall act" --

---

>> (Off microphone.)

KAVOUSS ARASTEH: -- "to something in accordance with -- to something to achieve its objectives." That's all. But not "reasonably appropriate" and so on an so forth. Too many qualifiers is weakening totally this objective.

I'm very sorry. I discuss it, and even the author of the phrase was ready to change it, but perhaps it was forgotten. I apologize. I request this to be redrafted. Thank you.

LEON SANCHEZ: Thank you very much, Kavouss. And that's -- that's actually the purpose of forwarding this text to the lawyers because they will be actually refining this text and, you know, ironing out those details that you have -- that you have pointed to.

But I am aware that this is also language that has been into this concept since the very beginning, so yes, we will be running it through our lawyers.

Yes, Thomas, you want to add something?

THOMAS RICKERT: Just for those who are waiting in the queue, let's not make this a wordsmithing group exercise. If we are okay with the notion of what's in there, let the experts refine it, right?

I would mark this green if we are comfortable with the content in there, and then we will have the legal language to be double-checked by this group anyway. So you'll get another chance to look at the exact language.

---

LEON SANCHEZ: So the message in short, if we are okay with the concept, let's go ahead and forward it to the lawyers and they'll come back to us with some wordsmithing.

Next in the queue is Alan Greenberg.

ALAN GREENBERG: I think I'm okay with the content but the wording of the caveat to the lawyers I think is incomplete.

The ALAC's concern was there are some people and groups that believe that the URL, the domain name itself, and specifically the top-level domain, is content, and from that perspective, regulation -- that may take away ICANN's ability to regulate the top-level domain.

I understand that much of what we are doing is, indeed, as a result of the consensus policies that were determined, but certainly in the past we have taken action -- maybe we shouldn't in the future -- that were outside of consensus policy. That is, the gTLD process committee has invented rules as we've gone along. The PIC was not the result of consensus policy directly.

So I want to make sure that we don't have a big loophole you can drive a truck through and that those abilities to do those levels of regulation which are currently within our process be suddenly declared invalid by some IRP. Thank you.

BECKY BURR: That's not the intent and, again, we're going to have the attorneys put some -- some cycles in on getting this language right.

---

LEON SANCHEZ: Thanks, Alan. Thanks, Becky.

Next in the queue, I have Malcolm Hutty.

MALCOLM HUTTY: Thank you.

On the same point, that blue text of clarification is not well expressed and needs continued refinements, I would say.

I think that we understand what we're trying to get to here but I'd like to express it so that we can be clear.

We don't want to stop ICANN from developing consensus policy as to what the purpose of a domain is, like .BANK is for banks, that kind of thing. And we don't think that that constitutes regulation.

And we don't want to stop ICANN doing the UDRP either. That's an entirely proper element of the regulation -- of the domain name system.

That said, it is absolutely the intent of that text to limit the powers of ICANN, including the powers to develop consensus policy, so that it's only -- that consensus policy can only be consensus policy for the things that are within ICANN's mission. And what is not within ICANN's mission, according to this text, is attempting to use those powers to attempt to regulate the services that use unique identifiers -- the DNS, for example -- or the content that those services carry.

And to Alan's point here, this is not talking about Internet content; this is talking about the content that is carried by the services that use the DNS, which is a different thing.

---

So it's -- before we say that we agree to this principle, we need to understand what principle it is that we're agreeing to as expressed on the table there, and I'd have real concerns with it, but I think that ultimately we're all on the same page. I hope my comments have helped clarify.

BECKY BURR: Thank you.

LEON SANCHEZ: Thank you very much, Malcolm. Next in the queue is Jorge Cancio.

JORGE CANCIO: Thank you. Jorge Cancio, for the record.

First of all, I would like to stress that we have -- or at least I have a problem with being able to react to a table which has been just distributed, and it's -- so it's difficult to express endorsement or agreement with something which we haven't been able to see, although some of us, we have been participating in the meetings of the -- of the working party. So that's the first thing I want to say.

Second, I agree with much of what has been said by other speakers, especially with what Alan Greenberg has said about what the meaning of this limitation at the end of section 1 would really mean, with all the work that has to be -- still be done by the lawyers.

And third, before I leave the floor, I want to ask the co-chairs if we are talking only about section 1 or if this is for comments on all this document we just have received.

---

LEON SANCHEZ: Thank you very much, Jorge. I'm surprised that you were unable to check the document in the five minutes you had to do it, and that's, of course, a joke.

[ Laughter ]

Yes, we are taking care of only Section 1 at the point. My connection seems to be lost, but I remember that I had Greg Shatan and then Pedro in the queue. So next in is Greg Shatan.

GREG SHATAN: Thanks. Greg Shatan for the record. I also have continuing concerns about this section at the end of Section 1, not just the drafting, wordsmithing which we'll leave to another day but the intent and the scope of it. For one thing, you say we seem to know what regulation isn't, but we don't really know what regulation is. And whether ICANN is never a regulator or always a regulator is, to my mind, at least open to interpretation. Especially if you view -- so we need to really -- the word "regulate" has given me heebee-jeebies since day one here because it implies it could be a variety of different things. To my mind, regulation is a completely unilateral imposition of a rule of law on -- or regulation on parties that haven't agreed to it other than by being, say, citizens or within the jurisdiction --

BECKY BURR: The FCC would disagree with you.

GREG SHATAN: -- as well.

As I said, it's open to question.

---

And then I share Alan's concern with regard to the content. I do get Malcolm's gloss on the way to read this. But not only top-level domains but there are those who said that second-level domains are content. And so we need to distinguish what kind of content we're talking about and whose content, and who are these -- what services are we talking about here? There just seems to be that this could mean -- this could be incredibly broad.

BECKY BURR:

Can I just add? I just throw out here, consensus policies is a well-defined term and it is not particularly narrow. And what we're saying is if it fits -- if it's within ICANN's mission -- and consensus policies are by definition within ICANN's mission -- then it's okay. And the regulation of registration of domain names at the second level is specifically called out in Specification 1 as permitted.

So we can go through this in great detail, but I urge you to go back and read Specification 1 which details the scope of consensus policies which I think will address a lot of these concerns.

I mean, the point here is that ICANN has to stay within its mission. And consensus policies is a way of defining -- is another way of defining ICANN's mission. So that's really what the point here is.

GREG SHATAN:

I think the exclusion of consensus policy is clearly in a step in the right direction. The whole discussion about voluntary, I think, was getting us down a rabbit hole and freedom of contract



---

versus voluntary agreement to PIC specs and other things I think takes us into a whole other question here.

But I can see this one is going to be often cited in years to come. Maybe at that point, I should start opening my IRP practice up.

BECKY BURR:

Just to be clear, it's been on the -- consensus policy has been defined and in operation since the beginning of time. That was one of the most highly negotiated issues in 1998 and 1999. And I do not believe that there has been a dispute about consensus policy. So we are not inventing something new.

GREG SHATAN:

I'm not suggesting that the consensus -- as I said, the clear exclusion of consensus policy is a step in the right direction. I'm just saying outside of the issue of obvious consensus policy, this still raises other issues.

LEON SANCHEZ:

Okay. Let's move forward.

Next in the queue, I have Pedro and then the queue is closed and we'll continue with the next point.

So, Pedro?

PEDRO IVO SILVA:

Actually, my comment is about commitment Number 5 and actually Becky didn't talk about that.

---

LEON SANCHEZ: We'll get there. You will be the first to speak when we get to that point.

Becky, please?

BECKY BURR: Commitment Number 2. I have highlighted the language that is in there regarding the neutral and judgment-free operation of the DNS.

And can I just say -- I mean, one of the things that we may want to do is just highlight these issues and then have a breakout group to sort of nail down some of these things. I'm just suggesting that to address some of the concerns.

There was a comment from ALAC regarding the nature and judgment-free -- the neutral and judgment-free operation of the DNS included in commitment Number 2. This is language that is taken from the NTIA commitments, but it is one area we didn't get a lot of comments on it. But in round 2, we did get a comment from ALAC on it. And so I don't know if we want to just have a missions commitment and core values breakout tomorrow to come back with a bunch of --

THOMAS RICKERT: We've heard a couple of concerns in the first section of this. Our hope was certainly that we could agree on the notion and leave the implementation of the language to the lawyers. But there seems to be some more concerns.

So my question would be that in the essence of time, we cut this discussion short. We will have Becky lead on a sub-team that's going to meet for an hour, hour and a half tomorrow, refine this.

---

And those who have concerns such as Pedro, make sure that you join us in an email --

BECKY BURR: Could we just go through?

THOMAS RICKERT: We are not going to discuss now. Becky is just going to present where she is. And if you have concerns around that -- we are not going to discuss this in the plenary, but we will take it offline and bring back a revised version to the plenary at the next possible location.

And if you have concerns, either join the sub-team or send an email to Becky or the sub-team mailing list and then we will proceed.

BECKY BURR: I think what this has done was designed to sort of identify the areas where we have some discussion points.

So, as I said, in commitment Number 2, that language, the neutral and judgment-free operation of the DNS, about preserving that, is one language that was flagged.

Coming down to commitment Number 5, this is -- this is highly interrelated to a number of other things. So I want to walk through this slowly. So the language here includes a reference to ICANN employing open, transparent, and bottom-up multistakeholder policy development processes led by the private sector including business stakeholders, civil society, the technical community, academia. And we did not have end users in the second draft proposal. Several commenters suggested

---

that we specifically include end users in the list of the private sector.

At the same time, this language here that's highlighted led by the private sector which essentially says the policy development process at ICANN is led by the private sector.

The current bylaws -- that language "private sector leadership" occurs in a number of places. It occurs in the white paper. It is implicit in other places in the bylaws. But that language itself -- and Steve DelBianco pointed this out to me -- was not in the original bylaws in this section. So we have introduced -- and this has been there since the first comment period. And it is a point of contention, particularly for the government participants here who believe that references to the private sector are outdated, that we are living in a multistakeholder world so that the reference to private sector leadership, which I have to -- I want to be clear -- was introduced -- it is implicit in other places. But it was introduced here in the first draft proposal. It doesn't exist in the current bylaws language.

So that becomes an issue here. It also becomes an issue if you could just scroll down to core values 3.

Keep going down.

Somehow that got cut off.

If you go down to core value 7, we have this "While remaining rooted in the private sector including business stakeholders, civil society, the technical community, academia and end users recognizing that governments and public authorities are responsible for the public policy"-- "for public policy." That language, what we have done is we have expanded the meaning

---

of "private sector" to ensure that it is clear that it is not just business stakeholders. And I am again repeating the comment that we had from various people about we need to have a clear reference to end users in here.

In any case, this language is quite contentious largely in two ways. I think the government participants in work party 2 have said very clearly and very repeatedly that we live in a multistakeholder world. The notion of private sector leadership is outdated. It's a concept from 1999. I think that there are an equally strong number of views that private sector leadership with respect to policy development, which I think can be seen in the current bylaws. It is the GNSO and the ccNSO and the various policy development processes that are here where the government does have a role and is a participant. But, in fact, those policy development processes are grounded in the supporting organizations.

So that is an issue that we do not have consensus on in our discussions here. And I want to just make that very clear, that that's another issue that we're going to need to talk about.

Finally, actually, if you go back to core value 3 -- there's something wrong with this. It's not rendering. It's not showing core value 3.

MATHIEU WEILL: Core value 3 is before core value 2. That's perfectly logical.

[ Laughter ]

BECKY BURR: No. This doesn't look like mine even remotely. But okay.

---

MATHIEU WEILL: We can think outside the box.

BECKY BURR: We can get this answer -- we can get to this in core value 5 where the language that says introducing and promoting competition in the registration of domain names in the public -- hold on one second. It's impossible to read this.

Let me just say that there are a couple of places where the language said, "Where feasible and appropriate, depending on market mechanisms to promote and sustain a healthy, competitive environment in the DNS market," there was one point that the language in the public -- that where feasible and appropriate was dropped out of here at the suggestion of the U.K. government, in fact.

And in another place, "to the extent feasible and appropriate delegating coordination functions to or recognizing the policy role of other responsible entities."

I will send around to everybody the document that I'm looking at, which is not the document that's on the screen here.

And ALAC objected to the deletion of "where feasible and appropriate" in both of those cases.

Finally, the other set of comments that we got -- and there were quite a lot of comments -- are you guys laughing at me? ALAC suggested it. So I expect whoever in ALAC has a view on it to come to my breakout session.

Finally, as you will recall in the first public -- in the first draft proposal, we did cabin the obligation for ICANN to engage in consultation with the GAC to those situations where its advice

---

was in accordance with the bylaws and to the extent consistent with these fundamental commitments and core values. So the notion was in the first draft proposal, that ICANN did not have to engage in a large back and forth with the Governmental Advisory Committee if the Governmental Advisory Committee was advising ICANN to do something that was inconsistent with the bylaws.

As you will recall, we got a huge amount of pushback from the governments on that point. And their argument was that nothing should undermine the current authority and the current responsibility that ICANN has to engage constructively with the GAC on -- in response to public -- to advice.

After -- as a result of our discussions over -- and comments on the first draft proposal, what we agreed to do and what we implemented in this draft was we took that language out and we said, okay, ICANN, just as you do right now, you have an obligation to engage constructively with the GAC regarding their advice and to work to find -- to try to find a mutually acceptable position.

In addition to that, we said, one, advisory committees should provide a rationale for their advice including reference to international and local laws where relevant. That was an implementation of ATRT2's recommendation. It is not specific to the GAC.

And, again, it does not in any way undermine ICANN's obligation to engage constructively with the GAC over its advice.

We also clarified that ICANN must engage constructively with the GAC on all of its advice. But ICANN -- but ICANN has an obligation to implement any advice it receives and decides to

---

implement in a way that is consistent with the bylaws. So, in other words, just because the GAC advised ICANN to do something, that doesn't mean ICANN can violate its bylaws. It means ICANN must implement GAC advice in a way that is consistent with the bylaws.

I think that those -- I think that we had a sort of -- in work party 2 at least, a fairly strong sense that we had cabined the notion that we were not diminishing the GAC's and ICANN's obligation for consultation and interaction. But we were saying, please provide a rationale. And we were also saying, ICANN, no matter what advice you get, you still have to act in a manner that is consistent with the bylaws. So if you get GAC advice, implement it -- and you want to implement it, implement it in a way that's consistent with the bylaws.

I just want to mention that some governments did notice that we fixed that. And I appreciate the call-out. But a lot of people in the comments really objected to taking that language out, that said -- that we had in the core values that required ICANN to engage in the interaction only where the advice was consistent with the bylaws.

I raise that only because many of the people in the room here are the people who objected to the taking it out. No, I feel pretty comfortable that we tried to accommodate everything. And I'm going into a detailed explanation because I think people who were objecting to the arrangements that we made may not have understood all of the compensations that we put in place.

But I cannot say that the public comments reflect consensus at this point with the change that we made after the first public comments.



---

And that's the list.

LEON SANCHEZ:

Thank you very much, Becky.

I believe that Thomas tells me that we agreed not to have a discussion here but instead take it offline.

And I see a lot of people already in the queue wanting to speak on this topic, so I believe it's important to actually listen to those who are in the queue, but I would -- I would just ask you to be very concise and very concrete. We're not going to fix this in this moment. So just let us know your concerns. I am pretty sure that Becky will take note of them, and when the work comes for refinement, they will be taken into account.

So I'm closing the queue with Olga Cavalli, just to let you know, and please be concise. We are already behind schedule, so -- and we need to take care of many issues, still.

So Pedro, you are the first one.

PEDRO IVO SILVA:

Yeah. Thank you, Leon. Thank you, Becky, for the presentation.

A quick comment.

Additionally to the fact that "private sector," the definition of "private sector" that is mentioned here seems to be outdated, you know, additionally to that, I think we need to make use of concepts that have, let's say, wider acceptance by the international community, and this is, again -- this is not the case, again, with this specific concept and the definition that is put here.

---

For example, in Brazil and I'm sure in other countries as well, we would have -- we don't agree with the definition that academia would be part of the private sector as it's indicated here. It's a contradiction, actually. Well, there are universities that belong to the private sector, but many of them are a hundred percent funded by public funds.

So I think that's an additional argument of why we should stick to maybe other concepts like the multistakeholder concept that have wider acceptance. Thank you.

LEON SANCHEZ: Thank you very much, Pedro.

Next in the queue is Tijani Ben Jemaa.

TIJANI BEN JEMAA: I would like to be very brief.

This issue of private-sector-led has a lot of -- how to say -- lots of objections and it is because the definition of "private sector" internationally, if you want, is not what we are doing now.

I am very happy with the language you have come with in defining what you mean by "private sector," so we have -- now we have clarity, but in general, the term "private sector" worldwide is not what we are defining here. That's all.

LEON SANCHEZ: Thank you, Tijani.

Next in the queue is Kavouss.

---

KAVOUSS ARASTEH: Yes. (non-English word or phrase). Kavouss Arasteh. I think we in the ICANN are equal with respect to each other.

There is no subordination, no leadership. I don't think that the NGO is subordinated by private sector nor civil community nor technical community and so on and so forth. This is a collective work, teamwork, and we work together. So I suggest that we remove all of these "private sector," "civil society" -- (making sound) -- and go to the multistakeholder bottom-up approach, full stop.

LEON SANCHEZ: Thank you very much.

KAVOUSS ARASTEH: It is very, very difficult if we can't do that.

And the second point, it is mentioned that in the advice of the GAC reference to be made to the rationale with reference to the national and local law. I don't think that it is implementable. We have several advisors and I don't think that (indiscernible) want to advise what national law we have to refer and what local law we have to refer. It may put some big obstacle in any advice that we have given, that saying that the reference to have given to national law is not valid.

I don't think that the national law will be dominating or will be prevailing on any other law. I don't think that that's how. This is -- those are the two areas to be reviewed. Thank you.

LEON SANCHEZ: Thank you very much, Kavouss.

---

Next in the queue, I have Jorge Cancio.

JORGE CANCIO: Jorge Cancio, for the record.

Thank you very much to the co-chairs for giving this opportunity to state our concerns.

On commitment number 5, I think that we should reflect what is current practice within ICANN, and that means, amongst other things, that governments are part of the bottom-up public development process of policies and that that should be stated in commitment number 5 very clearly without making distinctions whether we are on the top or in the middle or on the bottom but we are participating in the bottom-up develop- -- public policy development process.

And returning to the question that Becky alluded before on the -- on the changes on -- which made a reference that only public policy advice which is consistent with the bylaws should be considered, I think we had a good discussion in Working Party 2 some months ago, and that addition of "consistent with the bylaws" was changed in comparison with what is on the bylaws nowadays. It was clear that there was no consensus on that change. So I think we shouldn't go back to that discussion.

Thank you.

LEON SANCHEZ: Thank you very much, Jorge. Next in the queue is Wolfgang.

WOLFGANG KLEINWACHTER: Thank you very much. Wolfgang Kleinwachter.

---

I just want to echo what Pedro and Kavouss have said with the language to the stakeholders.

I think the language from the 1990s has really evolved through experiences, and we have a number of other bodies which have further developed the language what multistakeholderism is.

There is no definition, but, you know, if you go through the language of the NTIA, they used it now in a way which is very natural and they do not refer anymore to private sector leadership as they did in the 1990s.

So we have a clear definition in the Tunis Agenda and we have practices, you know, what multistakeholder participation means and who are the stakeholders in the CSTD of the United Nations, and if we draft new language, this would be consistent because ICANN is seen as the most advanced model for multistakeholder cooperation, and so if we describe the role of the stakeholders, we should be inspired by these U.N. processes and to be consistent with this language. Thank you.

LEON SANCHEZ:

Thank you very much, Wolfgang.

Next in the queue is Alan Greenberg.

ALAN GREENBERG:

Thank you. I won't talk about substance but I hope before we leave -- and some of us have other meetings right after this -- we can have some clarity about what's happening in the breakout sessions. Not all of us can be at all breakout sessions in parallel, nor do we have the time to write detailed emails on anything that may be discussed there, so I'm a little bit worried that the

---

breakouts are not going to be particularly inclusive and, therefore, we'll have problems coming out of them. Thank you.

LEON SANCHEZ: Thank you very much, Alan. I think we'll be touching that point further in the agenda today to flesh out the details on how these working sessions will actually work out tomorrow.

ALAN GREENBERG: Preferably before I leave.

LEON SANCHEZ: Hopefully, yes.

THOMAS RICKERT: Just if I may, Alan, I'm not sure whether we can provide a full overview before you leave, if you have to leave in the next couple of minutes, because at the end of this day, we will know which topics need further refinement, and then we need to make a determination as to what is needed most to advance the whole project. So we're going to try to have at least -- the least overlap tomorrow and concentrate on the most important things and spread the other work over the week.

So I know that might -- that this answer might not be satisfactory, but I think it's the best answer we can give at this stage.

ALAN GREENBERG: Let's try to end by 6:30.

---

LEON SANCHEZ: Thank you. So next in the queue, I have Milton Mueller.

MILTON MUELLER: Yes. Milton Mueller, noncommercial stakeholders group.

My comments relate to commitment number 7, and actually I'm partly just asking for clarification and I'm a bit confused about where -- what you have actually decided to do or have not decided to do.

I know that our stakeholder group, and many others, were very concerned about the removal of that language.

I thought I just heard Jorge say that there was no consensus about removing the language, in which case I'm happy.

You did not. Okay.

So, yes, the problem there was not so much the removal of the language because you could assume that of course everything they do has to be within their mission. The problem we had was looking at the GAC discussion of this, that many governments were interpreting they wanted that language removed because they thought of it as a limitation on the kind of advice they could give.

And this was disturbing because it's not about -- you know, these commitments are commitments of ICANN, the corporation, ICANN, the institution. They are not commitments of the GAC. The GAC can offer, you know, advice that the law of gravity should be repealed, but ICANN is bound by these commitments and therefore it must be very clear that whatever advice it takes has to be commitment -- consistent with its commitments and its mission and its scope.

---

So given the idea that seemed to be floating around certain quarters that GAC could offer advice on anything it wants and that would be duly taken into account, we want it to be extremely clear that there is a limit. You cannot ask ICANN to implement or take advice that is contradicting its basic commitments and core values and mission.

So we would argue to keep that language in.

LEON SANCHEZ:

Thank you very much, Milton. Next in the queue, I have Olga Cavalli, and then next Greg Shatan, and then we'll move forward.

Olga?

OLGA CAVALLI:

Thank you. This is Olga Cavalli, for the record.

Argentina has commented in the two rounds of comments that we accept the definition of "multistakeholder" that was agreed in the World Summit of Information Society and also in NETmundial.

If we understand that ICANN should be a multistakeholder organization, it should take the multistakeholder definition from those agreed documents and meetings.

We also have agreed using that language in several regional -- in Latin America and the Caribbean, in several regional documents.

So we think that the "private sector" reference is not consistent with those definitions.



---

And at the same time I would agree with my colleague, Pedro from Brazil, that academia -- academia is not private sector or civil society is not private sector.

Thank you so much.

LEON SANCHEZ: Thank you very much, Olga.

And lastly, Greg?

GREGORY SHATAN: Thank you. Greg Shatan, for the record.

With regard to this whole discussion about "private sector," I think it's clear that what was meant by "private sector" when this was drafted, you know, would include academia and the technical community. It was not meant to be just the commercial/industrial sector.

So saying that it doesn't include it is just to misread the definition, to misread it as it was meant, and the reason that we added -- or that was it added in there, academia, technical communities, is to clarify that this is the words "private sector" as being used here.

So -- and I think that if ICANN is going to say that it's no longer rooted in the private sector, that to me is a very significant decision that we would need to make, and I think it would actually -- not that we should be dictated by the transition, but given the NTIA's clear requirements, it would seem to me to be interpreted in a way that easily could impede or derail the transition.

---

And I don't have any special inside information but I'm just saying that I think that, you know, taking away "rooted in the private sector," especially in the context of this discussion, would be very troublesome.

And lastly, I think the idea that we should adopt the Tunis Agenda or WSIS definitions I think again also, at the very least, is something that deserves, you know, very substantial discussions. We are not those organizations. We are not -- we are who we are and I think that we need to, you know, make our own consideration of our own definitions, and I think particularly with regard to the Tunis Agenda there's a wide degree of different opinions about whether and how it should be applied. Thanks.

LEON SANCHEZ:

Thank you very much, Greg.

So this is an item that is in our scorecard as needing refinement and it is clearly something that will still need refinement, so this will be further worked out in the breakout sessions tomorrow.

Thank you very much, Becky, for this. Don't just go yet and I'll turn to my co-chair, Thomas, for the next agenda item.

THOMAS RICKERT:

Which is the subject of IRP refinements, so Becky, you can just continue to present to us briefly what you've done since what we know already --

BECKY BURR:

Okay.

---

THOMAS RICKERT: -- and then I would suggest that we try to agree on some changes, hopefully, and advance this part of the -- of our -- this part of our work.

BECKY BURR: Okay. There was -- there were a number of comments about the IRP and the vast majority of them were actually very supportive of the IRP as proposed.

To the extent that they were -- there were major issues, there were some issues about funding costs, accessibility, and independence. These came from a variety of commenters.

One that the -- that Work Party 2 has discussed was a sort of potential way forward of saying that essentially ICANN would bear the costs of community IRPs, however those are styled, so I know that there's a potential issue of whether something is an arbitration to enforce the community powers or whether it's an IRP involving a community-supported concern that ICANN has acted in violation of its bylaws, that ICANN would fund those as well, but for a variety of different reasons where the dispute is more -- is sort of the more traditionally commercially based dispute, that the costs would be allocated as they currently are, which is borne by the parties, with the panel having the ability to assign the costs for the arbitrators to one or the other.

That solution with respect to funding and cost and also some of the independence issues got some -- got some traction in our discussions of -- of this.

For the most part, there was strong support for the standard of review that was expressed in the second draft proposal, which is the de novo standard of review, and although it's a little bit hard

---

to tell from the board's comments, I believe that at least in part, the board -- at least in certain circumstances, the board agreed with that.

We did have one or two comments where people were arguing for an abuse-of-standard discretion, so I'd just point that out.

There was concern -- there was a concern about standing, and it went sort of both ways, and I think this is an issue where we sort of need to drill down some more.

At some level, people were saying, "Make sure that you can't have sort of tyranny of the minority where somebody's bringing a community IRP without sufficient support." On the other hand, people were arguing that an individual constituency should be able to bring -- or stakeholder group should be able to bring an IRP.

I mean, that certainly would be permitted out in the materially -- or significantly harmed standard. If a -- if an SO or AC was -- was materially harmed, it would be able to bring a -- an IRP under the general standard for standing.

At least one government was very concerned that the material harm standard meant that a government could not bring an IRP outside of the community IRP, so I think there are a range of issues on standing here.

There was -- there were concerns -- a variety of concerns expressed about abuse of the process. All of those sort of roll back to, you know, required participation, for example, in a PDP before you had the ability to stand, fee shifting, all of those kinds of things.

---

With regard to that, I think that the -- all of those things except for the standing fall into the discussion about the need to create a subgroup to get going right away to work on the details. As we said in the second draft proposal, there are a lot of details to be worked out here.

We needed a highly skilled -- we needed some expertise and a highly dedicated team to start rolling up their sleeves and sitting down and writing these, and so to me, coming out of the IRP, that really is the major issue is the -- is getting the detailed work going on this so that -- so that it can be underway.

And then the one other issue that there's some -- some disagreement on is that the second draft proposal contemplates that the IRP would be available to resolve inconsistent decisions of expert panels. That is something that the board comments did not support, and the view of the board was that those should be handled by the policy development process that leads to whatever those processes are that create the expert panels.

The question for this group is: That's fine, that's probably actually, you know, the right way to approach it, but do you want to have a panel of last resort, in the event that a policy development process fails, to think of all of the ways in which you might get weird decisions, and rather than make it up on the fly, do you want to have a sort of more institutionalized body to resolve those conflicts?

THOMAS RICKERT:

Thanks, Becky. I guess that we all know that we need experts ideally to flesh this out, but you still have a couple of options in there. And if we could, I think it would be ideal for us to try to reach agreement on which option we want to pursue. So if you

---

look at the third bullet point, for example, "abuse of discretion versus de novo," those points, a permissive approach versus abusive prevention. If we could, maybe you could specify what you think could get better traction after having analyzed public comment, and then let's try to limit it to one reference option and try to agree on giving those -- this basically as a term of reference.

BECKY BURR: Okay.

THOMAS RICKERT: For further work.

BECKY BURR: So on the standard of abuse of discretion versus de novo, the vast majority of the comments supported a de novo approach. I think it was a -- you know, a small handful of comments, commenters who had raised this point in the first round and repeated it in the second round and called for a abuse of discretion. It was repeated -- since it was repeated from the first to the second, I did not feel like I could ignore those comments and felt that I needed to bring them up. But I -- I think the -- the sense of every discussion that I've been in is that there is support for a de novo standard of review where the judges are held to, you know, exercise their judgment based on a -- on a standard that -- that is typical in that kind of a judicial proceeding.

---

THOMAS RICKERT: Okay. So let's remove "abuse of discretion" from this slide, just to try to get agreement on what needs to be refined. Right? So I think we should give some guidance.

Then the other optional thing on this slide is "permissive approach versus abuse prevention." I think we don't need a lengthy rationale for you to provide us with, but which option to choose, from recollection?

BECKY BURR: Well, what my -- I think that the comments are -- actually it's a little harder on this one to be clear about it. There's strong support for the community IRP and the question of whether it's very permissive or not depends on the thresholds that the -- get set by work -- by Work Party 2 -- or Work Party 1 for when you bring a community IRP. I think that there is -- a very permissive standard invites a lot of potential for abuse and it -- and it has the -- could have the ability to delay progress on implementing policies and the like. I mean, you could game a system that was very permissive.

So to my mind, the notion would be that if you were not materially harmed directly that it would be incumbent upon you to collect the support of the community to bring a community IRP and that that's -- that is the balance that I would -- would set, which is a sort of -- you know, depends -- there's a threshold that needs to be set for the community IRP, and I think that really comes out of the Work Party 1 discussions. And if that is set properly, then -- then that takes care of the problem and the material harm or the substantial harm standard works to control all of the other -- all of the other issues. Also, cost -- it's important for cost, too, because remember, this is about the community IRPs which ICANN is going to fund.

---

THOMAS RICKERT: I think what -- what may be a potential way forward is just deleting that bullet point from here. Because I think we will have this being taken care of in WP1. So my suggestion, let's strike out that point, delete it here, because I think, you know, we will surely look at abuse prevention when we craft all these things.

Then I guess the other point that we'd like to hear your feedback on is, what was the community's response to the rollback to 2013 standards?

BECKY BURR: I think that the -- the devil's in the details, and I think that there are a lot of moving pieces here. So that is -- is something that, you know, the standard that we've set in the proposed standard is actually pretty close to the substantive standard in 2013 but with some clarifications. So I think that that's really in the details for the -- the subgroup to work on the details. I actually don't think it's a substantive issue.

THOMAS RICKERT: But then I think it -- you know, we're just stating here that the board suggested rollback to 2013. If I hear what you're saying and what came back from the responses is that we should rather say that whoever is going to work on fleshing this out further should take a look at the 2013 standard when doing so.

BECKY BURR: Well, I think the 2013 standard, with some clarifications, because remember, ICANN has argued that the 2013 standard means something else than the community thinks the 2013 -- at least than the community thinks in this standard. So I have some



---

concerns about that. But what I actually think the rollback to the 2013 standard is is about timing. And the timing issue is something that is going to have to be decided by the subgroup, which is how you roll it out, what the process is, what the timing is. So I don't think -- that's why I'm saying it's really more about timing than anything else.

THOMAS RICKERT: Then I suggest we change the language to "consider 2013 standard in terms of timing." Let's just make it concrete. Right? And so with these -- with these amendments are we happy to task the subgroup or even external counsel to flesh that out? I think everybody needs to read it anyway, but these are requirements -- requests coming from the community, and I would suggest that we sign off on them, agree on them, and say that's the -- that's the basis for further work.

So unless there are --

>> (off microphone).

THOMAS RICKERT: Yeah, go ahead.

>> If I'm allowed.

THOMAS RICKERT: And then we're going to go to Alan.

---

ALAN GREENBERG: Thank you. Just wanted to mention, one of the things Becky mentioned -- nope.

>> I was about to make a comment and struggling with the mic. Just my suggestion is that later on this week we consider how best to organize work on implementing this -- on refining and implementing the IRP, taking into account that this is -- this is one of the recommendations that has the longest lead time because we need a panel, we need to set up the rules and everything, and as a consequence I would suggest that we maybe consider how to organize so that we get into the refinement and implementation phase very, very, very soon so that we can deliver in time with the rest of the process. That was my suggestion, Thomas.

THOMAS RICKERT: Yes, and I guess that's spot on. I think the first thing we should be doing is actually see whether there's pushback on this time sheet, if you wish. And maybe Alan is going to speak to that and we'll talk about the process.

ALAN GREENBERG: Thank you. I don't have pushback. One of the things Becky mentioned was the question of whether the IRP should be the panel of last resort for panel decisions, and just to point out that if indeed we decide it should be, then we need an allowed outcome that addresses that. Currently the allowed outcome is did you follow the bylaws or not and that kind of question would need a different outcome. So that's just something to note.

---

Regarding the IRP and what you just last said, it's not clear to me, maybe it is to others, that the IRP has to be implementing and working the day that all of this rest starts. We may have -- you know, we may say the IRP will come into effect in, you know, December 2016, March 20 -- 2017 or something like that and not have to do all the detailed work right now. It would be nice if it was available, but I don't see it as mandatory.

BECKY BURR:

So let me just say, I think that we need to get the timing -- we need to get the details right and the details are then going to dictate the timing and we should not put the cart before the horse.

Having said that, I think what Mathieu and Thomas' -- we want to get as many of the details down as possible, as quickly as possible. So there's no -- I mean, to me, this is the next step, and it's a really important step.

THOMAS RICKERT:

So we have two more hands up, Kavouss and Tijani.

KAVOUSS ARASTEH:

Yes, you talk about working groups. How many working groups we have? I hope they are not working in parallel, they are working in sequence. Thank you.

THOMAS RICKERT:

At the moment the only question in front of this group is whether we agree to these refinements. And we're going to talk about how -- who does it when later. So this is just us asking for confirmation that we can add to the requirements that we have

---

in our report these refinements. Because I think if we have that, then we have terms of reference for whoever writes this up, right? So that's the idea of this exercise, Kavouss. I hope this clarifies things. Tijani.

TIJANI BEN JAMAA:

Thank you very much. Seeing that the IRP can be implemented a while after the transition happen, disturbs me very -- really because that means that you not make refinement now and you will wait after the transition. Because no, we -- we are building our -- our model on the IRP, on the Independent Review Process. So we have to define it very clear. Because if it is not well defined, we may end up with something that is not acceptable. What will we do after that?

THOMAS RICKERT:

Tijani, good points. I guess we need to be very clear on what we do when and who does it. All right? So the way that I see it is that if we -- if we agree, which we seem we do, unless Malcolm objects, is that we agree on this set of criteria and then the question is, what do we do with the criteria? We need to put some language in the bylaws. So I think we should task experts with drafting bylaw language that sufficiently reflects what's -- what needs to be reflected in the bylaws. Then we will have some rules of procedure. They need to be worked on as well. So the question is, do we do that? And I think we should rather oversee what's being done. But maybe we should just get some arbitration or experts on that to work on that for us. And then we need to -- you know, if we have all that language ready, we need to seat the panel. We need to select panelists. I think what we're trying to say when saying that we can't have this ready on day one is that we will not have all the paperwork plus the

---

selected panelists ready on day one. So we have to work sequentially, and I think the next step for us to confirm today is agree on this and hand it over to the lawyers for drafting bylaw language. And I think that satisfies your immediate needs, doesn't it?

TIJANI BEN JAMAA: Okay, to postpone the selection of the panel, that's normal. But for the rule of procedure they must be there before the transition. We are building on that. So we have to define everything.

THOMAS RICKERT: Yes. But I guess that's not necessarily for our group to do itself. I think it's wiser to task experts in the field to do that, and we just oversee it. So actually we could -- we could mark this green and say this is all this group can -- can do on this at this stage and we hand it over for experts to work on the implementation. Malcolm.

MALCOLM HUTTY: I share Tijani's concerns. I think it's fine to defer the appointment of panelists and stuff like that until later, that's fine. And I accept your recommendation that having developed the specification we hand this to lawyers to draft up some bylaws for us. But once they have done so, they should hand that back to us for review, and we need to approve that.

THOMAS RICKERT: I think, Malcolm, we're -- we're in perfect agreement.

---

MALCOLM HUTTY: Perfect.

THOMAS RICKERT: What we tried to establish during the Dublin meeting is that we mature as many areas of our work to a level where we can't go further. And I think that us all being -- at least I don't claim to be an expert in the field, as many of you. Maybe we have some experts, but I think it would be wise for us to say okay, this is our set of requirements. We can't go further. We mark this green for us as we've delivered what we can at the moment. We pass it on to the experts, bring it back to the group for revision, as we do with every other area that we have in our work as well. You know, we need bylaw language on almost everything. And still we mark this green because it's green because our group can't take it further. That's the idea behind it.

And I don't see any further objection to this at the moment. And I'm sure that Eberhard is coming up with an objection, I suggest.

EBERHARD LISSE: I wouldn't accept a suggestion of yours if my life depended upon it. I do not -- I do not accept, also, that we call something green which is red. You have had significant headwind here. You've got some pushback and you say it's green because we can't do anything about it. If that's -- if it's not green, it's not green. I mean, I'm not color-blind.

BECKY BURR: I'm not sure that talking about the green or red is particularly helpful here. I think where we are is we have agreement about the shape and the next steps. The next steps involve lawyers drafting bylaws language that implements this and work on

---

rules of procedures and operations. I think that what Thomas is saying, I'm going to channel Thomas, which is like scary, is that we have come to the point where we need to pass it off, not permanently but for the time, to get further work and input and refinement on it. It will come back to this group. So the green and red may not be helpful Eberhard, but I think that it moves us. What we are ready to do is take the next step so that we can come back and refine.

EBERHARD LISSE:

If you remain on the analogy of traffic lights, to be refined is yellow. I don't really mind the colors here, but you cannot say something is -- is agreed when it's not agreed. If it needs to be refined, it needs to be refined.

THOMAS RICKERT:

Let's not dwell on this for long. It depends on how you define refine. But there's only so much this group can do. And we are marking things green at a point where we need to hand over to somebody else. That doesn't mean that we're letting loose. So we close on this, and I hand over to Mathieu for the next agenda item. But before that, let me thank Becky for her work on this. Becky.

[ Applause ]

MATHIEU WEILL:

And the Work Party 2 volunteers. I think we'll have to call Jordan back to the table. It's been a request from the room. So I have to defer to that.

---

>> We've missed you, Jordan.

MATHIEU WEILL: Yeah, we've missed him.

>> (off microphone).

MATHIEU WEILL: So we have actually three items.

And the number one is the community forum. Then we have the standard bylaw changes and the fundamental bylaw changes that are still relevant to work party 1.

What I would like to have -- and welcome, Mathieu, who has been organizing work on the community forum is, if we clarify whether we still have a lot of work of refinement on the community forum, whether we've received feedback that it was something that was raising -- that was getting consensus, refinements. Very quickly. Because we are way beyond schedule. But that we actually have a common view of where we stand with the community forum. And we'll try to assess whether we can put it into green or not with the definition

MATHIEU WEILL: Let's go first with the forum report back.

Thanks, Jordan. Thanks, cochair. Hopefully, this will go quickly, because the community forum did get a considerable amount of support as proposed by the working group in the proposal itself. And that is, effectively, that it is a discussion and information-



---

sharing exercise to occur between the petition and the decision part of that process that we've talked a lot about before.

There's broad support for purpose. There's broad support for -- is this up? Yeah, okay. There's broad support for one that's open to participation beyond the ICANN community for open and transparent processes and for some form of documented discussions. So documented the process of the discussion itself, documentation of the discussion itself.

One person made a very good comment that, from their perspective, this was a very important part of the multistakeholder nature of this process in that it's open to broader representation and it really is a place to bring items for discussion. Get kind of a common mind share, if you will.

Now, there were many areas needing refinement. But I think we recognized that we didn't put a lot of detail into the proposal on this, so it's understandable. Also one of the other problems was that the community forum was kind of split between two parts in the proposal itself as well. Which made it difficult to follow in some of these questions. I don't think I really need to go through the questions except just to say that, you know, these kind of varied between is it permanent? Is it ad hoc? Does it occur when there's a need? I mean, there are a number of things that still we've put into the proposal that give guidance. But there is still a little bit more refinement that needs to be done.

And the issue really then, I think, becomes -- we can go through these triggers. Permanency, periodicity. How often should it meet? Should there be virtual meetings? What's the composition of the community forum? Who actually sits in it, and what is that structure?

---

And you can go through these points and see that. I think in many ways there's considerable support. We just have to come forward with a little bit more detail and a little bit more refinement. What we've said in the proposal is that that work would be undertaken in the implementation phase of workstream 1.

I'll just quote that directly here. In the proposal it says, "The working group will pursue the establishment of the ICANN community forum in the implementation phase of workstream 1."

We kind of have a choice. I mean, in a way there's an expectation that we'll bring more detail to the community at this point in time, I believe, from some of the questions. And it probably does require and necessitate additional work at this point in time. But it is in the refinement stage. There was not a significant divergence of view or alternative options that we thought when we discussed it that we thought we could bring forward.

>>

Thank you, Mathieu. So the assessment would be that it's still to be refined with very strong support received in the public comments.

MATHIEU WEILL:

Yes.

---

>> Is that assessment not shared by anyone in the room? I see two hands raised. Kavouss and Tijani. Are they old hands? Kavouss, is that a new hand? So Tijani we'll be short on this.

TIJANI BEN JEMAA: Thank you. I don't object to this assessment. But I'd like to stress the fact that the community forum should be a mandatory phase, a mandatory system, a mandatory mechanism of our system, of our model.

I understood from some of our group that they wanted it to be perhaps we can use it and we cannot use it. We will make the consultation outside the forum. I would like this forum to be something mandatory. And all the discussions about the exercise of the powers of those mechanisms should go through it. Thank you.

MATTHIEU WEILL: I think it is fair to say that there were some who suggested that it should be mandatory. And some of the comments suggested that perhaps it didn't need to be mandatory. I think, if we're looking at a process -- and I wasn't here this morning, but I understand that process may be evolving further -- then I think it does, in effect, become part of that process and, in that sense, mandatory if that's what we're referring to.

>> That's why we have broad support for that. So I think that's agreed. And we still have to refine some of the models, some of the details of the model. We're very close to agreeing. I would say. But I would state to be refined at this point. That's probably something where, if there's an ability to further detail

---

among this, we can even reach green by the end of the week. Because I think the gap is not that big. You've made a lot of work on this. And that's to be commended.

MATHIEU WEILL: Great thanks to Jorge who contributed a lot to this process. Perhaps the two of us can take it away and see what we can do in terms of bringing it forward another step. I'm not sure what the process is going to be going forward.

>> We'll be very agile. So we'll see what we can do.

>> A full draft by the end of next week that's ready for approval.

>> End of this week.

>> That's only half an hour.

>> That's a few hours.

>> No, it's only Friday. It depends on when you put the end of the week.

The next -- thank you very much, Mathieu and Jordan.

---

The next two items I would like to make a suggestion that we actually sort of use them as consent agenda items. The next two items are standard bylaw change, fundamental bylaw change. And, Jordan, I'm over-summarizing the summary that your group has provided. But it's, basically, I see we're getting support on the idea and the only refinements are those that are related to the mechanism for decision making and the model for enforcement.

As a consequence, I would put them in green pending, obviously, those conversations because we'll decline whatever model decision making comes out from this. So I think -- and there's been a lot of support for the idea from everyone. I haven't heard about any real objections on this. So, unless there's objection to that, I would consider these two items discussed in that fashion.

Okay. I'm not seeing anything. Obviously, it's two readings, whatever. But that's okay. So that's green.

And, Jordan, I think we'll try to get you back to the table later. But I'm not sure exactly how we will do it right now. So please stay with us. And it's been a delight having you at the table.

Well done, Jordan.

[ Applause ]

Our next items are the other stress tests. And, yes. Steve is going to be -- do you want to come to the table as well, Cheryl?

CHERYL LANGDON-ORR: I'm very comfortable where I am.

---

>> All right. Please, keep your seat. I think that's also an item where there hasn't been so much. There have been comments. But I think we're very close to agreeing as well. So, Steve, update us on this, please.

STEVE DELBIANCO: Great. Thank you. Staff, if you could display pages 112 of the second draft comment, that's the place where stress tests 29 and 30 appear. And that's the only thing I'm up here to discuss is the divergence or concern expressed in the public comments. And the stress test work team's analysis led to two recommended changes to the stress tests.

29 and 30 came to us as recommendations during the first public comment period. The New America Foundation, in particular, wanted to put a stress test together that assessed whether ICANN could really -- if it enforced registrar accreditation agreement requirements and PIC specs and consensus policies, that could be considered to be running afoul of a limited mission statement or were not necessarily a bottom-up developed process, the question was, well, what would happen then?

The stress test is supposed to evaluate that, if an IRP ruled something like those can not be enforced by ICANN because they don't match the bylaws, then what would happen?

Again, the purpose of stress tests is to evaluate plausible scenarios, not probable but plausible scenarios. And the stress test work team takes suggestions from our community. So, when folks asked us to do a stress test, we didn't necessarily think the answer could be no. Our answer was: Let's do our best with it. I feel like 29 and 30 generated quite a bit of interest and quite a bit of comments. There were seven commenters who

---

objected to the inclusion of 29 and 30. And there were other commenters that supported it. But, again, the stress test team wasn't going to say, no, we're not going to do it.

But we analyzed what they came up with. And 29 is very similar to 30, so we can just leave 29 on the screen. And I think you'll follow along.

And one of the concerns I had was that the consequence -- if you see the consequence right there in paragraph 938, the consequence suggested by the people that suggested 29 and 30 was that ICANN effectively becomes a regulator of conduct and content on registrant Web sites. And that consequence was suggested by the New America Foundation because it matched pretty closely with the proposal at that point in time, way back in our first draft, our proposal for what we were going to put in the revised mission and core values.

And Becky discussed this morning whether there will be some pivoting and adjusting of what those mission and core values are.

So our first change is to not be presumptive like we were by accepting their paragraph 938, but to simply change it to this: "ICANN's enforcement of registry and registrar contact terms might be blocked by an IRP ruling that cites the amended mission and core values."

Okay? So that's the plausible scenario. And the consequence would be, my goodness, ICANN is suddenly unable to enforce PDP consensus policies or enforce terms that are in the RAA or enforce voluntary PIC specs and things like that. So that's the consequence we want to change it to.

---

And then we'll discuss only one other change, which is the conclusion at the bottom of 29.

Staff, it might be appropriate to just leave the stress test up that you had. Because I can rather quickly go through what those various changes are. So, again, the consequence -- thank you very much -- of 938 would be revised to say, "ICANN's enforcement of registry and registrar contact terms might be blocked by an IRP ruling citing amended mission and core values."

So is there any objection to making that change, which was endorsed by the stress test work party?

So there were a couple of hands that shot up. So at this point we should look at the queue. Greg, you would go first

GREG SHATAN:

Thanks. I object to several of these changes here. I think that -- I think -- for one thing, this stress test will be looked at to interpret the bylaws change regarding content regulation. Because this is going to be read as a document together. And, as people try to figure out how these things will work together and what our interpretation of these things are, this is going to be part of the whole system. So the -- I think that the idea that this -- the new consequence I think still, basically, has the same implication as the old consequence, which is that it's a plausible interpretation of the mission and core values that enforcement of contracts is content regulation and, therefore, outside ICANN's mission.

So unless the consequence -- unless we're saying that the new consequence as stated is that the IRP gets it wrong. And, if we



---

do think that's the case, then we should say that. Because, otherwise, I would read this as a statement that we -- that consequence is that the IRP is getting it right and that they shouldn't be enforcing these contracts. So I think that, you know, right now this is kind of a big muddle. And I also think that the second paragraph in stress test 29 up there is a completely different fact scenario than the first one, which says that ICANN also insists that legacy gTLD operators adopt the new gTLD contract upon renewal. I think that fits in very nicely with the business constituencies' reconsideration request. But I don't think that that is, again, something that would be -- the conclusion from that isn't necessarily that ICANN is becoming a regulator of content either.

So that seems to me it's -- I don't know why there are two stress tests in one here. We've kind of ignored that second line there. But I think that's also troublesome. So, you know, I still think this is -- it's maybe damaged differently than it was in its previous iteration. But I still think it's damaged goods. Thanks.

STEVE DELBIANCO:

Greg, you joked earlier about starting an IRP practice when Becky was up here, so if you were to start one, you -- it would be a mistake to count upon the nonlawyers and the stress test team and the words we used to analyze plausible scenarios. And you're suggesting that that could be relied upon as future IRP panels interpret whether the bylaws were changed. And I find that astounding to be coming from you.

GREG SHATAN:

That's not what I said, so maybe that's why you're astounded. What I said was that as people read our draft proposals and they

---

try to figure out what the heck we meant in our changed mission and core values, they're going to look at the stress test and the consequence and the measures and use that to interpret what we meant.

What I mean is that the second draft proposal is going to be read as a unitary document, you know, with the exception of possibly minority statements, which hopefully we won't have any of, but everything else here is supposed to be all of a piece.

So this will relate back to the mission and core values that it is interpreting.

STEVE DELBIANCO:

Greg, if you'll yield for a second, the third draft is really all that matters. The second draft is being revised, and that's actually what we're here to do. We're analyzing public comments in an effort to produce our third draft, hopefully our final draft, and that will include not only revision of some stress tests, but it will include new mission and core values that Becky spent about an hour sitting up here talking about today. And those revised mission and core values were anticipated by the second and final change I was up here to pitch, and I should probably just read that into the record so you can respond to both of them.

If you scroll down a little bit, please, staff, to the conclusion of these stress tests, our conclusion, stress test team, was the proposed measures would be adequate to challenge ICANN's enforcement decision. So ICANN's decision to enforce voluntary contract provisions could be challenged. That doesn't mean that we are predicting the IRP could overturn them. We have no idea.

---

So the stress test team unanimously proposes that we change the conclusion to read proposed measures that would be adequate to challenge ICANN enforcement actions, but it is unlikely that IRP panels would block enforcement of voluntary contract terms and consensus policies. And we wrote that without even having seen the document that Becky displayed about an hour ago, because we wrote this last -- three or four days ago.

So it dovetails perfectly with what Becky presented this morning from WP2.

So that revised conclusion, Greg, I think should give you great peace. If people actually read our stress tests and take notes from them, they'll have to consider that it says proposed measures would be adequate to challenge ICANN's enforcement actions, but it's unlikely that IRP panels would block enforcement of voluntary contract terms and consensus policies.

So we're putting out for your consideration both of those changes, and that's the entirety of it.

We'll get back to the queue which I think is Malcolm.

MATHIEU WEILL:

Just before we get to Malcolm, Greg, if you want to suggest particular edits, please do. I think that would be much appreciated by the group.

Malcolm.

And -- sorry, Malcolm. I'm just informing that I'm closing the queue after Robin so that we -- we're getting close to the end of

---

this meeting and we want to make sure we stay on track. Exactly.

Thank you, Malcolm, for your patience.

MALCOLM HUTTY:

Thank you. Malcolm Hutton, for the record.

Thank you, Chair, and thank you, Steve, for the valuable work of you and your team on this, and in particular to you personally for pretty much originating the concepts of stress tests, which has been so valuable to us.

Now, these stress tests form a useful purpose. They help us to analyze the concerns that the community has so that we can see whether our proposal will meet those concerns, and it's likely to be something that is supportable that we can put forward as a community proposal.

The responses that you've had from members of the community that caused you first to create this stress test and that is causing you to seek to amend it are coming from different groups of people with different concerns. Those that originally created this were motivated primarily by a concern that ICANN could become a general regulator for Internet content and behavior and they wish to put in a stress test to make sure that we had analyzed whether or not that was an outcome that could happen and assured ourselves that it isn't, and you have evaluated it as being no, the measures we are putting in place will prevent that. So the people who were concerned about that will be very happy by that.

There were other people who are motivated by another concern. They are motivated by the concern that those measures to

---

prevent that general regulation might be so strong and so overreaching that it might prevent us from doing things that ICANN absolutely should be doing, it's doing already, it should be doing, and must continue to do. These are separate concerns.

So my recommendation is this. We ought to keep this stress test here that in the current form, unamended, because it validly speaks to a legitimate concern that people want to see that we have analyzed.

The people that have asked for it to be amended, they also have a legitimate concern, and their concern should be documented and analyzed too. So instead of amending this in the way that you propose, what we should do instead is create an additional stress test to address this new concern.

STEVE DELBIANCO:

If we retain 29 and 30, the stress test feels very strongly given the clarifications that Becky is presenting in her next draft, we feel very strongly that the 29 and 30 should be amended according to the ways we presented. And in addition, if you'd like to suggest a new stress test that gets to this general content called content regulation, write it up and get it in and we'll analyze it while we're here this week. So we'll add one.

But with respect to 29 and 30, we can't leave this text in here because it doesn't reflect any more what the next draft will have in it with respect to the limits on the mission and the core values.

So we can do both and accommodate your point.

---

MALCOLM HUTTY: This stress test analyzes a possibility. We should absolutely expect that that possibility will not be realized because we are hoping that our measures have -- just as with the other stress tests, our measures have precluded that possibility from being brought about.

So I don't see that there's any -- any reason to amend it.

STEVE DELBIANCO: Malcolm, paragraphs 933 and 944 have to be changed if the proposal that Becky put on the table is adopted in our next draft. I just can't put this back out basing it on an inconsistency in the document. So we have to make the revisions to 29 and 30 and then consider a new stress test that looks at general content regulation.

You're quite correct that the folks who put 29 and 30 in were looking to blow up the RAA provision 3.1A, which was to investigate and respond to reports of abuse. This is suggesting that if those were the result of a bottom-up policy and they were voluntarily agreed to by the registrar selling names in the new gTLD space, that -- you couldn't blow them up with an IRP pursuant to Becky's clarification.

So this is going to take more work than I think we will be able to go through in a colloquy here, so I'll take the rest of the queue, and you and I will have to talk more this weekend.

The next on the line was Alan Greenberg, and I see, Cheryl, you're raising your hand, but can you also do the Adobe hand to get in the queue. Thank you.

---

MATHIEU WEILL: Which was supposed to be closed, but, I mean, it's your first intervention so certainly we'll hear your comment.

Alan.

ALAN GREENBERG: Thank you. I'm not sure I have a question. Steve, could you read out again, at the beginning of this you said you have rewritten 938, and could you read it again, and I'll either have a question or don't have a question.

STEVE DELBIANCO: Staff, if you could paste from the yellow document or simply bring up the new page 3 of the stress test document. I know you have it ready and I appreciate that.

So, Alan, we'll are bring it up and have you take a look at the new text. It's coming up right now.

ALAN GREENBERG: Probably conscious enough, if you read -- say it a second time, I'll know.

STEVE DELBIANCO: Great. I'll do that. So 938 being the consequence or the conclusion, Alan?

ALAN GREENBERG: Consequence, I believe, is 938.

---

STEVE DELBIANCO: Thank you. So the consequence would be changed to say ICANN's enforcement of registry and registrar contract terms might be blocked by an IRP citing amended mission and core values. Because that's the consequence of the stress test.

ALAN GREENBERG: In that case, I don't have a question. I misheard you. Thank you.

STEVE DELBIANCO: Thank you very much.

After Alan is Milton.

MILTON MUELLER: Yes, I'm finding this discussion -- first of all, it's absolutely core and central to what we're trying to do here, and I'm getting very confusing signals about where this is going, so I'm liking the idea of not making any decision right here and discussing it further, getting our signals straight in terms of what's actually going on.

Just let me say that your proposed -- What you're saying, Steve, if I understand right, is that we have changed the mission statements in a way that would allow an IRP challenge to block certain forms of overreach by ICANN that would extend regulation to content and services simply because they use domain names; is that correct?

STEVE DELBIANCO: So in the second draft that we put out, we had a mission statement and a core value that could potentially, plausibly be interpreted to prevent the enforcement of a policy that was voluntary or that extended into the regulation of content on a



---

registrant's Web site. I think that answers the last piece of your question. And because we are in the middle right now, this weekend, of revising that particular core value and mission statement to say that notwithstanding those limitations and the requirement for bottom-up, ICANN should enforce contract terms that are consensus policies and contract terms that are voluntarily agreed to by contract parties.

So because of that particular change that's coming down in the next -- hopefully in two days, we need to revise the stress test pursuant to that in our next draft that we put out.

I hope that that answers your question, but if you're still distressed, let's talk about it some more.

MILTON MUELLER:

Well, I'm not quite finished with my comment. I want to add one other thing here, and that is this idea of voluntary agreements is very slippery in this -- be in this environment. You know, if ICANN -- These -- Frequently, these are contracts of adhesion, and they're not really contracts in the sense that they can walk off and go somewhere else. So if ICANN says you want to get into this business, you know, we won't approve you unless you agree to add, let's say, some weird public interest commitment that somebody came up with at the last minute, is that a voluntary agreement or is that ICANN acting as a regulator?

I think however we discuss this, we need to keep that slippery line in mind. So I think we need to defer this and actually come to an agreement on what we're trying to do here.

---

STEVE DELBIANCO: Milton, would I agree, and if you were here an hour ago, I brought up almost the exact same point about what constitutes voluntary and that we would keenly look at the way our attorneys come back with language to expand on what "voluntary" really means. I appreciate that comment.

Next in the queue is Kavouss.

MATHIEU WEILL: It's Kavouss, yes.

KAVOUSS ARASTEH: Yes, if you kindly go back to the table, just a simple question of presentation. Yes.

Yeah, first of all, when you talk about 939 and 942, they are exactly the same. So perhaps in 942 you put something, knock; otherwise, I have to read word by word to see whether they are exactly the same or not. So that is a standard that people are doing. First.

Second, existing. Existing in the first public comment or existing in the currently bylaw?

STEVE DELBIANCO: Current bylaws. Current bylaw.

KAVOUSS ARASTEH: So we should say existing. And then the people will ask what happened to 940 and 941. You should say stop. Deleted. You have not modified. So what happened to those? So people, they may ask in the final proposals.

---

STEVE DELBIANCO: Kavouss, these are readability suggestions, not policy suggestions. We'll take them on board to make things more readable.

Next in the queue, Robin.

ROBIN GROSS: Hello, this is Robin Gross, for the record.

I will be brief because a lot of folks have already said what I wanted to say. I just wanted to support Malcolm and Milton in urging caution in this change. I feel like it is a slippery slope, and we want to be very careful to avoid a situation where ICANN becomes a content regulator. And so I think we have a slippery slope here, and we need to be very clear and very sure about this particular stress test before we go any further.

Thanks.

STEVE DELBIANCO: Thanks, Robin.

So, Cheryl, I think that your CW; right? There's a Christopher Wilkinson, and I never know --

CHERYL MILLER: No, it's okay. I'm not CW, but my hand wasn't raising so I had to go the old-school version.

STEVE DELBIANCO: The old-fashioned? Okay we'll take Cheryl Miller and then Christopher Wilkinson. Go ahead, Cheryl.

---

CHERYL MILLER: Thank you. I appreciate it. I just want to say I do think there's a need for revision because the way the language existed, obviously we couldn't live with it, but we do need to be careful. So I just look forward to the final text.

STEVE DELBIANCO: And then Christopher.

CHRISTOPHER WILKINSON: Thank you. Christopher Wilkinson for the record. Adobe doesn't like long names, I warn you.

Steve, I've listened to you carefully. I couldn't possibly explain to a third party outside the room what on earth it is you are trying to achieve with this text. So I abstain.

Please, we would like to be able to save that text on the screen so that I can read it overnight. It's not savable at present.

STEVE DELBIANCO: It's been published since August the 3rd. That text that's right there, and staff can give you a link to it so you can bring it up.

CHRISTOPHER WILKINSON: That would be helpful. And just as a detail, that is just legible from this distance. Half the stuff we've been putting on the screen is almost illegible from this distance. But, Steve, we need more time to sort that out.

---

STEVE DELBIANCO:

Chris, this was published on August the 3rd and everybody commented on the document, first of all. So all I needed to do was mention to you it was on page 112 and 13 of our August 3rd.

Second point, the stress test recommendation to change two paragraphs was published last week and was published to everybody in the CCWG, and the link to that is available in the chat. I didn't really expect anybody to read from back there what's on the screen. I'm in the front row and can't read it. So I'm with you on that, but those documents have been published, and you've got the links. They're right in the chat.

All right. With that, I think it sounds to me like we do not have a green on these two changes. We're going to wait until we see what our lawyers come back in terms of modifying the mission and core values, and then we'll dovetail that with this. And I do want to hear from Malcolm, Milton, Robin and others who are thinking we ought to add another stress test, but let's do it this weekend, please.

Thank you.

MATHIEU WEILL:

Thank you very much, Steve, and I think Cheryl, Steve and the stress test working party deserve a lot of credit for all their efforts. And obviously they also did a lot of waiting upon the mission and core value to finalization to finalize the stress test, and we've known from the start that the stress test part will need to be reviewed at the end when we have all the proposals finalized. So great job, and unfortunately you still have a lot on your plate ahead of you, but I know you're going to tackle this with efficiency.

---

Thank you, Steve.

[ Applause ]

We have a half an hour before the end of the meeting and.

We have half an hour before the end of the meeting and we have four items, but I have good news. Three of them I think we could probably skip, if we consider that they are mostly already addressed for the fundamental bylaws or already supported for the AoC incorporation into the bylaws, so there's -- we're already in the implementation phase, if you want, although there have been some interesting comments.

So I would suggest we focus on SO/AC accountability, which was a new item in our second report, and then move straight to the conclusion of this meeting.

And for that, I'll turn to Leon for SO/AC accountability.

LEON SANCHEZ:

Thank you very much, Mathieu. This is Leon Sanchez.

Can we please have the SO and AC accountability slides up?  
Thank you.

So it actually comes to three different topics, which are diversity, SO and AC accountability, and staff accountability, but I'd like to center on SO and AC accountability. Thank you very much.

So we received, of course, a lot of comments on SO and AC accountability and one of the overarching issues on SO and AC accountability is that, as Spiderman said, with more power comes more responsibility, so if we are to empower the community, then there needs to be corresponding responsibility

---

from the community to -- not only to the larger Internet community, but to each other. We have discussed this with our advisors and we have had some feedback on some mutual accountability model which we have discussed.

But on the consensus side, we, as I said, leaned towards -- or more precisely, the commenters lead towards having more responsibility into the SOs and ACs if they are going to be empowered.

Then there is also consensus that there needs to be more work done on this issue, and this could, of course, take place as something to be further developed as part of our Work Stream 2, but it is important also to avoid watering down commitments for Work Stream 2, so we should definitely look into having a strong commitment that this will be -- actually be further fleshed out in Work Stream 2.

Then the areas needing refinement is periodical reviews, there have -- there were many comments on whether these periodical reviews should be taken by -- or undertaken by the ATRT team. Some of the comments said that the ATRT is already -- have a lot of things on their hands, so bringing these reviews into them would overburden the ATRT team, and so these are the areas, as I said, that we need refinement.

And then who watches the watchers, this is also one issue that has been widely commented, and it's a major concern by many in the community.

With the different models that have been proposed, there's always been this underlying question on who watches the watchers.

---

So we would be looking for some kind of formula to actually address this issue.

Then we only have one comment on -- that diverged from incorporating SO and AC accountability, and this comment was not really to the point so that's why we really didn't take it into account for -- for our report.

And then for consideration, we spotted some issues like having the SOs and ACs subject to the IRP. This is something that we should need to consider as a group, of course.

Diversity versus conflict of interest, there are some comments that say that the more diversity we bring into ICANN, then the more -- the more conflict of interest we open the door to.

Then there's also the revolving door effect. There are many comments saying that it's the same people around different bodies, so this should also be taken care of.

We also have the independent commission controlling conflict of interest. It is suggested by some comments that there should be this independent commission that would be overlooking to conflict of interest within ICANN. Especially, of course, within SOs and ACs.

And then having the structural reviews as a two-step process, which this would be undertaken by the SOs and ACs as a first step, and the second step would be taking these results into an independent examiner which would, in turn, deliver a report on these structural reviews.

Then the escalation path before going to adversarial arbitration or IRP. As Jonathan Zuck explained in the morning, we should be looking at all these processes as not being the last resort but



---

also as to -- to draw an escalation path before we actually go into the IRP.

So at this point I see some hands already lining up in the Adobe Connect room. I would like to open the floor for comments.

So first on the queue is James Gannon.

JAMES GANNON:

Thanks, Leon. So I'm probably going to be the one to say it but I think many people have been thinking about it.

I didn't have the bandwidth to follow Work Party 3 so I'm just seeing some of these things for the first time, and I have to say in some of the considerations, some of those issues terrify me because some of them are way beyond destabilizing in their potential influence. So I'd have serious -- without having gone through the process that you guys have gone through, and maybe there are various considerations that there's strong reasoning behind them but --

For example, take the very first one, "SO/ACs should object to IRP." I could see that being a total deadlock situation for ICANN policymaking going forward. There are serious concerns about some of these.

I'll be the first to say I have serious concerns about SO/AC accountability in general, but we need to be very careful as we move forward how we manage that concern because I know we speak about who watches the watchers. It's the -- it was the start of this conversation. And I think it was in Paris that I said that at some stage we have to accept that there is a bottom line of responsibility within the community and we have to determine that as a community where that bottom about line

---

sits. Where we're going to say, "Okay, the board watches the GNSO," "The GNSO watches the NCSG," "The NCSG watches the NCUC" and "The NCSG responds to its members."

We have to find that bottom line because otherwise it just comes an infinitely recursive -- we keep going down this line, okay, then we go out to an independent consultant to watch the NCUC members.

You know, there is a point of practicality on SO/AC accountability where we have to say, "No, there is a stopping point where this is where we are accountable to," and in my personal opinion, it's the membership of the various SOs and ACs at the bottom level.

We're a bottom-up multistakeholder model. The bottom is where we are accountable to.

LEON SANCHEZ:

Thank you very much, James.

And the queue has grown long and I'm closing it at this point with Sebastien Bachollet, so next in the queue, I have Rinalia Abdul Rahim.

RINALIA ABDUL RAHIM:

Thank you, Leon.

I just wanted to make a clarification.

The structural reviews would involve a two-part process that goes in parallel where you would have the specific parts of the community undergoing the review, performing their own self-

---

assessment at the same time the independent examiner is doing the same thing.

That's one point.

The other thing I wanted to flag is a challenge that I see that if we proceed with structural reviews as the mechanism for doing SO/AC accountability review, is that to have a snapshot of all SO/AC accountability, you would have to wait for the entire cycle of organizational reviews to finish, because the org reviews are not all happening at the same time.

An example I would make is, we have just finished the GNSO review, the at-large review is just starting right now, and the SSAC, RSSAC, and so on are starting later.

So if we wanted a snapshot of what is the status of ICANN's SO/AC accountability, it would be challenging to do that until we've finished one complete cycle, which would take several years. Thanks.

LEON SANCHEZ: Thank you, Rinalia.

And next in the queue, I have Mathieu Weill.

MATHIEU WEILL: Thank you very much, Leon. Mathieu Weill speaking.

I'd like to offer a suggestion for the group going forward on this topic, which would be to split this discussion on SO/AC accountability between what we would consider Work Stream 1 and Work Stream 2.

---

Remember that's one of the Work Stream 2 items that has been identified in the discussion we've had a couple of hours ago. And our second report suggests that the main -- the main recommendation that is Work Stream 1 is improving the ASO, A-- the structural reviews that Rinalia just talked about by adding this accountability topic into this.

I think in the comments, most of the consideration items are eligible more for the Work Stream 2 work, and so we would probably have to look today whether, based on the comments we've received, we can consider that the Work Stream 1 recommendation, which was to add accountability into the structural reviews, is something that is deemed an agreement or supported and then moves forward and that it's enough, for the moment, to make this happen.

And to me, I think we could definitely mark that green and take the rest of the comments into the Work Stream 2 item that we have on ASO/AC accountability, so if you ask me, what I would suggest is to count this green and take those -- the rest of the items into Work Stream 2. Thank you.

LEON SANCHEZ:

Thank you very much, Mathieu. This is a great suggestion. I think that we all agree that we must address SO and AC accountability, so that could be green ticked already, and we will be, of course, explaining this -- these streams into Work Stream 1 and Work Stream 2.

So is there any opposition to actually move forward with the suggested path that Mathieu has suggested?

---

JAMES GANNON: May I just ask a clarifying question?

LEON SANCHEZ: Yes. Of course.

JAMES GANNON: James Gannon. And so just so I'm infinitely clear, so what are we saying we will do in Work Stream 1 with regards to SO/AC accountability? Merely saying that we will address it in Work Stream 2? Is that --

MATHIEU WEILL: No. The current recommendation, this current status --

JAMES GANNON: Yeah.

MATHIEU WEILL: -- is adding to the structural review system the fact that the review is also about accountability of the SO and AC and making it clearer that this accountability is to the current members but also to the communities that these bodies are designed to represent.

JAMES GANNON: Okay. Thank you.

LEON SANCHEZ: Okay. So next in the queue, I have -- Kavouss, is that you? Yes?  
Okay. Kavouss. You're next, Kavouss.

---

KAVOUSS ARASTEH: Yes. Just very, very minor. In the last line, you don't need the adjective "adversarial arbitration."

Arbitration is arbitration. It is not amicable arbitration. It's not adversarial arbitration. It is neutral. So just delete that. We don't need that. Thank you.

LEON SANCHEZ: Thank you very much, Kavouss. And next I have Milton Mueller.

MILTON MUELLER: Yeah. I think when you're talking about AC and SO accountability, it's very hard for me to not see this as a diversionary tactic to kind of take the heat off of the board.

It's very strange to be suddenly worried about the -- the SOs and the ACs when those are the people who elected the board and are supposedly the paragons of this multistakeholder model. If we think there's something fundamentally wrong with how we're organized now, then I could see this being a priority for Work Stream 1, but, you know, essentially when you talk about accountability for the SOs and ACs and how well they represent the community, you're talking about redesigning the entire basis of ICANN, okay? And this is something that you can -- it's a can of worms. It's a -- it's not a rathole; it's like 47 different ratholes.

Our job is to come up with Work Stream 1 accountability mechanisms that make it possible for there to be an IANA transition, full stop. It's not to reform everything and anything about ICANN. The fact that the board has tried to use our accountability as a shield against their own should not be allowed to divert us into spending lots and lots of time on this.

---

At best, I could accept a general statement along the lines of what Mathieu suggested, saying, "Yeah, we need to pay attention to SO/AC accountability, we'll do it in Work Stream 2," but fundamentally, you know, we already have ongoing reforms and changes and reviews of these structures.

So I just view this as a -- really a diversion from our main task.

LEON SANCHEZ:

Thank you very much, Milton. Just to clarify, I personally don't think that this is a diversion because it was raised by many commenters in the public comments and it's also been a suggestion by our advisors that we take a look at SO and AC accountability and I don't think that this is meant to take the heat off of the board or anyone else or to put more heat on SOs and ACs.

But thank you for your comments.

Next in the queue, I have Greg Shatan.

GREGORY SHATAN:

Thanks. Greg Shatan, for the record.

I would dearly love to move this off to Work Stream 2, but I don't think it's entirely realistic for the reason, Leon, that you just cited, which is that a number of commenters, including, but not limited to, the board, you know, raised the issue. I think it would be immature to suggest it's merely a case of "Oh, if you're going to hold me accountable, who's holding you accountable? Nana-naa-nah."

[ Laughter ]

---

CHRIS DISSPAIN: We'd be delighted to put it like that, if you like, Greg.

GREGORY SHATAN: Apologies --

>> (Off microphone.)

GREGORY SHATAN: Oh, thank you.

Yes, I can see that the transcript is also having a problem with the "Na-nana-naa-nah." That's n-y-a-h, by the way. I'm not sure how many na-nana-naa-nahs -- it's a classic term.

In any case, I digress.

[ Laughter ]

GREGORY SHATAN: But more seriously, I do think we need to respond.

But there's an implication -- or maybe not an implication -- explicit statement that we have insufficient accountability and that we're all -- maybe we are all on the playground and we're immature as organizations, but let's recall that this all started with the idea that we were ready for accountability to be placed upon the global multistakeholder community, which means somebody thought we were ready.

And I do think we're ready. I think there's plenty of room for improvement in SO/AC accountability, but there's plenty of accountability right now among the SOs and ACs. I don't know



---

that we need to commission a study to -- or a section of this to talk about how SOs and ACs are accountable, but I think each of us who are members of an SO or an AC can think about how they work de facto in terms of accountability and how people are held accountable and how people -- you know, when things seem to be going off the reservation, how things are held back.

So I think that we have a good story to tell about accountability. It could get better, but that doesn't mean that we should just sit here and say, "Well, we have to add it to reviews and we have to move this off to Work Stream 2." I think we can respond cogently and more succinctly than I've been talking that we do have significant accountability measures in place and, you know, that part of the culture includes serious accountability within and between SOs and ACs. Thank you.

LEON SANCHEZ:

Thank you very much, Greg.

So just to be very clear, because I think that at some point I must -- I might have miscommunicated, this will be taken care of as a matter of Work Stream 2, okay?

So we have a green status that we do agree that this is something that must be addressed, but it's going to be addressed as part of Work Stream 2. Okay?

GREGORY SHATAN:

If I could just add, does that mean that we're not going to respond to the comments?

---

LEON SANCHEZ: No. We will respond to them because we are -- we are supposed to act --

GREGORY SHATAN: I mean, respond substantively along the lines that we said, that we should say that we are, in fact, are, you know, accountable communities.

LEON SANCHEZ: Yes. We'll figure that out.  
And next in the queue, I have Sebastien Bachollet.

SEBASTIEN BACHOLLET: Yes. Building on what was just said, I think that we do review periodically on each SO and AC and the goal was to add to the list of what the reviewers have to take into account, the question of accountability, and even if we think that today we are very good with accountability, there is no reason why not to review them each -- each five years, and it's why it's important to have it.

Now, there's another question raised both by Rinalia and by Greg that do we need overall discussion of the organization of ICANN and the accountability of the overall grouping, and that's a good question, and I suggest that really this question be put into Work Stream 2.

There is no urgency to answer this question even if I think it's important to answer this question. Thank you.

---

LEON SANCHEZ: Thank you very much, Sebastien. And last, but not least, Steve DelBianco.

STEVE DelBIANCO: Thanks. Steve DelBianco with the CSG and I'm answering for the stress test work party, Leon, because you may not have been conscious of this, but in the stress test work party, we had to address stress test number 33.

It was requested on June 16th in a blog post by Assistant Secretary Strickling in the work we did in Buenos Aires.

And so it's stress test number 33, known as NTIA number 2, and I put into the chat what the text is for those of you not familiar with it. It said, "Participants in an AC/SO might attempt to capture an AC and SO by arranging to over represent themselves in a working group and electing officers or voting on a decision."

And on Page 116 of our second draft report, we analyzed that stress test. We gave three answers to it. The first two are in existing policies. The notion that internal structural reviews, which your comment brought up earlier. We also brought up the fact that ACs and SOs can revise their own charters if they see a need to change their operating procedures or charters to guard against capture. We did note in the stress test team that if you had been, well, captured, it would be hard for you to push through a change to your charter reducing capture.

So that has limited effect. And the third and final point we made was that in Work Stream 1, we already have something new. We have an IRP that enables you to challenge board action or inaction on the basis of whether it's supported by the bottom-up multistakeholder process.

---

So this might be a bit of a stretch, and folks in the IPC, Greg knows, said it was too much of a stretch.

But we suggested that an IRP in workstream 1 would allow you to challenge or the community to challenge a board decision based on advice from an AC or SO, policy from an SO that had been captured. That would require that you present evidence that the GNSO policy was only approved by a 2/3 supermajority because the BC and IPC were captured by contract parties. There would have to be some argument made.

And the second thing is you would have to make sure that the IRP panel would understand that it would interpret the bottom-up consensus-based multistakeholder process by looking beneath the surface of the ACs and SOs into an assessment of how decisions were reached within the AC and SO. So we certainly hatched a thread that's worth a conversation. But I would not conclude that there is zero -- there is zero being done in workstream 1 to address this. Let's keep in mind stress test 33 and then IRP on the basis of the new bylaws requirement that it must be a bottom-up multistakeholder process or it's subject to challenge by an IRP.

LEON SANCHEZ: Thank you very much, Steve.

Okay. Mathieu, do you want to say something?

MATHIEU WEILL: No, no. Tell me whether it's green or red --

LEON SANCHEZ: It's green. It's green. It's green.

---

Okay. So now I'm going to turn back to Thomas -- or Mathieu.

MATHIEU WEILL:

Thank you, Leon. We have ten minutes to go, and we've come a long way. I don't know about you, but I have found this day to be looong.

[ Laughter ]

And the week promises to be even longer. But I think we've made tremendous progress. And I can prove it. We've been updating the scorecard. I think probably someone can put back the Google Doc link into the chat. And also doing a little bit of spreadsheet -- you know, when I get a bit stressed and things go too slowly, then do I spreadsheets.

[ Laughter ]

That's a problem that's been raised by some in the co-chair team, that I do spreadsheets.

So if you go to the progress tracking stuff here, you'll see our progress. Ta-da!

Alice, are you controlling this? Progress tracking, sheet number 2. Here it comes. Ta-da!

So in blue, you have where we were when we started this meeting.

[ Laughter ]

CHERYL LANGDON-ORR: I feel so much better now. Thank you.

---

MATHIEU WEILL: And in red, what we've achieved. So we have less disagreement. We have less to be considered. We have a bit less to be refined. And we have significantly more where we agree on. And we have one item where we were waiting external input.

THOMAS RICKERT: Which one might that be?

MATHIEU WEILL: I don't know.

[ Laughter ]

Let's look at the minutes to be sure. So I think that's the kind of progress that we need to keep doing. And, of course, you may not be sensitive to this as demonstrating progress. But I think we've also made a lot of progress in the way we have been engaging around these issues, in the openness that everyone has demonstrated into making things move forward, I think that's a very, very significant achievement as well and an asset that we need to keep building upon in the next few sessions.

And that brings me to very briefly outlining what's the plan for tomorrow's sessions. Tomorrow's sessions are starting at 8:30 until 12:00. So it gives us a lot of prep time, thank you.

So the idea of these sessions is to work on the four items we have been discussing, the four most contentious ones.

Oh, thanks, I like the new colors.

So the four --

---

>> (off microphone).

MATHIEU WEILL:

So the four items we'll be discussing in breakout sessions are going to be: Decision-making, enforcement model, board removal, budget and veto -- budget/veto -- budget and operating plan veto. Those are the four ones.

So we will send terms of reference for each of these groups to the list tonight. Yes, we were not able to send it two days before but we will do our best. So tonight we will send the terms of reference. We will take some time tomorrow when we reconvene to discuss these terms of reference so that everyone has clarity about what's expected from these groups.

Then we'll break out. The sessions, at least three of them will be facilitated by XPLANE so that we can have some visualization. No pressure, guys. But we really, really need this facilitation to be very efficient.

And we will come back and reconvene before the end and try to take stock of ideally all sessions but I'm not totally crazy. I think it's not going to be possible. So if we can at least take stock of two of them and demonstrate progress on these two, that would already be meeting expectations.

So that's the plan. So don't do -- don't party too much tonight. There is still work taking place tomorrow. We know there are other things taking place tomorrow. And we've really encouraged everyone to rearrange plans as much as possible, but we are aware not everyone is going to be able to participate. So that's going to be taken into account in how we -- how far we

---

can go because obviously it cannot be the same kind of decision-making meeting in these conditions.

But those who cannot be there, I hope you can trust the others for really making an effort at accommodating everyone's views. And that would really be one of our focus during the sessions.

And I see that Alan wants to speak. I'm checking the AC room to see whether there's another queue.

James, is that an old hand? A new one? So James and then Alan.

JAMES GANNON: Two quick questions. Are we going to be running all four breakouts in parallel?

MATHIEU WEILL: I think that's the intent, yes.

JAMES GANNON: Can we make sure if we are doing that, that we have sufficient breadth in stakeholder representation and everything else because we need to make sure the groups are balanced.

MATHIEU WEILL: That's a good point, and we will take into our prep discussions. Thank you.

ALAN GREENBERG: We are not going to be able to cover all of them in ours, but we'll have to fake it.



---

When is our next session as a CCWG?

MATHIEU WEILL: After that, we will have a CCWG session on Monday afternoon starting at 1:30 p.m. until 6:00 p.m. from memory.

THOMAS RICKERT: The engagement session in the morning.

MATHIEU WEILL: We have an engagement session in the morning.

ALAN GREENBERG: We're meeting as a group to do more work prior to constituency day.

MATHIEU WEILL: Yes. I have Robin and encourage -- I know people have wrapped up. I have Robin Gross, remote participant priority. Robin? Or are you here, Robin? I've seen you. Yes, you are here! You are remote. You are on the other side of the room.

ROBIN GROSS: I would just like a little bit of clarification on the difference between the first breakout and the second breakout, that you mentioned one being decision-making and the other being enforcement models. I just want to be sure I understand which specific issues are going to be in those sessions. Thanks.

---

MATHIEU WEILL: I would tend to defer this clarification to the terms of reference that we will provide. But before we start the breakout sessions, yes, we will have clarity on this. I'm conscious of time. But decision-making is the consensus-type of decision in the community body.

ROBIN GROSS: That's like the consensus versus voting.

MATHIEU WEILL: Yes, exactly. And the other is the discussion we had this morning about single designator, single member.

ROBIN GROSS: Okay. Thanks for that clarification.

THOMAS RICKERT: If I can add.

MATHIEU WEILL: You may add.

THOMAS RICKERT: Let me just add that we have circulated material on the different models. Please take a look at that. Send questions if you have any. I guess the attempt is really to try to make the designator-based approach work and not go back to square one and discuss all the options that we had on the table, right?

Let's try to operationalize that and remove concerns with it. That's the intent. So let's not be misled by the breakout session

---

being called "models." It's actually working full throttle on operationalizing and removing concerns on the single designator model.

MATHIEU WEILL: Excellent point, Thomas. From memory, Kavouss, Bruce, were you raising your hand. So Kavouss and Bruce and then we will wrap the day.

KAVOUSS ARASTEH: First of all, congratulations for today. We made I think relatively good progress for that. So we should be happy.

Second, for the schedule of tomorrow, which will be the first group tomorrow, which will be the second one? I have some commitment in the afternoon for GAC. I should be there.

MATHIEU WEILL: They are parallel groups. They will all take place in parallel the same room at the same time. But hopefully you can join in between. As it goes, we will be as inclusive as possible.

KAVOUSS ARASTEH: I know Thomas is pushing -- not pushing, emphasizing, focusing on Alan's method, model. But don't forget we have another thing to discuss that. Also, that is plan B. Don't forget that. Thank you.

MATHIEU WEILL: Not forgotten. We circulated a number of memos that were inspired by this work, which Thomas was referring to.

---

Bruce?

BRUCE TONKIN:

Thanks, Mathieu. Can you hear me? No? Yes, okay.

Mathieu, are you able to either put on the screen or you may have already -- I am having trouble getting email -- the actual list of the groups tomorrow. I think it would just help us coordinate to be clear. I know you verbally explained it. I would kind of like to see on the screen or in an email just what they are.

MATHIEU WEILL:

We'll send tonight the terms of reference for each group. So you will have more than just a bullet point. You will have the purpose of the group, the key requirements, what deliverables are expected.

And I think with that, I'm going to miss you all for the next few hours.

[ Laughter ]

But we reconvene at 8:30 tomorrow.

Thank you very much, everyone.

[ Applause ]

[ END OF TRANSCRIPT ]