

**ICANN**

**Moderator: Brenda Brewer  
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2:30 am CT**

Leon Sanchez: ...in these breakout sessions. We made very good progress yesterday I think. And I'd like to hand it to Mathieu so he can work us through the terms of reference and the goals that we will be willing to achieve in this breakout session day. Mathieu.

Mathieu Weill: Thank you very much, Leon and welcome everyone to this morning session. It's been a long time. We have been working a bit last night to provide some clarity on the breakout sessions. So let me recap where we were and why we're doing this.

Yesterday we identified the most difficult issues that we needed to tackle during this week and we've laid out some of the concerns and requirements that need to be addressed. We've also concluded that for items would need further work in the breakout sessions that will take place today.

Those four items are that decision - the community decision process - if we scroll down - the enforcement models, the removal of individual directors and the budget -- the one-year budget and operating plan veto power. Those were

the four items where we said we still need to consider the options and investigate.

The goal of these breakout sessions is not to make final calls on this. It is to investigate on the process side what it would look like so that the whole group can then make a more informed decision about what are the options and what's the preferred option.

So I want to stress that we're going to go from the principles and the concerns and the requirements we were discussing yesterday into a more hands-on approach describing process, stories, chain of events that take place. And that's going to be extremely valuable to get a common understanding of what is at stake behind these decisions before we revisit them.

So we've been working at drafting some short terms of reference for the four groups, there will be actually five groups but I'll defer to Cheryl for the organization announcement later but there are four terms of reference for the four items.

Let's start with the first. So community decision process was the first one we discussed yesterday. The goal is to describe a way of reaching decisions, a way that is consensus - or inspired by consensus but as we know consensus has a definition and that would replace the voting system that is in our current proposal that has drawn a number of concerns, okay?

So some of the requirements, the requirements here in terms of reference are really items that were put in here so that they're not forgotten. But it's really open, you can add any or whatever. Of course ACs provide advice so that would be providing advice. We need to avoid that a single and SO or AC

could capture the decision-making through a veto right or through the lack of broad support participation, that's the balance we need to find.

We need flexibility for SOs and ACs who want to participate on certain decisions or not depending on their missions. And we need to recognize that two of the ACs our board appointed, the RSAC and SSAC. And as such that might lead to certain constraints in the process. Those are the key requirements that we have gathered from the beginning of our work around this discussion.

And what we want at the end of the breakout sessions is a set of rules for the decision-making, probably some corner cases being analyzed, what is this and this and this happens, and whether there is a need to differentiate these rules for certain of the powers, for instance the fundamental bylaw is an approval and not an objection so maybe there is something to tweak in the rules for that, I don't know.

And of course it's a reminder that after the decision is made then there's the final step which is sending this decision to the board. And probably the board following up. So that's number one.

I'm not in the AC room at all, that's not good so if there's a queue anywhere I'll be relying on other people.

Enforcement model, enforcement model is the one that's a bit complex because we can't -- we have only limited time. So what we suggest is that the group focus on mapping two of the most difficult issues to enforce, that's a we discussed yesterday. The one is the PTI separation review team recommendations. So what happens if there's a recommendation to separate

PTI and the board does not want to follow on this recommendation. That's one story.

The other is a what happens if the board refuses to take place into an IRP and we want to get - refuses to enforce the decision on the IRP. Those are the two issues where we heard more concerns about the ability to enforce. So we think if we manage these two then probably we can fake the rest, that's a choice. But I think that's going to be already very useful to map through.

So the requirements are obviously that we - this would start at – oh. Nice voice.

Thomas Rickert: The board echoing what we say.

((Crosstalk))

Mathieu Weill: So of course this takes place after all the escalation steps. They key - the core of the work would start with the assumption that the board would have refused to follow on the recommendation from the review team but it still takes place in the context of an escalation that will have taken place before. Okay so it's a remote possibility.

We would focus on single member single designator because they are close to each other and everything. We will have some documentation from the lawyers in paper at hand. It's been shared on the list but if people need to get into some good legal material they can - well I'm not sure I encourage that but anyway it's going to be available and at hand and very clear.

So there's of course the need to test whether enforceability is achieved. And we need to keep in mind the goals of simplicity, efficiency and also the fact

that there's been a widely held request that court action is as remote possibility as possible in all of this. So that's the requirements we've heard. And the deliverable it's an escalation process, a story about what will take place. And of course potentially recommendations and pros and cons. Okay?

Third group, third group is the removal of individual board directors. Thank you, Alice. So the idea here is to tell the story, described the process of removal of a board member, NomComm or SO AC appointee with keeping in mind the requirements that were discussed yesterday one being that the SO and ACs who appoint directors wants basically their choice to be respected.

There are a number of steps that have been mentioned, informal consultations before going into a public discussion about removing a board director has been one of the feedback we've received from the public comment, the petition discussion decision phase you're all familiar with. There were questions whether a community decision could override an AC or SO on this type of discussions, and the limits on the process to avoid that the removal process turns into recalling the whole board or putting the board in a position where it cannot operate anymore.

So the goal here is to deliver a storyboard about what's taking place step-by-step and what are the mitigation measures we put for some of the risks that are discussed. Okay?

Number four, budget and operating plan vetoes it should be one year budget and operating plan veto to be very clear. What we are suggesting in this one, it's a slightly different approach. Assume that there is a power, as described in our current proposal, to enable the community to veto the one you're operating plan and budget.

What we want to discuss is a what are the risks that are associated with this and how they play out and how can we mitigate them, if we can. So the idea is then to be able to consider what are the actual consequences intended, unintended of this and see what can be done. And obviously that's also starting after a very strong engagement phase on the budget. And the goal is to - the requirements that have been discussed is obviously to ensure PTI is quickly (funded), very strong requirement; that an agreed initiatives, mission creep initiatives can be supervised or there's a check and balance on that; that ICANN's financial stability is insured both on a short-term and long-term.

And that we take into account scenarios where revenues may have declined, and that of course we're assuming that the community decision process happens first. I'm finishing, Asha, and then turning to you.

So what we're expecting from these groups - this group, but actually there's going to be two, is a list of use cases with the concerns about the current proposal, how that would play out and clarification of what is currently in the proposal or could be added to the proposal to mitigate those concerns, that's the idea. And then we will be able to revisit how we can adjust or not our proposal.

And, Asha, you wanted to ask a clarifying question I think? Not well. I want to thank you, Asha, this was an excellent question. If the quality of the board CCWG discussion, right?

((Crosstalk))

Thomas Rickert: We have a microphone here.

Cheryl Langdon-Orr: I will solve the problem, there you are.

((Crosstalk))

Mathieu Weill: Yeah.

Asha Hemrajani: Can you hear me?

Mathieu Weill: No we hear you.

Asha Hemrajani: Okay thank you, Cheryl. Thank you, Mathieu and okay is it is possible to add to the purpose is that I would like the group to look at the purpose or rather the objective of what do we want to look - what do we want to do here in terms of budget and operating plan veto. Is the objective to enhance accountability? Is the objective to block certain expenditures? I just wanted to take an eagle's eye view and start from the beginning, what do we want to achieve, if that's possible, thank you.

Mathieu Weill: So you're raising a good question which we tried to address yesterday and maybe we haven't fully addressed which is what are the overall goals. I think the breakout session layout it's not going to be appropriate to take that question straight on. However I think by going through this kind of exercise about corner cases and everything when we conclude we may have uncovered new objectives or have a clearer view of what the objectives actually are by looking at the process and what people feel comfortable or uncomfortable with.

So I think we will go - we will get greater clarity on the overall objectives and the eagle's view will be better after this exercise because that's definitely something that we need that discussion -- the discussions we've had yesterday

to show that probably we need to dive into details before going back to the eagle's view. Do you want to add something, Thomas.

Thomas Rickert: Maybe the groups could just think of offering a rationale for their suggestions because if they offer a rationale as a deliverable that will reveal the goal.

Mathieu Weill: Yeah, that would be an optional goal if we can get that that would be perfect.

Asha Hemrajani: May I have a follow-up? Thank you for that Thomas. I think you got my point. I just didn't want to jump right in to look at risks associated with veto. Even if we don't have a discussion on the overarching goal it's something that we should write into this purpose of the group so that we all know why we are here. And not assume that the first thing we're going to look at is look at risks associated with veto. First we have to look at what we want to veto for, that's a point. Thank you.

Thomas Rickert: I guess my suggestion would be, and I hope you will agree, that, you know, these are rough terms of reference for the groups. Everyone heard your concern. I think everyone in this group understands. So let's just make sure that those who are discussing make sure that we discuss in the spirit of what you said.

Mathieu Weill: So those are the terms of reference.

Thomas Rickert: No hands.

Mathieu Weill: No hands? So Alan.

Alan Greenberg: (Unintelligible).



Mathieu Weill: Well it's actually four so I finished the four.

((Crosstalk))

Cheryl Langdon-Orr: (Unintelligible). It's on.

Alan Greenberg: Is it – it is on. We have been using the term “model” – “member” and “designator” as two alternatives, loosely in this group. I think it's important as we proceed forward to recognize that designators is a legal term under California law related to appointing board members. We have several ACs that are not designators but we are probably planning to empower them and give them some of the other rights.

So as we're going forward we may want to be careful, and certainly in the report, but even in that discussion let's be a little bit more precise that the GAC is not the designator but that we may want to give them the ability to exercise certain of the powers. And just remember that as we go forward because I've talked to at least several people who say they are not designators and therefore they are not going to be empowered at all by this process. Just remember that.

Thomas Rickert: Thanks, Alan. We can't have a discussion on that now but let me just clarify that the suggestion or our wish or plead to this group was to look into the single designator model. So we chose deliberately the term “community designator model” because it would be the community forming one designator.

And the components of the community regardless of whether they are actually designating, whether they have legal personhood they can all join the game

and jointly do and exercise the powers as we spell them out in our second report.

Alan Greenberg: You understand and I understand and Cheryl is saying here here. I've talked to several people who didn't understand so I'm just saying let's be clear.

Thomas Rickert: Let's make sure that by the end of the week everyone understands.

Cheryl Langdon-Orr: Everyone will understand.

Mathieu Weill: Good, I think it's now time for Cheryl to explain to us how this will take place. A queue in the AC room. I'm still not in.

((Crosstalk))

Thomas Rickert: If it - I think we can't really have a discussion on the model here because we have a subteam to do that and also let me be clear that no decision on that has been made. We just said that we are going to look into this to see whether we can make it work. That was the intent. If you still think the you need to speak before we breakout keep your hands up. And if you think that this has been resolved and can be done in the breakout sessions we would appreciate if you could take your hands down. Sebastien.

Sebastien Bachollet: Sorry, I will not be in this group. I'm assigned another one. Just as they look also let the so called (not) designator organization do today within ICANN. They provide a liaison. And the liaison have all the duty of the board member except voting. And I am not sure that we are so far. Thank you.

Thomas Rickert: Thanks, Sebastien. James.

James Gannon: I'm going to yield to Malcolm because he was actually ahead of me in the queue and then you can come back to me.

Thomas Rickert: You were - and I think we should have a discussion on that, a substantive discussion now...

((Crosstalk))

Thomas Rickert: ... the more time we spend now we're going to have it lessen the breakout sessions. So, James, are you passing or are you speaking?

James Gannon: Okay, no I'll go. And so I'm concerned that we're setting the stage for certain discussions to go in certain directions which I don't believe is correct. I believe that in good faith the chairs are trying to move us towards a certain direction and I don't believe that that is the correct process for us to do this. Any change in our direction around models or enforcement should be driven by our public comments, which we have done analysis on, and the people in the room.

I disagree with setting the stage that we should be looking at single designator and we should be trying to coalesce around a single designator. If the discussions move that way that's fantastic that we have a rough consensus around a model and any deviations from that should be based on the public comments and based on discussions. I understand where you're coming from as chairs but I feel that we are getting quite close to being pushed in a certain direction. And I'm personally uncomfortable with that.

Thomas Rickert: Thanks, James. Malcolm.

Malcolm Hutter: Thank you. I'm not going to comment further on that point. I've made my views known at yesterday's session. In the spirit of following what you suggested on the page on enforcement model if you could turn to that page please, a question for clarification or an issue for clarification.

On enforcement model you list the list under requirements that ensure that – ensures – bound by - ensure board is bound by IRP default judgments. And under deliverables, fully described escalation process starting with board proposal to follow community or IRP decision.

Now default judgments is one possible solution to the problem of the board – of ICANN refusing to enter into the IRP. It's not the only possible solution. Other solutions have been suggested include a power to require ICANN to enter into the IRP. So the scope of what's being looked at in this group should allow for the examination of those multiple possibilities.

Thomas Rickert: Thanks for that clarification. Understood. Kavouss and then Jordan and the queue is closed then.

Kavouss Arasteh: Yes, good morning. Mine is very simple, is the terminology. At the beginning we have single versus multiple, single member multiple. Then in Paris we change it to sole and now we come back to single. So in order not to confuse the people perhaps it is better we continue to use sole membership or sole model and sole designator but not having single, sole, sole single and singular and sole and sole and single. Thank you.

Cheryl Langdon-Orr: See, I wasn't confused before Kavouss, but now I am.

Thomas Rickert: Kavouss, maybe we should form a subteam to find an appropriate name and acronym for it.

((Crosstalk))

Thomas Rickert: But, Jordan.

Jordan Carter: I don't know if I have a sole single in me or whether I have a single sole but I know I'm (unintelligible) Thomas. So I just wanted to thank Alan for his point about raising, if we start using the term "designators" in multiple places we're going to get people even more confused than we already have and we've done a pretty good job about that. So we need to come up with a label for whatever we come up with.

I wanted to – a key feature of accountability is responding to people's concerns and queries. So the reason I took a call is to respond to James's query and to, once again, hopefully make a very blunt direct point in my role as Work Party 1 rapporteur that there is no decision on single designator or single member. There isn't one. What we're going to do in this group is hopefully clarify two significant areas of concern about the impact of the SD model on those powers.

If we get to an answer where those powers are going to work in either model then that will be a good thing to know. If they won't work in one model that'll be a good thing to know. That will inform our decision making. We are not trying to monster to a decision on this.

Thomas Rickert: Thanks for the clarification, Jordan. And I think now it's time for Cheryl to explain exactly how we're going to deal with the breakout sessions. She has done a splendid job on that in LA and I'm sure that you will do the same today.

Cheryl Langdon-Orr: It's not just me. Dave, you going to come down so we do a tag team?

Great. Now this morning – now we finally got to actually doing it – we're breaking up into four physical groups and one remote participant group. The remote participant group will be dealing with the matter of budget and op plan. And it will be in this room gathered around Grace.

We've got people who've offered to become subject matter experts and we've got people who have already decided that they will be allocated into that to assist such as James.

The (unintelligible) matters at hand. So there will be a mirroring between the budget and op plan as a remote breakout group and a physical breakout group. Did you want to have a quick word before we tell them where to go and what to do?

((Crosstalk))

Cheryl Langdon-Orr: No? I'm doing great. Tell me if I'm not, you know.

((Crosstalk))

Cheryl Langdon-Orr: Okay that's fine. Today, which I'm really excited about, is that we're going to be working with the guidance and expertise of real professionals. And we have the (Xplain) team will be located as you go out of this room. They have set up in the foyer areas.

We will do our best to try and make sure we have a fairly well balanced group of people so it maybe that open of you is tapped on the shoulder and asked perhaps could you move across to another group because it might be lacking, for example, Bruce in board members. And I don't know whether the board

members may have discussed, you know, which of them might want to go what topics but we certainly like the board's (unintelligible)...

((Crosstalk))

Bruce Tonkin: Yeah, we plan to spread it as well.

Cheryl Langdon-Orr: Great.

Bruce Tonkin: (Unintelligible) board members in one place...

((Crosstalk))

Cheryl Langdon-Orr: Well I think my job was to nip the heels I think is how we described it, isn't it? Yes, sheep-dogging, I'm nipping at their heels. So as you go out of the room if you turn immediately left and head towards the lift on that side, actually it's kind of interesting because you've got the lifts, you've got the fire escape and you've got the (loo) which is kind of appropriate for removal of individual board members, there's a lot of opportunities there. And that topic will be running.

If you head straight ahead towards – Avri, how could I resist? It's me. If you head straight ahead you'll be dealing with the enforcement model. If you take a hard right and just along the wall you'll find the physical budget and operating plan (unintelligible). And if you wander a little further to the right it's the community decision model.

We'd like the groups to be balanced. We'd like the groups to be active. We'd like the groups to be standing up and working well. And most excitingly, we're going to be giving you an opportunity to move on after around 45

minutes. So at the 45 minute mark you'll have the opportunity to move to another topic. That will mean there will be a synopsis and review of the productivity of that breakout group for those who have either stayed and for those who are newly coming to that group.

We will then gather back here for the presentation and talk throughs of each of the topics and community as a whole decision – discussion, not decision. Is there any questions on what we've outlined in terms of logistics? Grab you coffees as you need them through the morning (unintelligible) in their coffee and now I'm going to find out what I've done wrong.

Man: No, no that was perfect. Thank you. I just want to add one thing. In working in the breakout groups I just want everyone to have the same mental model. We're creating recommendations to bring back to the group. So we want to have concrete recommendations, concrete ideas coming back into the room during a readout. So that's the mental model to bring back in. We don't know if it's perfect, we don't know if it's right so don't – we won't let ourselves get hung up on is this exactly right. Let's get something down, concrete, bring it back for conversation.

Cheryl Langdon-Orr: And have fun. Enjoy. Off you go.

((Crosstalk))

Grace Abuhamad: Hi everyone who's in the remote room. This is Grace Abuhamad. We are just breaking quickly and gathering the different groups and different categories or different breakout groups. What we're going to be doing I think is I looked at the Adobe Connect room and we have a small number of remote participants who are not physically present in the room. And so it may make sense to walk around and have the groups participate in the different conversations. But I



need to see what we end up with in terms of numbers before we can make that call. So let's gather and we'll come back online as soon as we have an idea of the numbers.

((Crosstalk))

James Gannon: Okay, guys, it's James. So for our remote participants we only have five that we've identified in the room that are actually physically present in Dublin.

((Crosstalk))

James Gannon: So we're going to – if you can give us just two or three minutes we're going to see (unintelligible) being involved in some of the actual breakout groups, the physical ones here by (unintelligible) Grace will actually go around we're going to (unintelligible) have our video turned on so that we can try and bring you to the meeting and we'll make sure that if you guys raise your hands in the chat here we'll make sure you're able to give an intervention into the physical group.

So does anybody have feedback (unintelligible) good plan for the remote participants? Are you guys happy with that? Okay I'm going to take the silence as yes. If you could give us about two or three minutes we'll come back to you.

Grace Abuhamad: Hi, everyone. This is Grace, Sebastien and James. We're all in the room to help facilitate the remote participation. What we'd like to know is which two groups you would like to join today? Based on your feedback we'll basically move the webcam around so you can participate remotely and see what's going on in the different groups. But we can only do two groups since there's

only one switch. So let us know what groups you're interested in and then we'll proceed to walk you around the room.

Bruce Tonkin: ...what's happened in this process that the community has launched a IRP and the outcome of that IRP the board has chosen not to (unintelligible) for whatever reason and then the community then (unintelligible) has to decide will it take ICANN (unintelligible). And then there's a decision process where the community gets together and says, you know, the board has refused to back our process and (unintelligible) support. So I think there's probably two paths with in it.

You could say take to court and there's an alternative path which is presumably initiate another power which is removal of the board or removal of board directors which is an independent part of that one. So you have one part which is to enforce the binding – basically go to a court, get a court order that ICANN must agree to the binding arbitration so the community would like the decision to...

((Crosstalk))

Bruce Tonkin: ...two that they're independent (unintelligible). The enforcement mechanism (unintelligible) go to court, get a court (unintelligible) which is an outside of ICANN enforcement (unintelligible). An internal enforcement method is that the community can take action directly against the board through its other powers and either a designator or member actually has the authority to remove board members. And so again if you decided to remove the board so I guess to make a decision, do you want to take this to court? (Unintelligible) ICANN is actually agreeing I believe...

Man: Yeah, hey, hey, one two?

Bruce Tonkin: ...(unintelligible) if it's a community decision. So ICANN would actually (unintelligible).

Man: Yeah.

Bruce Tonkin: And the other scenario is to take – the other scenario is remove or decide to remove I guess – yeah probably remove the board. So the community may decide that that's such a serious thing that whatever that power (unintelligible) board decided not to implement (unintelligible) board as a whole.

Woman: (Unintelligible).

Man: (Unintelligible).

Bruce Tonkin: ...community decides to remove the board (unintelligible) don't actually follow that binding arbitration.

((Crosstalk))

Man: I want to suggest that we ask (unintelligible) let's get some stuff on the table before we try to develop it, right, if that's okay? So I was going to say that to Becky who is the Work Party 2 rapporteur who's been leading the efforts to draft the IRP. She may have thought about some of this (unintelligible) stuff so Becky, do you want to (unintelligible) in there?

Becky Burr: (Unintelligible) well no, I mean, I think that the answer is that if as I understand it (unintelligible) the binding arbitration could be in the bylaws and it would be a (unintelligible) still agree in each (unintelligible) agree in each case to enter into binding arbitration and is there a decision point for

enforcement (unintelligible) agree to enter into binding arbitration.  
(Unintelligible).

Man: (Unintelligible) between the member and the designator but there would be a decision to proceed as a designator member essentially in the same manner. Importantly both would be – both designator and member here are somewhat just legal – bare legal entities. And so the bylaws would have to specify or provide the direction on what to do. So I mean, we'll have to draft it in.

Becky Burr: (Unintelligible) in the case of a designator would the board have to agree in each instance that it was entering into binding arbitration? Or is the bylaws provision sufficient to create their agreement?

Man: The same. And (unintelligible).

Woman: ...said earlier but I think it's (unintelligible).

Man: (Unintelligible).

((Crosstalk))

Bruce Tonkin: We have a community independent review panel process, okay? Which the board has agreed in the bylaws which will be binding. And so then the entity, which in this case is the community, actually has standing assuming that the community is an unincorporated (unintelligible).

((Crosstalk))

Becky Burr: (Unintelligible) designator or a member not (unintelligible)...

((Crosstalk))

Becky Burr: Yes.

((Crosstalk))

Man: Okay, here's the scenario step by step, yeah. The community or an individual (unintelligible) seeks to invoke the IRP. They say I have a problem, I want an IRP ruling on this. If the board says we think it's important that this happen, it's our duty to make this happen, we choose not to allow the IRP to second guess us, we're not going to turn up, yeah. What happens then?

Man: ...one would be to proceed into – they have the IRP convened if the panel is (unintelligible) and then a default judgment – a default award would be issued in there. But a default award is just a piece of paper from the IRP saying the other side didn't show up. And it would be a question of what level of (unintelligible) to do that.

((Crosstalk))

Woman: (Unintelligible).

Man: Either. Either.

Woman: (Unintelligible).

((Crosstalk))

Bruce Tonkin: Sorry, Sebastien. The legal entity that enters into the binding arbitration, so if there is a legal entity it can be a single designator or member or it could be

any legal entity actually that enters into that binding arbitration. That legal entity, whatever it is, then can enforce the decision of that binding arbitration in court. And that's why I'm saying you take it to court. So that (unintelligible) entity doesn't have to be either, they can be either one of those. And as you say – but it could be (unintelligible).

((Crosstalk))

Bruce Tonkin: Yeah, exactly, yeah. Yeah.

((Crosstalk))

Becky Burr: (Unintelligible). If we're just talking about single designator or single member then I agree with everything that's been said. But if we're talking about not single member, not single designator then I clearly would have to have (unintelligible) agree in a specific circumstance to enter into binding arbitration because the bylaws provisions will not enforce it (unintelligible). That's the legal question. But I think that we're out of – we may be out of scope.

((Crosstalk))

Jordan Carter: ...second of all the reason that this was scoped up to be an understanding of a single designator and single member is that we've got quite a lot of understanding about what happens in neither case. Neither case is the trust model version of the (unintelligible)...

Man: (Unintelligible). There are three cases but (unintelligible). It was not a trust model. The binding arbitration is binding on the parties that enter binding

arbitration. And either party can enforce that binding arbitration in the court.  
That's what binding arbitration is.

((Crosstalk))

Jordan Carter: That's the same question that Becky was just asking about that. So I think we need – Rosemary has sort of got her hand up so we'll ask her to...

Rosemary Fei: ...(unintelligible) in front of them and one of them is you got to be a person. And we can't get around that. So unless (unintelligible) even though we've existed for years and years, we've done our thing for years and years (unintelligible) we're now going to assume personhood in order to enforce – we don't have a person. And so one of the reasons that I think you want to be (unintelligible) focusing – I don't want to be telling you what to do but it seems to me there's a good reason for having said let's look at these two models and not talk about all these other scenarios...

((Crosstalk))

Rosemary Fei: ...is because in these we know who the person is. The person has been established (unintelligible) process...

((Crosstalk))

Rosemary Fei: ...and the person is ready – this is part of their function it was what is designed (unintelligible) that person for. But if you want to talk about the other (unintelligible) are not legal. So I don't quite know how they go to court.

((Crosstalk))

Bruce Tonkin: (Unintelligible) fantastic. So just to clarify what you're saying is to enter into binding arbitration you have to be able to enforce that binding arbitration so you need to be a legal person to be able to basically enforce that binding arbitration. But my point is that that legal person does not have to actually be designated as a designated or – doesn't actually have to be described as a designator or member in the bylaws.

You could actually form the single person, right, so you could actually say the SOs and ACs collectively in advance are going to form this legal person, that they can then use for community IRP processes. And then that legal person can then enforce that arbitration in court. And that's why I'm saying it's not – it's not dependent on whether it's a designator or member. But you're saying it's dependent on having legal personhood.

And we could establish the legal personhood in advance so it could be a single entity, if you like, maybe a third offer here. But you can have a single entity...

((Crosstalk))

Bruce Tonkin: Sorry?

Man: (Unintelligible).

Bruce Tonkin: Not sure. But...

((Crosstalk))

Bruce Tonkin: No, no quite. So what the MEM model was is basically said that you could have a range of different legal persons which could be individual SOs if they wish to form an unincorporated association or you could collectively form –



we called it an issues group. You could call it the single person just removing these legal terms for a second. I can form a thing called the single person and that single person has SOs and ACs that comprise that single person. And I'm going to call the single person the community person, okay?

So this community person we establish in advance. That community person has legal personhood and it can enter into binding arbitration with the board. And that legal person can then enforce that in court. And the board has actually agreed that it would actually pay the legal fees to allow that legal person to enforce it in court. So try to separate...

Man: Yeah.

Bruce Tonkin: ...these things give you different powers...

Man: Yeah.

Bruce Tonkin: ...which aren't really related to arbitration. But...

((Crosstalk))

Jordan Carter: ...the reason that we're having a – there are all sorts of models that can work for any one of these powers. The thing – the reason we're dealing with these ones is because people have less certainty about how they would operate. We're not saying – it's not that the rest of the powers are irrelevant, we just have more knowledge about how they apply in these two different models because there's less ambiguity about it. That's why we've chosen these ones to focus on.

The other point I'd like to make, Bruce, is that you keep raising this suggestion which is out of scope for this discussion. So we're not going to be able to...

Bruce Tonkin: No, I'm just clarifying the question for the answers that are being given...

Jordan Carter: Okay.

Bruce Tonkin: ...so we're clear. But I think what we've...

((Crosstalk))

Jordan Carter: Well you've spend about 1/3 of your time speaking on a model that isn't on the table. So...

((Crosstalk))

Man: ...to focus on this. And I was actually going to suggest if there's energy to go map out this kind of third option, the personhood through contract, for lack of a better name – you're shaking your head at me, that's not the right term, that's fair. If anybody wants to do that feel free to do that. But I think we want to focus this conversation on these two models in the process so when we go back into the room we don't stand there and say, well we didn't finish because we explored some other ideas.

((Crosstalk))

Bruce Tonkin: I think the point though is that from what I was hearing from the lawyers, in terms of being able to enforce this in court there is no difference between those two models and that's why...

((Crosstalk))

Man: The relevant difference here between – is that you'd have a broader scope potentially of decision on the member because the member would not have the same fiduciary limitation. On the designator model the board has the main fiduciary authority and so you could not have a IRP that was within that fiduciary duty.

The member – those fiduciary powers – some of those are reserved up to the member, whatever we reserve up to the member you could take into court. So there'd be a smaller core fiduciary duty that was accepted on the process. That's the difference between designator and member.

((Crosstalk))

Man: What's in scope, the member you get a broader decision. Yeah, a broader scope of arbitration.

((Crosstalk))

Woman: I have a clarification about what you just said because as I understand it we're talking about something that's already been through IRP right? And so...

((Crosstalk))

Woman:: ...if it's between a member or a designator some of the particular issues of what they're taking to IRP and what they're saying IRP could be different. But it doesn't necessarily change what the enforcement actions would be. Because I think that there is a possibility that we could build into the IRP the ability to

already look at what – to weigh the fiduciary duty within the IRP and then ICANN could agree to just say, okay so whatever the outcome is of the IRP we're going to stand by that in court as opposed to saying ICANN will participate in the IRP and then go to court and say oh no but it wasn't within our fiduciary duty, right?

And so there – I think we need to be really clear about what the limitations are.

((Crosstalk))

Rosemary Fei: Thank you. So I think what happens is – sorry...

((Crosstalk))

Rosemary Fei: Oh got it. Thank you. Sorry. Different kind of phone than I've ever worked with. When you take it to the court we've got an assumption that the board is refusing to implement something that the community has approved. And one of the reasons the board could assert – and I don't think you can stop the board from asserting it, is that we oppose this decision of the community because we don't think it's in the best interest of ICANN.

So let me finish because – so then you're in court and you've got the community on one side, whether it's single designator or single member, and you've got the board saying, not good for ICANN and these folks saying, no it is the right thing for ICANN. That's the posture of the case. So what happens is the court looks at that and if you have a single designator then the board's fiduciary duty cannot be arbitrated. Essentially can't be enforced because it would take away from the board its fiduciary duty.

And courts have said it repeatedly that if a case – if the claim has the effect of a contract, has the effect of anything, has the effect of taking away from the board its fiduciary duty it won't enforce it. In the single member model, we've actually said there are certain decisions, very limited decisions, where the board doesn't have, under the bylaws doesn't have the fiduciary duty because they don't have the decision. That decision is actually given over to the member.

We can't give the same range of decisions to a designator. And so let's say it involves the budget then the court will not look at an argument from the board that its fiduciary duties would be infringed by this. Whereas if you're in the single designator the court will look at that argument and it's a winning argument.

Does that help?

((Crosstalk))

Man: (Unintelligible).

((Crosstalk))

Man: Is the escalation path the same? Let's get the escalation path (unintelligible). The escalation – so the escalation path is the same and you could either go into the – so the board doesn't want to do the IRP. You could either go to the IRP and try to get a result out of that and then go to court or you could go straight to court and go into court and get an order from the court ordering the board to go through an arbitration process.

Man: Binding arbitration then is...

Rosemary Fei: ...another option.

Man: Another name or another option or...

Man: You would send them – you would send – you could either go to court – go to court or arbitrate. Those are the two pathways. And they're the same for both.

((Crosstalk))

Man: And a key distinction then is the fiduciary...

((Crosstalk))

Man: The scope, yes.

((Crosstalk))

Jordan Carter: Trying to turn this a little bit into English because I think most of us aren't lawyers – not English it's just not English-English. So don't take the budget example just take the following the IRP example because that's the example that we're working on here. Is there – what you're saying is just on that point the viable IRP is the difference – to put it another way – this can have a wider scope of binding IRPs than this.

Man: Yes, the single member would have a wider scope.

Jordan Carter: ...there's a member there can be a wider scope of binding IRP than if there's a designator because the fiduciary duties cannot be ameliorated in a designator model. Is that – or cannot be suspended.

Man: (Unintelligible) fiduciary discretion that is broader in the designator model than in a member model. The member is more empowered than a designator.

Becky Burr: So my question is when we're talking about the scope of the arbitration isn't it possible to require that there's a certain scope of the arbitration so that you're addressing the fiduciary duty issues within the arbitration and then walking into court with that.

((Crosstalk))

Woman: (Unintelligible).

Man: What we've found is there are decisions that the board cannot make a deal, make a contract, make a bylaw provision that they commit to a third party that the third party would decide its fiduciary duty. The board has to retain its fiduciary core. Then the member model is different because the member has that reserved power.

Becky Burr: But only over certain things.

Woman: Right.

Man: Only over the things that are reserved to the member, yes.

Woman: Can you give an example of what would be something like that that's not...

((Crosstalk))

Man: Strategic plan maybe or maybe separation of PTI. That's where...

((Crosstalk))

Man: ...the rubber hits the road on this.

((Crosstalk))

Bruce Tonkin: What would be helpful is just to define the differences in scope. So you're using the term fiduciary duty which in itself people aren't completely understanding that, right, I'm talking about broader sense. So can you give some examples of things that you think – so what the examples are in the powers is what budget...

((Crosstalk))

Jordan Carter: ...there was a process in the bylaws (unintelligible) and then the board didn't follow that because (unintelligible) process. What I think I'm hearing is that in the designator model the IRP couldn't bindingly adjudicate on that question because that question is subject to the board's fiduciary duties. But if there was a member model and if the right to veto was a power that the member had then (unintelligible) choose the IRP route to enforce that (unintelligible) direct application of that power.

Man: Right, yeah, I'm tracking what you're saying.

Woman: (Unintelligible).

((Crosstalk))



Man: You could either – the judge could – the IRP panelists could issue a ruling on that. The question would it be binding. The word “binding” was the key word you...

((Crosstalk))

Jordan Carter: ...it would be binding because the IRP can be binding in that situation.

((Crosstalk))

Man: (Unintelligible).

Woman: ...okay to my understanding is it possible because (unintelligible) comes from the law, right, (unintelligible) is it possible to change – to amend the bylaws in such a way to make the mission (unintelligible) of the designators (unintelligible) in the bylaws (unintelligible) would that solve the fiduciary duty issue?

Man: The court would have an interest? Who would have an interest?

Woman: No. The board has (unintelligible) all fiduciary duties. I think she's asking whether it's possible to alter fiduciary duties. And we did do a memo on this (unintelligible) talk about it. And the answer is we can try and close the gap (unintelligible) about articles amendments to try and convert the concept of the (unintelligible) of a bottom multistakeholder process to determining the interest of this corporation.

But at the end of the day the law still leaves to each directors relatively subjective – the language of the law is what they in good faith believe to be in that language which believe to be is in the statute in the best interest of the

corporation. And there is room for difference between different directors or between the directors and the community as to what's...

((Crosstalk))

Woman: ...we can't really completely remove it.

Man: Go to Malcolm next and then I'm going to...

((Crosstalk))

Malcolm Hutty: Okay thank you. Talking stick, great. I mean, let's get away from things like the budget and so forth. We're not talking about that here, we're talking about the IRP. The IRP is designed to be a mechanism for holding the corporation to honor the bylaws commitments that it's made. So to be able to challenge a decision or action of the corporation on the grounds that it contravenes those points like this is not consistent with these core values that we've written it. It's not consistent with the process that you set out.

The purpose of going to the IRP is to be able to go and say I think this is not consistent with this. Give me an independent ruling on this that ICANN then has to follow. Yeah. Now if – so my question is what if the board say, well, so what? We still think it's in the best interest of the corporation. We use – bandy this phrase, fiduciary duty, far too much. And non-lawyers find it very confusing. It's just the duty of the directors to act in the best interest of the corporation as they see it, right?

Yeah. If they believe that this course of action that they've embarked on they've had an IRP ruling against them but they still believe that it's in the

best interest of the corporation to do that thing anyway, yeah, what can we do about that? How can that be made binding in the situation?

((Crosstalk))

Malcolm Hutto: That's what the IRP is for.

Man: Well also you've got (unintelligible) on that. And let's say (unintelligible) example of what you're talking about.

Malcolm Hutto: Well, I mean, an existing example, policy but be made according to a given process. The process hasn't been followed, yeah, but the board say – but we still think it's important not to reverse this decision. It's in the best interest of the corporation that this policy is upheld so we're going to honor it anyway despite the fact that we got an IRP ruling that this policy is invalid.

Man: So then do we go to court (unintelligible) the IRP decision...

Malcolm Hutto: Okay.

((Crosstalk))

Malcolm Hutto: And who has the right to do that?

Man: Either the designator or the member would have a (unintelligible)...

Malcolm Hutto: Okay notwithstanding the fact that the board still maintain it's in the best interests of the corporation to disregard the IRP ruling.

Man: That's – a member would have (unintelligible) area of the board discretion. The member – the single member model would have broader latitude (unintelligible).

Malcolm Hutty: They would have broader latitude.

Man: Yes, but the procedure of going into court to enforce the IRP decision (unintelligible).

Malcolm Hutty: Rosemary, you want to come in?

Rosemary Fei: It's important to be clear that it's only broader latitude where you've reserved a power. Because except for the reserved powers, which are very limited, it's all the same. Because only where the member has reserved it do you get to say oh we took that decision away from the board so the board doesn't have fiduciary duty on that. Everything else the board still does.

Jordan Carter: Can I ask a follow up question which is maybe a different point – a different example to Malcolm's. So there's a set of core values – and this is not a coded reference to NETmundial. So like seriously it isn't. So say there's a scope requirement in the bylaws that says ICANN is about coordinating the DNS. So if there was a decision to go and support a conference about pink elephants in Burma and ICANN wanted to spend \$2 million on it, and the community raised an IRP about that. The board was convinced it was in the interest because the elephant's had IPv6 or whatever – whatever the point.

It's well outside the scope. The board wishes to persist with it. Is there any difference in the stability of an IRP finding that says that was not in scope and the restitution is you cancel your support of that conference. Is there any

difference in the enforceability of that IRP decision between these two models? Who'll pick this one up?

(Ed): And that scenario if the Board (unintelligible). They pay (unintelligible) spend a lot of money. And then their report with regard to powers (unintelligible) a lot of money. And so the member - the single member model you have the understanding of (unintelligible) report. In the designator model you the community the counter argument being is not about (unintelligible). It's about scope and that's the difference.

Jordan Carter: No. But it's about scope of action. So one of the - one of the whole presumptions of this (binding) IRP process has been that you can use it to challenge decisions by ICANN to go outside the scope. So that's an important point here.

So the question again is whether it's more enforceable one way or the other. And if your answer that I just head is that if it's a matter that's within the fiduciary responsibility of the Board, it can make a decision even if it is outside the scope of the bylaws. And that doesn't feel right.

Man: Hold on a second. So (Sam)'s had her hand up for a while. I think the gentleman behind her has as well.

(Grace): Hi everyone. This is (Grace).

(Sam): So how I understood your question (Jordan) and I think the thing that I didn't hear in your answer (Ed) was so the Board has a duty over the budget...

Man: Yes.

(Sam): ...but it also has a duty to act within its mission.

Man: Yes.

Man: Yes.

(Sam): And so the reason that you challenge the action isn't that the Board's ignored the budget power but that the Board acted outside of its mission?

Man: Yes.

Man: Yes.

(Sam): And so that would be the real question. It's the \$2 million was the red herring, right.

Man: Yes. Right.

(Sam): But it's - I mean it...

Man: (Unintelligible) clarify that would work with either (side). But it would work I guess (unintelligible) sort of our mission. So here's the example we've decided...

((Crosstalk))

Man: So it's nothing to do with (managing addressable numbers).

((Crosstalk))

Jordan Carter: And so doing the conference on elephants has absolutely nothing to do with ICANN's mission. The panel looks at our mission and bylaws and says yes, running a conference on elephants.

Man: Yes.

Jordan Carter: Irrespective spin. I would have thought that either model would be able to enforce that.

Woman: Sometimes comes up because it's...

Jordan Carter: Yes.

Woman: ...if it's a veto of the budget...

((Crosstalk))

Woman: Well no. I understand. But I'm telling you it could come up in two ways.

Man: Yes.

Woman: If it's a question about whether you're within a mission or not, that's...

Man: Yes.

Woman: ...not...

Jordan Carter: That's the question I'm asking (unintelligible).

Woman: Right. But then - but you asked if you would ask the question...

Jordan Carter: But we're not just worried about spending \$1 million on pink elephants. We're worried about seeing Fadi stood on the back of a pink elephant talking about elephants. Yes. Pink elephants have got nothing to do with ICANN. We want to stop him doing that. Yes. That's the question.

((Crosstalk))

(Sam): So another point I wanted to make about the binding arbitration issue is what's you've built into the IMRs there's a binding arbitration that actually (tightens) those (unintelligible) responsibility in (unintelligible) binding arbitration, right. So the Board (like my brain) is the bylaws. The Board (unintelligible) so I'm told.

And so it's not just (unintelligible) and you have to figure out how (unintelligible) the contract (and everything like it). (Unintelligible) the bylaws that this is an important process for binding arbitration. That becomes part of the Board (unintelligible). (So informing) our teams to not abide by binding arbitration (unintelligible) issue of according to you bylaws and (unintelligible).

((Crosstalk))

Man: Yes.

((Crosstalk))

Man: And then (David) after that and I'm going to grab the mic after that because I just want to make a point and then we can just...



((Crosstalk))

Jordan Carter: So basically this is one of the identifiable community powers whether it's about the mission or the project. The membership model will not allow - this new member model will not allow the Board to go to the Board and (unintelligible) of an excuse over what the community wants.

((Crosstalk))

Woman: ...to reserve power. And I think...

((Crosstalk))

Man: ...you're talking about.

((Crosstalk))

Woman: No, no.

((Crosstalk))

Woman: (Unintelligible).

Jordan Carter: I just wanted to clarify the terms to (get us past it).

((Crosstalk))

Woman: Something in the bylaws that specifically says (unintelligible) where the member gets to make the final call. Now what I'm hearing is that the

(unintelligible) or anything. (Unintelligible) what you're saying is (unintelligible) does not have reserved powers.

It has never been (stopped) today. But you've never had powers (unintelligible) whether (unintelligible) or not. If you (unintelligible) reserved powers (for) an organization where, you know, there's a...

((Crosstalk))

Man: No. What I said was (unintelligible). Sorry. I think - no. Actually I was going to give (David) next.

(David): Thank you. I thought - thank you. That's a - I think that's an important point. I just wanted to get in the queue and (Constantinos) made this point. But what we're dealing with is the IRP decision in done and what - how can the Board defend itself.

And so I appreciate your point (Sam) but what we're trying to hard wire is how do we defend the community from hard knuckle litigation tactics in a court past the IRP.

And so with the designator model the fiduciary duty defense of the Board trumps in the member model if it's a reserved power that trumps.

((Crosstalk))

(Sam): ...went outside that scope you could argue that. All right. I mean you could - if the Board uses fiduciary responsibility for anything - any justification for anything and you go to court, you could prove this isn't actually fiduciary responsibility based on all these other examples of case law in the past.

Could you not try to at least argue that decision they made isn't fiduciary responsibility if it's say an IRP on scope of the organization? I mean could you not attack that in the legal proceedings?

Man: When you go - when you go to court to enforce a - when you go to court to enforce an arbitration decision, the review by a court is very (lengthy) and it should not reopen the whole thing because look where (it's) in a properly constituted arbitration whether there's basic fairness. And then it's - so (unintelligible) the arbitrator issues a judgment to enforce it.

So the court does not reopen everything. When you are trying to force arbitration - the other panel is jumping in, going to court to force arbitration, then the court will look at more broadly is this the proper subject for arbitration.

And it would - this kind of issue might come up because no doubt in this - and it's (unintelligible) case, right?

Man: Yes.

Man: Yes.

Man: So the Board would probably be litigating because they felt that this was an important thing. And the community would be litigating because they felt it was important (maybe). This is a very - hopefully would never come up. But this is a possibility.

Man: Yes.

((Crosstalk))

Man: (Athena) has her hand up and then to (Jordan).

(Athena): So is there any way that designator model you could have reserved powers that you can use during the IRP?

Man: No. That (unintelligible).

(Athena): In the bylaws describing the designator model and the powers it has as a community.

Man: The member - you reserve powers of the member but you could not reserve powers for designators as a matter of corporate (unintelligible). But as a matter of corporate law that the member can reserve powers in a way that a designator cannot.

Woman: So then if it's - I'm back to the fiduciary thing, sorry.

Man: Yes.

Woman: But if there's an arbitration decision, they've gone to binding arbitration. Is that - and you go to court to enforce the arbitration. Then that - the Board can't really argue that they can't - I mean once it's there, it's there. It's done. Right?

I mean they can't come back and say well, actually this is outside of the scope. I mean we can't do this because of our fiduciaries. If they've already - binding arbitration decision and all the court does is enforce it, then they're not going to make a determination that the Board is just...

Man: Then the Board's argument would no doubt be in that scenario; that the arbitration was never proper because it was beyond the scope of the arbitrator to get that, so.

Woman: And what's the likelihood of that going? I mean then you would actually open up a legal proceeding, you know.

Man: Yes. I mean that's - you're - this is a very...

((Crosstalk))

Man: ...let the Board argue. The Board's argument would have to be there's something wrong about the IRP process either, you know, that it was not fair or there's - that it's outside the scope of our ability - something like...

((Crosstalk))

Man: That's what I - can I come in. Sorry (Athena), do you mind? But that's the key one. Yes. That's what I would expect. You go to an IRP. You challenge ordinary behavior, not on reserved power; ordinary behavior of the company about ordinary activities as being inconsistent with the bylaws. You get a bylaws decision in your favor.

Woman: Yes.

Man: Yes. The Board says but we still think acting this way is in the best interest of the company and it's our responsibility to do that. And so they insist on their previous thing. You then go to court. And you say we've had arbitration...

Woman: Yes.

Man: ...and I won so you can enforce this judgment. The Board's argument in reply to that surely is but this arbitration is not a real arbitration. It's just a - advice to us.

Man: Yes.

Man: Yes. It's not binding on us. Yes. We cannot export the decision as to what is in the best interest of the company to this IRP panel. We must retain the final responsibility to decide what is in the best interest of the company. And we've heard the IRP's advice to us but we still think that persisting with this course of action is the best thing to do. That's their reply.

((Crosstalk))

Man: So which wins?

Man: It's depending on what we're talking about. The member...

Man: No. Wait. We're not talking about - reserved powers. We're not talking about reserved powers. We're talking about an ordinary complaint under the IRP. Yes.

Man: Yes.

Man: A complaint under the IRP that the Board has - that the company has acted in a way inconsistent with the bylaws.

Man: Yes.

Man: Nothing to do with the reserved powers of members or designators or anything like that. Nothing to do with the budget. Nothing to do with appointing directors or anything.

Man: (Oh I see). (It's) IRP's...

Man: An only IRP decision.

Man: ...and that (is deemed to be important).

Man: Okay. And that takes...

((Crosstalk))

Man: ...that takes precedence over the Board's arguments that...

Man: Yes. (Unintelligible).

Man: That takes precedence over the Board's arguments that doing so would be to export the fundamental responsibility to act in the best interest of the corporation to the IRP panel.

Man: That's right. I mean they have their - they have their business judgment but it's - if there's a - like for instance whether you pay a casino's (pay rates), you know, whether it's \$1 or \$50 million, right. They have (precedence) on those issues. But if the (binding) is part of the (unintelligible) IRP and it's part of that, they go before the judge. The judge would affirm that the (decision of the panel).

Man: (Unintelligible).

Woman: Yes.

Man: Direct follow up. Direct follow up. Which is to say that - which is to say that it's - there's no difference between a member or a designator in that surely because the member's powers only trump where they're specified or they're...

Man: Yes.

Man: ...statutory. So without it being a specified reserved or statutory power, the fiduciary duty is the same. So the consequences would be the same either way. The member doesn't help you stay with that one. And for God's sake, we've got to get (Athena)...

((Crosstalk))

Woman: Do you have an example in which a court would overturn the binding arbitration decision in favor of the Board based on fiduciary responsibility? I just want to turn the scenario on its head. There's a million scenarios in which they wouldn't. Is there a scenario in which they would?

Man: I think that the reserved powers...

((Crosstalk))

Woman: But let's get out of the model.

Woman: (It's the other way). If the arbitrator...



Man: So we can't hear you.

Woman: If we find the Board is (unintelligible) because of their (unintelligible), it'd be very hard for a court to...

((Crosstalk))

Woman: No. I mean the opposite. What if there is a binding arbitration decision. The court chooses to enforce it. The Board wants to argue it at the end of the day. Can they argue at that point?

Woman: After...

((Crosstalk))

Woman: No. They're going to court. They're going to court. They're going to court.

((Crosstalk))

Woman: And they have a binding arbitration.

Woman: I don't know about binding.

((Crosstalk))

Woman: Yes. They have a IRP (decision). (Unintelligible).

Woman: I would think at that point that if the conversation opens up to discuss what is the fiduciary responsibility. Now I mean each side would argue their side, right? And you would say no, (unintelligible) has nothing to do with the

mission of ICANN. Therefore it's out of the scope. And the Board would say but we love pink elephants and we believe it's important. And you would...

((Crosstalk))

Woman: Okay. The point is that there would be a point in the process where you would...

((Crosstalk))

Woman: It's important to the case to the (unintelligible).

Man: Yes.

(Athena): Okay. I have a...

Man: (Athena), please.

(Athena): Yes. Just to understand something. So the fiduciary duty where does that come from? How is this analyzed? Isn't it from the bylaws? Isn't it from the mission - from the core values or is it something else?

((Crosstalk))

Woman: It involves judgment. The difficulty is fiduciary duty involved that judgment. And then as explained the fiduciary duty memo two different people can come up with a decisions that have two different judgments. And both of those judgments can be consistent (unintelligible).

((Crosstalk))

(Athena): How would that be evaluated by the court? Isn't it from the bylaws and from the mission?

((Crosstalk))

Woman: They will give...

((Crosstalk))

Woman: ...and judgment without (an interpreter) of the bylaw.

Woman: Yes.

((Crosstalk))

(Athena): I mean (unintelligible) in the bylaws. Like the financial strength of the organization could be used in consideration.

Man: Okay. Stop. Stop for a second. Stop. Spread out a little bit please. Take half a step back. Okay.

((Crosstalk))

Man: Part of it is hard to hear.

Man: It is a little hard to hear (a little bit). We'll cave back in in a second. I want to just a quick point of order on where we are because somebody asked and it's a good question so we're just going to step back for a second.

So there was a side conversation that I want to run by everybody to not dig into this conversation because this is a scenario of this. So is everyone okay with that?

Man: Yes.

Man: Okay. No objections on that. Okay. Good. So we're setting that aside. We have identified the possible paths of recourse of escalation here. Are there any others that we need to identify? No.

Man: (First part of) arbitration.

Woman: Binding arbitration - you've already been through an arbitration so why invite an arbitration...

((Crosstalk))

Man: So the suggestion is binding arbitration has already happened potentially to the IRP process.

((Crosstalk))

Man: Okay. So court is the only escalation path after an IRP.

Man: Yes.

Man: Okay.

Man: If you have...

Man: After an IRP decision.

Man: Right.

Man: Hold on once second. I just want to get through the readout of this and then we'll come back. So then I had circled around and asked (Rosemary) a few minutes ago are there other pros and cons we're not discussing. We're focusing quite a bit on the scope question and the fiduciary and that sort of thing.

But the feedback was this really is the main thing between the two models to be thinking about. Is that true? Are there any other...

((Crosstalk))

Man: Okay. Okay. So go ahead with that thought and then I'm going to come back to you (Athena).

Man: They were two (unintelligible) and certain...

Man: Yes. Okay. Go ahead (Malcolm). Go ahead (Malcolm).

(Malcolm): Okay. The first one is starting from a different stage. Yes. What happens if the Board refuses to go into the IRP?

Man: Right.

(Malcolm): Yes. In that...

Man: That was the default judgment.

(Malcolm): Yes. That - in that then you've got one option is to try and look for a default judgment. Get a default judgment and to enforce it. Yes. Another option, which is available, as I understand it to the single member but not to the single designator. It's to go to the court for derivative action to enforce the bylaws provision that the IRP must be available.

Man: No. I think it'd be available to either.

(Malcolm): A single designator would have the right to a derivative action?

Man: No it's not a derivative.

(Malcolm): Okay.

Man: It would be a - you could...

((Crosstalk))

Man: ...go to court, not a derivative way but just...

((Crosstalk))

(Malcolm): No. But there isn't an arbitration. And so we're back and forth in the bylaws.

((Crosstalk))

(Malcolm): Okay. It's the Board's decision (to enter) into arbitration.

((Crosstalk))

Man: The Board (refused to make an) arbitration.

(Malcolm): That's right. Yes.

Man: Well, (microphone)

(Malcolm): Would you like me to state it again?

Man: Yes.

Man: Yes.

(Malcolm): Okay.

Man: I think we're getting hung up on the whether it be a derivative (unintelligible).

(Malcolm): Okay. Right. So circumstance - okay.

Man: (Unintelligible).

(Malcolm): As an outside person not the community - as an outside person, significantly (unintelligible) something that's happened. I wish to bring an IRP challenge to what the - what ICANN has done.

And the bylaws say that I can do that through the IRP. I can go to the IRP for a judgment on that. And the Board says well I know that it says that in the bylaws but we're still not going to do it because we don't think it's in the best interest for the company to do that on this occasion in this particular circumstance.

Man: Yes.

(Malcolm): What can happen then...

Man: Yes.

(Malcolm): ...as I understand it, my recourse under the sole member model is that I go to my constituency and persuade them to understand this is a problem and they persuade the GNSO Council. The GNSO Council goes to persuade the rest of the single member. And then the single member goes to court in a derivative action to enforce the bylaws provisions.

The bylaws provision that says that in the event of a dispute you have a resolution through the IRP.

Man: Yes.

(Malcolm): I understand that's the escalation part in the sole member model. In the single designator model, even once I've gone through the community to persuade the single designator that this is a bad thing and something must be done about it, from what we understood is that the single designator doesn't have a right to go into court to say I want to bring a derivative action onto the bylaws so make that happen.

Man: That's right. You do not have a derivative.

((Crosstalk))

Woman: But you have a lawsuit. Okay.



(Malcolm): A lawsuit, yes. Okay.

Man: Could it do some other kind of suit that has the same affect?

(Malcolm): Yes. Good question.

((Crosstalk))

Man: ...interesting case but it might be able to bring this us (unintelligible) derivative because it's a member.

(Malcolm): Okay.

Man: But it might be able to bring another...

(Malcolm): Well what sort of action would that be?

Man: It would be an action to - it would be (unintelligible) under (unintelligible) of the (unintelligible) the agreement (unintelligible) basically the bylaws...

(Malcolm): What agreement? Bylaws a contract.

Man: So yes.

((Crosstalk))

Woman: ...issues in the bylaws (unintelligible) bylaws (is a) contract.

Man: This is true.

((Crosstalk))

Woman: ...talk about it.

Man: Yes.

Man: Yes.

Woman: ...but do you think that (unintelligible).

(Malcolm): Can the single designator be given the right to enforce the bylaws in the bylaws?

Woman: What you (unintelligible) are the bylaws and (contracting) while bylaws (unintelligible) contract (unintelligible).

(Malcolm): But is that doctrine one that is used and is it clearly understood that it would play out that way? The bylaws as a contract model would work then?

Man: Would you recommend that as a model into the community?

(Malcolm): Can we have confidence in it? That's the question. Can we have confidence in it?

Man: Yes.

Woman: But we never talked about putting this in the bylaws (unintelligible). I think you could do it.

Man: And you had a clear bylaw...

((Crosstalk))

Man: ...clear right in the bylaws you could provide a (function).

Woman: The designator would have to write...

((Crosstalk))

(Malcolm): Because there seems to be something circular about that argument there. I'm saying it's a single designator. You know, it's a single designator wants to enforce the promise in the bylaws that the IRP is available.

And in order to do that he has to have another promise in the bylaws that he has a right to enforce the bylaws? That strikes me as circular.

Man: I think that works because of two different things. First is the right to sue being in the bylaws means that when a court looks at the bylaws as contract, it's clear that the designator does have the right to enforce the bylaws.

So it's not circular. Because it's the - it's two different ways. One is what the bylaws requires. The other is the bylaws as a contract between the participants.

Man: Okay.

Man: So it's two different sentences. But I'm not a lawyer.

Man: Greg's got his hand up.

Greg Shatan: Thanks. Greg Shatan. I think may want to look into this more carefully. I am not going to pretend that I did deep research into this. But I found in looking at this under California law, and again I'm not admitted in California, but that there were, you know, particular cases in California that seemed to go against the bylaws as contracts issue. That seems - so it seems to potentially be a weaker construct in California than in some other states.

So that was one issue that I saw. And the other issues is that bylaws as a contract to some extent depends on whether you have a party that is capable of contracting that is on the other side of the bylaw.

In this case, unless we've already formed a designator as an unincorporated association immediately, then there can't be a contract between the - you'd need that in order to have kind of a - the bylaws be a contract between two contracting parties.

Without the contracting party - without the community being a party capable of contract, it seems to be difficult - more difficult to argue that the bylaws is a contract.

(Rosemary): But Greg, that is the assumption that we are either in the single member or the single designator model. That's all we're talking about. So there is a person.

Greg Shatan: You had - the person part is solved. But then the bylaws as a contract issue.

(Rosemary): Bylaws as a contract issue I think does remain. I think I would agree that there's states that recognized bylaws as contracts more strongly than California.

(Malcolm): But (Rosemary), what you could do in addition by - I'm (just saying) for reference (in keeping) with what Greg's saying. So we're assuming that we formed a legal entity, a legal person in either of these models. So we have a legal person.

ICANN could actually have a contract with that legal person that actually commits ICANN to do various things as a contract, which would actually lock in (unintelligible) if it was a (unintelligible).

((Crosstalk))

(Malcolm): So all I'm saying is I have a legal entity and I recognize this entity as a designator. So that's one path. I could also have a contract with this legal entity that says that I agree with this legal entity. I will (introduce) the binding arbitration under these circumstances. And if the Board then...

((Crosstalk))

(Rosemary): ...though. You still have that limit. Even in a - a Board cannot contract away its fiduciary...

((Crosstalk))

Man: (Unintelligible) be that easy to - no, no. I thought the issue that (Malcolm) is saying is what do you do if the Board refuses to enter into arbitration. I'm talking about a mechanism to ensure that the Board enters into binding arbitration.

Man: Are you talking about something beyond...

Man: No. No I'm not. Right. (Malcolm)'s concern is he believes that the Board may refuse to enter into binding arbitration. And he's saying, you know, as just a member (unintelligible) derivative actions. I'm saying you could achieve the same thing with a designator because the legal agency that's the designator could enter into a contract with ICANN that agrees into enter into binding arbitration.

He's talking about the fiduciary (unintelligible) either. I'd say you look like you're saying...

((Crosstalk))

(Rosemary): Right.

Man: Then if I'm correct, it's merely the fact you want to enter into arbitration.

Man: Yes.

((Crosstalk))

Man: A new thing that we haven't got in our model at the moment could be...

((Crosstalk))

(Rosemary): Okay. But it will not reserve - it will not address the concerns about a Board saying I will not arbitrate this because it's not a proper subject of arbitration because it goes to the heart of my fiduciary duties. It will not solve it. You cannot contract that away.

((Crosstalk))

Man: My suggestion about the contract was merely the fact that the Board in general doesn't refuse to enter into arbitration.

((Crosstalk))

Woman: Based on that, I think we have...

Man: They can always ask you but they cannot generally (select) to act in the best interest of the company and this was in the best interest of the company. And I also...

((Crosstalk))

Woman: It's a hole you can drive a truck through.

Woman: Can we - okay.

((Crosstalk))

(Athena): May I say something? So...

((Crosstalk))

(Athena): ...do I understand that this fiduciary duty argument can play in both models unless we're talking about specific powers that is reserved for members? So do we have this problem anyway?

Man: Well, (Holly) just said that...

((Crosstalk))

Man: You're right. It's for the reserved powers...

((Crosstalk))

(Athena): Only the reserved powers. Not for everything. So we will have this issue...

Man: Yes. Yes.

(Athena): ...in any case. Exactly. So I understand that in this case the only way to have an enforcement let's say what the community wants is this indirect enforcement, the removal of the Board. And that's why I would like to put that removal of the Board as an indirect enforcement. Because this is the only way to sort this out.

Man: Yes. That's why...

((Crosstalk))

(Athena): So talk about the powers to remove the Board in single and designator model. What is the difference in terms of the process for the single member or the designator model to enforce the spill of the Board? What is the process?

Man: It's out of scope for this meeting. Sorry. We're not talking that now.

((Crosstalk))

Man: ...that there's no difference between spilling the Board...



Woman: Enforcement.

(Athena): Enforcement, right. Well, no difference.

Man: No difference.

Woman: No difference.

((Crosstalk))

Man: Just one moment. That's the topic of - we're trying to get a bit of idea of statistics here. So binding arbitration is a common way for commercial organizations to deal with disputes. What's the percentage if you can give me or even number of cases where the court has overturned that binding arbitration based on fiduciary duty? I just want to kind of understand is this a common thing or very rare?

Like is - because the (stuff I say), the number of times someone goes to court to enforce binding arbitration, how common is it for the court to overturn that binding arbitration?

Man: Generally arbitration awards are affirmed. I mean the arbitration awards are frequently - most frequently - I don't know how but I can't give you a particular percentage. But there's very broad federal policy in favor of enforcement of arbitration awards.

And so it would have to be a particular case where the fiduciary duties can come up in a unique way.

Man: How often...

Man: Yes.

Man: ...does that happen?

Man: I think it's - well it's a...

((Crosstalk))

Man: We're talking about - I think we're talking about the concept...

Man: Yes.

Man: ...it's not a common situation. Otherwise, why would I enter into binding arbitration...

((Crosstalk))

Man: But then it'd be nice (unintelligible) arbitration.

Man: Yes.

((Crosstalk))

Man: But I just want to get - this is - well, this is binding arbitration they were asking the courts before. I just want to get a sense of how common has the fiduciary argument...

((Crosstalk))

Man: Yes.

((Crosstalk))

Man: (Jordan). (Jordan) (unintelligible) right now.

Jordan Carter: (Unintelligible). I've been waiting to speak for a little while here. I just wanted to follow up again on what I saw as an important exchange about the getting people into the IRP. So what I heard the lawyers say was that in the single designator model and if the designator had a contract with ICANN in which ICANN pre-committed to entering IRP proceedings...

Man: You can enforce that contract.

Jordan Carter: ...you could not enforce that contract if ICANN argues that the subject of those proceedings would be (flagged) and so it would be subject to fiduciary duty.

Woman: Argued reasonably. It can't be...

Jordan Carter: Reasonably. Reasonably.

Woman: (Unintelligible) with fiduciary duties where...

Jordan Carter: Yes. So I just think that's - it's an edge of an edge of an edge case. But it's - we have to be extremely clear about that. So in the designator model that's - it's a bleeding edge but it's important to just be clear about it.

((Crosstalk))

Jordan Carter: No, not in both models because in both - in the member model there's a statutory right to take to enforce the bylaws. No one's against it. Fiduciary does not damage that. So the member...

((Crosstalk))

Man: (Third power).

Jordan Carter: But the member can take - the member can take a derivative suit to enforce ICANN's compliance with the bylaws as a member.

Man: Okay.

((Crosstalk))

Jordan Carter: No.

Man: Can we clear - let's clarify from Council please.

Jordan Carter: Yes.

Woman: I want (an answer to) your question again.

Jordan Carter: So what I'm saying is that set aside the contract idea. Said that the bylaws commit ICANN to entering IRPs and you're a member. You've - there's a member and ICANN chooses not to get involved with the IRP.

Can the member using its power statutory granted to enforce the bylaws say get a judgment that says ICANN you have to enter the IRP because the bylaws

say you have to enter the IRP. Or is it defeated by the same fiduciary argument as the contract?

Woman: You have the ability to challenge the Board for a breach of the bylaws.

Jordan Carter: Yes.

Woman: But if you're going to - you could still get into an argument about whether it's really a breach or whether it's a different interpretation based on a fiduciary judgment.

Jordan Carter: Okay.

Woman: Does that...

Man: Answer.

Jordan Carter: That's true. There are never...

Woman: There's key areas in the member model where you...

((Crosstalk))

Woman: ...is a member.

Jordan Carter: Yes.

Woman: You can limit somewhat the Board's ability to do that around the (four) core powers that we've been talking about (unintelligible) preparation and review by (unintelligible) operations and (strategy).

Man: Can I - my - is that the end of the point? Any other - okay. I want to get to (Sam) because she's been - she's had her hand in the air for a little while.

(Sam): So just to be clear on (Jordan)'s point. Unless it's one of the reserved powers, the issue of whether or not the courts - ICANN can be forced to go into binding arbitration is the same because even if the member went into court to say I want to - through the derivative action to say you should - you weren't right to ignore this on this non-reserved power. The court can still say oh no, it's about the fiduciary duty. It's the same issue.

Man: So I'm going to raise my hand and get myself into queue here for a second. So I just want to kind of do a quick...

Man: (Unintelligible).

Man: ...thank you - a quick check. Between...

Man: (Tell it again).

Man: Yes. Let's raise (unintelligible) everybody thank you. Time check here. We're down to about three minutes at this point. So I kind of want to - let's gauge here where we are. Between the single designator and the single member is there energy to one or the other?

So I'm going to actually ask you to raise your hand or kind of point. So on the designator side is there energy towards the designator side?

Woman: What do you mean by energy?

Man: Do you - would you walk back into the room and recommend it to the rest of the group? Yes.

Man: Yes.

Man: The designator side. So could you do a quick show of hands instead of nodding?

Man: Could we do both?

Man: Yes.

Man: Yes.

Man: Okay. The single member? Right down the middle seems like. Pretty close.

Man: So I've got to (hand) with the microphone.

Man: Go ahead.

Man: I haven't heard anything on this that really convinces me between the two of them in the respect of this issue. So it has made me think this case of IRP isn't a decisional factor in choosing one model over the other. That's how I feel. Does anyone else feel like that? Put your hand up.

Man: (David). (David).

Woman: (Unintelligible) arbitration is (unintelligible).

Man: I'd just like to comment that in yesterday's meeting in a chat between (Rosemary) and (Bruce) I believe there was a discussion of designator model plus contract. And I thought there was some promise in that. And so I would just say there may be a third - there may be a - there may be a hybrid between them.

Man: (And it don't surprise me).

((Crosstalk))

Man: The scope of arbitration on the member model would be (broader that) include the reserved powers.

((Crosstalk))

Man: I'll tell you - I'll tell you how this discussion has affected my thinking. Yes. This had made me feel...

Man: (Unintelligible) will be heading back in in three minutes.

Man: Thank you.

Man: ...okay. This has made me feel less sure that this is a decisional issue between these two models than I was previously. Not so that it's not discussed, yes, but less sure of that.

But it has also made me feel less confident in the underlying effectiveness of the IRP thing all together. Yes. Okay. And that worries me in this way. Because when I'm being told that even though this isn't fair, by the way, it tends to be stronger. It tends to be some more robust on this side.



And the fact that the whole thing has taken a step down in confidence I'm more - it pushes me back to think well in that case something is a bit better even if it's not perfect. Yes. It's - I place more salience on that, yes. So that's how this has persuaded me.

Man: Did you have your hand up?

Woman: No, I was blocking the sun.

Man: All right. We're at the end of our time pretty much. So why don't we break here. We've got an after break conversation. Thank you for the discussion. Can I - (counters) could you say here please and (Jordan) stay here please for conversation of read out. Thank you. Thanks everybody.

Man: Thank you (Jordan).

Man: Thanks remote participants.

((Crosstalk))

Jordan Carter: I thought we were supposed to be discussing separation.

Man: We were going to discuss that but we had a short conversation to say that this separation falls under this. This is an - if separation were run, then this is...

((Crosstalk))

Man: Oh, okay. Talk to (Bruce). He was one of the main advocates of that.

Jordan Carter: (Might now).

Man: Okay.

((Crosstalk))

Thomas Rickert: Hi everyone. Just before we make the breakout groups present their findings, I understand that they need a few more minutes to tidy up their notes and then speak them. But this is just to share with you that we got an invitation as co-Chairs from the GAC yesterday that we're asked to update the GAC on where we are. And we have gladly accepted the invitation.

So that, you know, is an FIY so we're going to report about the outcome of the public comment period. We're going to speak to the fact that we're not settling on a specific model at the moment but that we're investigating our options. That we have understood that there are major concerns with the concept of forwarding with the allocation of powers with potential risk of concentration of powers.

That we're looking into these and that our group has understood that with whatever set of recommendations we come up with we'll make sure that these risks are eliminated or lowered to the furthest possible extent. So that's pretty much it.

We're also going to speak about (Strat) 18 that we're waiting - awaiting their input. Just as a reminder that our group can't go any further on that. And, you know, that's along those lines. We're going to talk about the bits that have been receiving a lot of support from the public comment period, the areas that we move to need refinement phase. So basically no new information compared to what you know at the moment. And (Malcolm).

(Malcolm): So I got a quick question for (concentration) - quick question for (concentration) because what you (preach to the) Board is obviously very important here. What you (preach to the) GAC rather is very important here.

Did I correctly understand you that you will be briefing the GAC that as a result of these discussions and the public comment we've had back? We do not currently have a reference model. We are open between models. Is that what you're planning saying?

Thomas Rickert: What we're going to say is that the group has not made a decision on the model. There's no consensus on the model. That's it. We're looking at what we're going to speak to fact that we're trying to address concerns we received during the public comment period. I think we'll also already saying but not state on the slides that we're looking into the designator option but that we're investigating it and that is a decision is yet to be made.

But I guess the main topics are that we can confirm that we've understood that we must ensure that there's least risk of capture, least risk of concentration of powers, no reallocation of power and that we're working on that primary in the area of community decision making.

(Malcolm): Okay. Now when you say we're working on the single designator model, now I'm hearing that they will take that as you saying that we've adopted the single designator model as our working model.

Thomas Rickert: No.

(Malcolm): Yes. So I think it's important because briefing the GAC, GAC is a terribly sensitive entity. It's very important to be precise on this and we've got a clear understanding. So...

Mathieu Weill: That's we're - it's a good point. It's a good point (Malcolm). We'll be very careful on that.

(Malcolm): So can you please try and restate it as you would want to state it to the GAC so that we can understand what you're trying to say?

Mathieu Weill: I think the statement is that the second report is based on sole member model and our group is currently taking into account the feedback we've received and some of the concerns about the statutory rights or anything that we've heard and investigating whether other options including the sole designator model could address that. That's it. We're just investigating another model but the second report is still the member model. And one other I expect...

(Malcolm): Thank you.

Mathieu Weill: ...I would like to stress that we'll be bringing up with the GAC is the timeline. And we would - as we would encourage all SO and ACs, we will encourage the GAC to consider whether some - if our final report can be delivered in a short timeframe after this meeting, whether approval or actually consideration of it could just happen before Marrakech.

That's an open question we're going to ask to the GAC just like the other SO and ACs by the way. And so we'll introduce this question, which is one of the key questions for this week. Kavous, your hand is up.

Kavous Arasteh: Yes. I think GAC has already had another invitee for the (unintelligible) this afternoon. I think at least as far as CCWG is concerned you need to be very, very careful what you inform the GAC because most of them may not have time to follow this very complex process. So we need to be careful not to bias their mind and leave them the freedom to look at the matter quite cautiously and not filled up with something that may not work or may work.

So you will be very careful what you reporting them. This is a result of the second public comment. You may also need if you decide to do something what we have done yesterday or so on so forth back. It should be told to the GAC that we are doing something at this meeting and there might be a need for another briefing if we have some results. Thank you.

Man: (Points).

Mathieu Weill: And (Ann)'s hand is raised. And then we'll move to the readout of the sessions that you're all awaiting with patience. (Ann).

(Ann): Thank you Mathieu. Very quick question. At what time are you briefing the GAC? When are you briefing the GAC?

Mathieu Weill: You're asking some pretty intimate questions. I think it's 2:30; 2:30 pm local time.

(Ann): Thank you. Today, yes?

Mathieu Weill: Today.

(Ann): Thank you.

Mathieu Weill: I don't have the room with me. Okay. So who's introducing this? Cheryl.

Cheryl Langdon-Orr: Cheryl Langdon-Orr for the record. As you may have noticed, the intention of how we were going to run it went by the wayside. And we ran it in a slightly modified version. We didn't do a walkthrough to different - to secondary topics.

Most of you with the exception of one group felt that even with the extent of the amount of time we gave you all, you could have done with more time. And that's actually not a bad thing at all because it means you had for (unintelligible) saying somewhat spirited discussions to go through.

But what - before we go to the read back and the discussion on the outcomes from each of the groups, I just wanted to call on James Gannon as one of the active participants in our remote participation exercise to very briefly just bring you up to speed on what we changed there because we did not run a separate remote participation group that was separate from the groups that were running it physically. We actually integrated them. So James, over to you for a minute or two.

James Gannon: Thanks Cheryl. James Gannon. So the initial time was we were allowed to have our own breakout session for the remote participants. Around speaking to the remote participants themselves we realized actually it was quite a small group and that they would just prefer to being able to attend some of the actual physical sessions and most notably the Session 2 on the community enforcement.

So on very short notice (Grace) and (Sebastian) decided to help me out and we were able to magically set up video and audio for the remote participants. And

so we took some laptops out and we dialed in a couple of mobile phones and we brought them out to the group session for Number 2.

And we (could coral) the various participants in Group 2 to hold mobile phones as microphones when they were speaking; those remote participants were able to hear the conversations and able to track what was going back and forth.

And then we had (Grace) and (Sebastian) primarily were going around with a laptop with the Web cam on pointing at the various people who were talking to try and, you know, be able to get a bit more interaction from the remote participants.

So the feedback from the remote guys was that it was - they were very happy with it and they felt relatively included as we could on such short notice. So although it wasn't the original plan, I think it's just as successful in the end.

Cheryl Langdon-Orr: Thank you. And I'd actually like to put my hands together and I hope others will join because I think that was an excellent piece of the planning on the fly. So thank you very much.

Which brings us now to some vague semblance of order and no relationship to the timing on the agenda with decision model. And mics over here at the front if you want to grab it.

Steve DelBianco: Hi everyone. Steve DelBianco with the CSG. And the first breakout group was on the decision model. Our terms of reference were ambitious for such a limited time and a complex topic.

We zeroed in on the most important question of all is that how do we get away from this notion of weighted voting and approach a definition of consensus for the decisions and a process that moves us towards that.

I think we made some progress. So we have all seven of the community powers; the same seven that were displayed multiple times yesterday. And for the folks who were in our decision support group, they're not in exactly the same order of our conversation yesterday.

They're in the same, sorry, this morning. They're in the same order that we had yesterday. If you're having trouble seeing it here, everything here should be on the Adobe. And the update one's going to go up.

All right. So to simplify things, I realize that there was a stair step and a progression that included a petition and then a pre-call. Then the decision whether to have a community forum. And then the decision whether to vote or make a consensus decision to proceed with the community power. And then the notion that after that there would be a formal filing of the objection and in some cases mediation and consultation.

To keep things simple because we had a tough time getting through the complexity, we just have three steps of a multi step process. We have the three key steps where indications of support help us to measure whether to proceed on the escalation path leading to the ultimate decision to be made. Do we in fact block a budget strat or op plan? Do we approve a fundamental bylaw? Do we block a bylaws change?

The conversation ranged about participation levels and quorum but in the end we said we needed two things. We needed an indication of support and we



need no more than one objection. So sticking to one of our point of references that said that a single objection should be enough to kill a community power.

And we had a - we had a minority who felt that on one of the - on one of the particular powers a single objection would be enough to kill it. You can guess which power that is. It's the full Board removal. So I'll cover that when I get to that. So let's just walk through them all.

In all cases we said that it only takes two AC and SOs to indicate enough interest and support to say we need to have a pre-call. And if you guys remember from yesterday's discussion, a pre-call is a relatively lightweight inexpensive ICANN organized call with Adobe support and staff support, chat transcripts and minutes.

And that phone call would be scheduled if at least two ACs and SOs have said we have an interest in exercising one of the community powers. Two is enough. In other words, we didn't even ask hey, if somebody objects, can they kill a phone call? Answer no. So let's just allow it to be a really positive moving ahead process.

Now that pre-call is where you air the grievances about why we want to block this bylaws change or why we want to block the budget. And it's entirely possible that on that pre-call we get enough of information out that we can resolve the issue. That's the whole point of an escalation path.

It's possible that on the pre-call it'll be obvious that we need to solve this issue and it can simply be solved. The essential element here is that the Board participates. We want Board and staff - ICANN legal staff to be on this pre-call. All right.

What does it take then to move to the next step, which is the calling of the community forum? So the calling of the community forum implies staff support, travel support for us - the interested participants to come together at a place like this. Hopefully the community forum would occur on a day before an ICANN meeting or the - during the process of an ICANN meeting.

But if it's an urgent matter like an approval of a budget or a bylaws change that the Board's going to act on in 30 days, we may need to have a special intersessional meeting like the one we had in Los Angeles at the end of September where we fly in for a day with staff support, Adobe - sorry. Not like Los Angeles. That example.

((Crosstalk))

Steve DelBianco: Istanbul? Better example. Okay. Purge - forget Los Angeles, exactly. And again, we want the Board to be present. We want ICANN legal to be there. And you know what, we need to have the community's representation there too. And this is something we brought up last week is the idea that we may need legal support for the community that's independent such as we had from Adler and Sidley.

At the community forum, which lasts roughly a day, we make the decision in the weeks that follow because you can't make a decision at the meeting because each AC and SO has to use its own decision making processes as to whether approve the ultimate decision. Okay.

So what you see in the ultimate decision, for instance the budget strat and op plan, is that the rule we're coming up with for the consensus, the way we're going to measure consensus is at least three AC and SOs would support it and

no more than one would object. At least three must support and no more than one objects.

So they are - it's two fold. It's an indication of support in the absence of strong objection. But it's also a measure of quorum, a measure of participation because when you say at least three, it means that three of the seven ACs and SOs feel strongly enough about this that they want to proceed.

So our group felt strongly that you needed to have both a show of support and the absence of significant objection and that the numbers had to be at least at a level that half of the ACs and SOs were participating - half of the seven.

So there, you know, no more than one can object indicates the rule we had earlier is that you couldn't block - no one person could block - no one AC and SO would block.

Now as you work down all the community powers, the threshold changes in only one way. For some of the community powers we raised the threshold of consensus to say that you had to have at least four ACs and SOs supporting the move. And again, no more than one against it.

Simply made one tweak and we applied that tweak of the higher-level threshold to a fundamental bylaws change and that's a vote to make the change. We have to approve a change in that case. It's not a vote to block. It's a vote to approve.

We also raised the threshold for removing the entire Board. We raised the threshold for the PTI. That's the separation of post-transition IANA. So the separation as it was recommended by IANA functions review as it moves ahead that's a rather significant change to ICANN.

So we said the most significant ones in terms of needing a higher level of consensus were PTI separation, the removal of the entire Board and approving a change to a fundamental bylaw.

So this middle column here is the community forum, which was the phone call based decision to say do we want to come together for a day like Istanbul. Mathematically we just took whatever the threshold was for the decision and just subtracted one from that.

So that again, it's a positive move ahead. It only takes in this case - two is enough to - two is enough for a standard bylaws change. Two is enough to support having a community forum. And you move to three.

But on any item that has a four for a decision, we said two is enough to support but we would need at least another AC and SO during the phone call - at least another AC and SO has to warm to this to say we'll go back and check with my - the rest of my GNSO colleagues. And if we come back and say support, we bump it up one. So whenever you needed to conclude with a four we felt there had to be a progression as you moved up. Okay.

I do want to note on the full Board removal we had some Board members and others in our group that felt strongly that one would be enough to object. There were four of them and at the time we had 12 or 13 people so it could have been as much as 1/3 of our little subgroup out there.

And I will note that a couple of - at least two of those were Board members who felt that this ought to be able to block by a single AC and SO. That one would be enough to block it. And the majority of our group felt no, more than one in all cases. Okay.

There was only one other item we had time to talk about and that is with respect to an IRP. If we have decided to proceed with a community IRP things can get expensive because a community supported IRP is not just an investment of all our time as we work this through but ICANN has to pay for the lawyers for the community. So it can get expensive.

So the idea was that let's move potentially to mediation, see if that can be solved before you move to an independent review panel and the filing of legal documents. And this came up yesterday I think in a discussion. I don't remember if it was (Becky) but I think it was suggested while Jonathan was presenting yesterday. But we didn't have time to deep dive into that.

Most of what we did was try to say that to replace this notion of weighted voting and 75% and 85%, let's come up with strong indications of support and the absence of more than one objection, which - and the numbers themselves are related to the current count of seven ACs and SOs.

What happens if we add an AC and SO? Well at that point in time we'll re-jigger the numbers to keep the same ratios that are engaged. And it's a little tougher to do when you go to eight ACs and SOs. What's the participation level? The idea here is you had to have at least four of the seven. So we are more than 50%.

I think that that covers the - I think that covers the walkthrough. First, before we take hands from everyone else and questions, are there other members of our group that want to clarify? And how much time do I have? So (Patrick) from XPLANE went back to the photograph we took on the Board outside and made a correction.

With respect to budget op and strat plan, if the consensus decision to block would require four ACs and SOs to support and you had to have no more than one objection. So I reported that as one of the lower ones.

Are there any other members of our subgroup that want to add color to it?  
And how much time do we have? Five more minutes. Alan.

Alan Greenberg: Just a quick note that on removal of the whole Board, there was another option of either requiring - Steve mentioned a single objection or veto is enough to veto. The other option is a higher threshold of fours.

Steve DelBianco: Alan's correct. But the majority of our group said that for Board removal four is enough to support as long as we didn't have more than one objecting. But I agree there was other ideas that came up. Any other members of our group that wanted to add color to this? And seeing none, then we should probably just call from the queue. Can't see the queue so I'll leave it to you.

Thomas Rickert: Kavous is next and then (Malcolm). (Malcolm) and then (Jordan). And Avri has raised her hand. So you'll be next.

(Malcolm): Thank you. Thank you Steve. As explained with your customary eloquence, you're such a great salesman. I always listen to your proposals. I wonder how we could have ever imagined it would work any other way.

Steve DelBianco: This is (Malcolm)'s way of setting me up.

(Malcolm): I just have one small question that I think...

((Crosstalk))

(Malcolm): ...that I think that when this works its way into our thoughts that people will want to ask. And that is this. This process describes gradually building support. You start off with two and then you need to move on to three to the next level and then four to the next level and so forth and that all makes perfect sense.

But it starts with two. Now if it started with one, then you could see how it works all the way through. But if it starts with two, there's going to need to be coordination. And then that raises the question when where does that happen and what's the process for it.

Steve DelBianco: Great question. We did cover that. So the notion is that we need staff support to set up email lists and potentially there would be direct phone calls. But it's mostly emails among the AC and SO officers to determine whether at least two of them feel the support using their own means within the GNSO, your own means within the ALAC to say do we have support for the lightweight step of having a phone call.

So we didn't want to add a complex infrastructure for the AC and SOs to decide do we want to have a phone call. So we thought email lists would be sufficient and staff would support us on doing that. So it would be some kind of an email. It would start - a list would start at icann.org.

I'm pretty sure you have an AC and SO leaders email list already. So it's the idea of just email alone to decide whether to have a call. Once we have a call, we probably create another list. The budget op, strat plan, community power exercise 2016 group; and that group then would be a list that anybody could subscribe to in the same way that we did for the CCWG.

I hope that - I hope that is what you were thinking. We don't need something too heavy to decide whether to have a phone call.

Thomas Rickert: Next is (Jordan).

Jordan Carter: Just a different question about the same topic. In the second draft proposal we had one SO being able to raise the issue of the community power. And I think the reason for that was that it might just be on an issue that was specific to that So that other people didn't now about.

So in a sense - in essence, this kind of raises the bar and makes these community powers slightly less accessible than they would have been compared with that second draft proposal. And I may have missed it but did you step through the logic of that decision?

Steve DelBianco: So accessibility starts to matter when something gets to be difficult and expensive for a lot of people to participate. A holding of a phone call is a relatively low barrier but it does require that the AC or SO who fee4ls strongly about locking this budget is going to have to enlist the help of one other AC and SO to take the dramatic step of holding a phone call.

And it's on that phone call that the persuasiveness and the rhetoric and the sales of this concern have to be surfaced and debated. So one felt that like we could really create a situation where we would constantly be having these calls because one AC and SO has a gripe. So two at least raises the requirement that you have to persuade one other.

Now I don't think we've cross the line to say now it's inaccessible. But it does mean they have to work a little harder.



Thomas Rickert: Okay. Just for everyone to know, the idea or the hope is that we can protect this to the level of meeting requirement...

Man: Refinement. Refinement.

Thomas Rickert: ...refinement, I'm sorry. So I think it's important for (Jordan) to monitor whether we're doing this in the spirit of what we had in the second report. And I think that we're good on our way there. I'm going to close the queue after (Chris). Let's hear (Bruce), then Avri, Tijani and then Chris.

(Bruce): Thanks Thomas. Just want to clarify to some that's slightly clear when we use the term support, that means there's a properly constituted resolution from that particular organization so that'd be subject to notice periods and marking a seven day notice period and then a meeting and all of the normal things that you would have in a GNSO resolution or a...

Steve DelBianco: Yes.

(Bruce): ...(highlight) resolution.

Steve DelBianco: Each AC and SO use its own rules and its own notice periods. And that's why (Bruce) that the community forum when we get together for a day we don't have any illusions that at the end of that day we'll know what the decisions are because GNSO has to go back and have a resolution.

But there might be as much as a couple of weeks, initially three or four weeks between we've just finished our day together in Istanbul and then via email we are waiting to hear back on whether or not we have met the threshold for consensus to proceed.

And I guess that if one group, the GAC, needs 60 days that's going to end up holding all of us up. So the exercise of a power. So one hopes that we discuss the timing while we're together in this Istanbul meeting and everybody understands what can you do. You don't have an intersessional coming up.

Can you do it by email? Can we get the ASO to participate? Because if somebody says in the ASO, the RSSAC or the SSAC look, we just don't care that much. We don't think it's relevant. Well then it becomes incumbent to get the participation up because we need to have four. If it's just ALAC, ccNSO and GNSO, we're only at three. We've got to convince one of the other seven to take a position on that.

Thomas Rickert: Great. Thanks. Next is Avri.

Avri Doria: Thank you. Avri speaking. And pardon me if I'm not seeing it right. I'm asking a question - a clarification question. The idea in general seems appealing. And I left my computer attending another meeting I'm supposed to be at.

Is it correct that they are all identical and not requiring any more than one objection? Because when you were talking I felt there was a differentiation. But when I tried to read the slips of paper, it looks like they're all identical. That it's no more than one objection in all cases.

Steve DelBianco: The answer is yes.

Avri Doria: Okay. Thank you.

Steve DelBianco: Our majority of our group said one objection would not be enough to kill a community power. We only had a difference in one case and it's on Board

removal where something less than 1/3 of our group said one objection would be enough to kill Board removal.

And I will note that that group is mostly Board members. They know it best. They know it best.

Avri Doria: See I would have agreed with them but that's beside the point.

Steve DelBianco: But that's okay. Right. I'm noting. We got - (George) says it's roughly 1/3 of our group wanted one to be enough to kill it.

Thomas Rickert: Thanks. Tijani.

Steve DelBianco: Avri. Wait. Wait one quick minute. Avri said identical. They're not identical. They differ in the amount of required support. You do understand that.

Avri Doria: Yes.

Steve DelBianco: Okay.

Avri Doria: But in terms of the objection...

Steve DelBianco: Yes.

Avri Doria: ...they're identical.

Thomas Rickert: Tijani.

Tijani Ben Jemaa: Thank you. It's only to confirm what I understood - I think I understand. For each power you need four - for example, a number of support plus and a maximum - minimum objection. Isn't it?

Steve DelBianco: No. It'd be a maximum.

Tijani Ben Jemaa: Maximum.

Steve DelBianco: You need to have - you have three in favor and no...

Tijani Ben Jemaa: Yes.

Steve DelBianco: ...more than one against.

Tijani Ben Jemaa: And there's an and...

Steve DelBianco: There is an and on every one of these.

Tijani Ben Jemaa: Okay. Thank you.

Steve DelBianco: Thank you.

Thomas Rickert: Thanks. Next is (Chris).

(Chris): Thank you. Steve, just to check. I may have missed the beginning. If I did, I apologize. There's no participation level requirement.

Steve DelBianco: There actually is. Add the numbers.

(Chris): Yes. Yes.

Steve DelBianco: Four is the minimum.

(Chris): Yes.

Steve DelBianco: Three is the minimum.

(Chris): But it's - I'm fine with it. I just want to make sure that I'm clear. If on your community forum call the only people to turn up are the two supporting SOs and ACs, there's no - I'm not saying there should be. I'm just making sure.

That doesn't in any way negate the process. The process is still deemed to have happened with those two SOs and ACs. And then you either have to go and get your votes - not your votes, your buy in from the other SOs and ACs. Yes?

Steve DelBianco: I think that's correct (Chris).

(Chris): (Cool). Thanks.

Steve DelBianco: Because mandatory participation is extremely difficult.

(Chris): Yes. No, I don't disagree. Just wanted to make sure. Thank you.

Steve DelBianco: People that are moving - people that care the most about moving this community power up the escalation path they're going to have to aggressively recruit others to agree.

Thomas Rickert: So I have closed the queue after (Chris). Five people have added themselves to the queue afterwards. So the question is how do we deal with that? I think

we really need to be firm on, you know, this is a very important subject but we can't be disrespectful to the other groups to present. So (Robin) is really the last one to speak and I urge everyone who's raised their hand to be very, very brief. (Athena).

(Athena): I'm so sorry. I'll be very brief. I'm a little bit confused and maybe this has been explained already. But how is the process describing the individual Board member decision is related to what will come from this other group discussion that was in parallel?

Steve DelBianco: So on individual Board member removal I understand that that group looked at whether NomCom's included and so on. This says that whatever the community role is - this is not individual ACs and SOs. This is the community body. So that if the individual Board member removal has an aspect of does the community support it then that's the aspect that has to support having a community forum, and it would take three to support the resolution because we'll not get in the way of an individual Board Member removal by the AC or SO that appointed them.

Thomas Rickert: Thanks. Kavouss?

Kavouss Arasteh: Yes, (unintelligible). I want to make it clear that supporting of AC and SO should be left to them; not necessarily always by a resolution. Leave it to them to decide whether there's a resolution or another way, because in some cases a resolution would be very difficult to process. So not, as I said, including resolution, but not always only resolution is the means of support. Thank you.

Thomas Rickert: Thanks Kavouss.

Steve DelBianco: (Unintelligible) would agree.

Thomas Rickert: I guess this was relating to the petition phase -- how the process...

Steve DelBianco: No, no, no, no. At each stage when you count noses, the ACs and SOs use their own rules to decide whether we are in or not; whether we support or we object. That's all Kavouss is saying that it may not be a resolution that's done; it could be some other method that you use in the GAC and that's fine. And that would be for every indication of support at every phase.

Thomas Rickert: Just to be clear, what about the petition phase?

((Crosstalk))

Thomas Rickert: Yes; understood. We have said in LA, from the report we got, that if it's an individual that has issue with something, they need to find a group that supports them. So I guess that would be true for that phase.

Steve DelBianco: That would be true.

Thomas Rickert: Yes.

Steve DelBianco: And this says that if a first decision is are we going to have a phone call, and you still need two ACs or SOs to officially indicate they want to have a call. And they may do that with a resolution and they may do that by any means they want.

But an individual can come to ALAC and get something started. We didn't cover that here because it really didn't get (unintelligible).

Thomas Rickert: Good. Alan?

Alan Greenberg: Thank you; just two things. On that last question, my understanding is it should be a decision of the group as opposed to the chair deciding, "Yes, we should do that." And that was really the intent of that.

And just one other comment although I said it earlier before, the issue on removal of full board members; the objections were not just board members. Thank you.

Steve DelBianco: Actually I thought I said that most of them board members; I didn't say all. It was a GAC member who felt one was enough.

If I misspoke on that, let me apologize. We had about a third of our group -- and I know how sensitive we all get sometimes.

Thomas Rickert: Folks, we are not casting this in concrete although he is not only the master of selling in eloquence, but he is also the master of apology.

We have George, Robin and (Halker). Robin, you've had your pass; you lowered your hand? Okay. So then let's here from George and (Halker).

George Sadowsky: Yes, thank you. I want to comment on board members making the concern -- emphasizing the concern about no objections.

I'm concerned about capture. The ultimate capture is capturing the Board. And I think those of us who feel - okay.

Man: (Unintelligible).

Thomas Rickert: I think we should keep the conversation on the record and not (unintelligible).



George Sadowsky: Thank you. The ultimate capture I believe is Board capture. And it's really important to ensure that that occurs for good reasons and not for bad reasons. And I think if you have an AC or an SO objecting to it, there's some good reasons -- there should be some good reasons there -- and they should clearly explain it. But I think that this should be a no objection rule.

Perhaps we as a board - and I'm not saying this because I'm a Board Member. But we as a Board do know the extent to which this will change the organization if it occurs, and if it occurs for the wrong reason we're all in trouble. Thank you.

Man: Thank you George. Just a quick - I think we are all aware of this of the importance of avoiding Board capture which can take place through this process or through the existing processes as well.

And so we're trying to find the right balance between both risks here. And I think - I personally think there's a very interesting attempt at doing this in this sort of exercise. Thank you.

Thomas Rickert: Thanks. Next is (Halker) and he's actually the last speaker on this topic.

(Halker): Hello, thank you very much. (Halker Ro) for the record.

I wanted to thank Steve for a very good job, and I think we managed to arrive at a good balance between express support, objection, and the importance of the subject at hand. Although some of us which were a mix of Board members and GAC members and I don't know if all of us share this understanding that on the total or complete Board recall, perhaps we should have no objections.

And the other very quick remark I made also in the Chat is that we still have to go forth in discussion how we really flesh out the community forum to fit into all this process because, as you know Steve, some of us, we have quite a strong understanding that the community forum should be more of a process although there may be events physical or ritual events in that process, but that process is needed in order to really arrive at the mutual understanding of the facts and the information and be able to having a conversation and deliberation which would lead us to consensus. Thank you.

Steve DelBianco: And the community forum deserves its own break (Altorie) where we indicate the agenda for the day, the participation level staff support and everything else.

Thomas Rickert: Thanks everyone. This clearly shows that the LA meeting at least was good for something because this was the basis for what we achieved today.

And what I'd really like to ask for is your agreement that we tech this ready for refinement. I think we have brought consensus on the general notion of these steps -- and needs a little bit of fine-tuning and needs a little bit more detail for everyone to understand and fully subscribe to it hopefully. But let's try to capture what we have and further work on it.

Cheryl, who's the next repertoire?

Cheryl Langdon-Orr: Well, we did have a running shade (sic), but I'm aware that Jonathan (unintelligible) has a time critical appointment. And I wondered if you'd indulge us and let us run with the budget now so Jonathan is well clear for when he needs to go to his next meeting.

Jonathan, how does that work out for you?

Jonathan: (Unintelligible). Not sure I need a microphone either frankly; you can just turn one on in the back and (unintelligible).

So we had a highly passionate and qualified group that engaged in a very spirited discussion. And I would love to reconvene that group for a longer period of time.

I think one of the things that's interesting about this particular execution if you will of this particular power is the kind of safe that it leads the organization in as the decisions are being made by the community. A lot of business-as-usual can happen in the execution of the other powers, but in this particular power there's a lot of discussion about what goes on in the meantime while we're forming the consensus and things like that. So that was part of the discussion that we had.

One part of the discussion we had had to do with drawing the distinction between the operating plan and the budget itself, and it turns out that that distinction is somewhat specious. The operating plan itself has numbers next to it and so some people might call that a budget, right. And so the consensus that was formed in the group is let's just treat them as a single unit; that the veto such as it is, is a veto of both the annual operating plan and the annual budget so for discussion purposes.

The other thing we agreed on is that the Board's proposal to allow a community veto of the five-year strategic plan and budget was something on which there was consensus as well. So we focused most of our discussion on the annual budget and operational plan.

So we took one step back and tried to look at what the actual purpose of this veto -- the operational purpose of this veto -- might be. And in most instances, it was that there was something that had been raised over the process of consultation and public comment on which the community in some form or another had expressed decent, and that that had gone unaccommodated in the ultimate budget that was published, right.

And so it did boil down to their being a specific issue. And in fact, the current proposal by the CCWG that was put forth in the second draft suggests that nothing that wasn't raised in that process could be used as the basis for a veto with the exception of something new that was thrown into the budget at the last minute or something like that. So I think we had some agreement about that.

We then began to look at some risk scenarios, right. One risk scenario is, well, if we look at the process now, a lot of the public comments end up being very minor tweaks to the budget and not very significant issues. And so should we set like a dollar threshold about which people could object.

And I think there was rough agreement that the process that Steve just described would go a long way to removing trivial issues from being the basis of a veto.

The second issue, and the one that probably got the most discussion, was about the state in which the organization would be left as this process was going on; how long would the process take?

If we had a round trip of two, if we realistically took the time that Steve was talking about and had, you know, a phone call, a community forum, and then a

decision-making process and then process of veto, how long would that realistically take?

And then if the Board came back with a slightly revised budget but didn't quite address the concern, would that process happen again because we said we'd have two round trips, and how long would that overall be? And what would the impact be to sort of the operations of ICANN?

And so that was a very significant concern among our group. And so we were looking at trying to understand what the mitigators might be for that particular risk, right.

And so one area that was described and, you know, discussed was this notion of a target veto, right. I mean some (unintelligible), for example, in their comments recommended a line-item veto. But the idea of a targeted veto is something a little bit more abstract and one that we don't completely have our minds wrapped around.

So we talked about it but didn't really resolve on what it is because it's different than a line-item veto in the sense that if the objection on the part of the community has to do with these two programs still existing but the allocations of funds to them being different than what were decided on by the Board, what would a line-item veto be in that or even a targeted veto be in that case?

Would it mean that both of those budgets went away all together until it was resolved? Would it mean they stayed on last year's levels? Well that doesn't work if flipping them was in fact the desire of the community, right.

So targeted veto is something that got tossed around a lot in the group but wasn't yet completely well defined.

The other issue that came up, and the one that Cherine raised yesterday and that Xavier helped to clarify in our meeting today, is the notion of discretionary versus non-discretionary costs. So I've got contracts in place -- I have to pay those contracts -- and that - I mean Cherine was able to say in firm language that we're going to write those checks anyway regardless of what you do because we are going to be legally bound to do so.

So we started - and again I stress just started -- having a conversation with Xavier about coming up with what the notion of a discretionary or non-discretionary budget might be because the answer might be that the continuing (sic) resolution, as we've called it, rather than being last year's budget plus ten or last year's budget fixed, which doesn't map at all to the operational plan for the year or even potentially in the interests of the community - in other words what they want to have changed - would be to in fact make the continuing budget as something that was predefined as a non-discretionary budget.

And so Xavier has taken it as a homework assignment to look at that and to figure out what a non-discretionary budget might look like as a baseline for what the holding pattern would be as we were trying to move forward so that weren't trying to delve into a line-item budget, we weren't trying to figure out about a target budget.

He's not convinced he can do it in a way that everyone will agree with him because A, he's been in these rooms before, right. But that's the exercise so let's just all spend positive thoughts Xavier's way as he attempts that exercise because if we succeed in that exercise, I think we address some of the concerns that we're raised by a number of people about the issue of deadlock,

about the issue of quarterly reporting; there were other things that were raised that we didn't fully handle.

But there might be this notion of a non-discretionary budget being sort of the holding pattern as the community process progresses. So that's kind of where we left it. There were a lot of open questions about how to proceed.

One of the things we discussed was crystallizing the processes Xavier has, over the past couple of years, put into the budget consultation process about which we're all happy, right. And should that be placed into the bylaws as proactively as well, and there's definitely some impetus to do that.

And if it's easy to define and we don't limit our ability to improve it in the future, then why not do that, so it's maybe worth putting some effort into that. And I think there was some agreement about that.

So I think that we got to a place where we could mitigate the majority of the concerns surrounding a budget veto if we could conceptualize a non-discretionary budget that would be the holding pattern budget as this process progressed.

So that I think was a breakthrough for us, it provided that we can all kind of agree on what that looks like. I kind of think that we do because none of us in the community are looking for the organization's default on contracts and things like that.

Ray of course raised the specter of people getting contracts signed quickly in order to - and maybe. But we're looking for, you know, we may not find a perfect solution; we're just looking for a solid one.

I guess that's it. So we can just take a queue; Cherine wanted to speak. So yes, he was a group member so let's do open it up for members of the group to add color and commentary.

Thomas Rickert: Just in order to manage expectations, I think it's important for other group members to weigh in. but in terms of how we approach this, I think this is great progress but I think we need it in writing for people to digest.

It is my understanding -- I saw a lot of nodding in the room -- that we should hopefully take this to a meeting refinement stage as well.

Jonathan: (Unintelligible) I don't know what you're talking about.

Thomas Rickert: So that we hear from (Chris) and Cherine now for adding to that, (Chris's) pass. Then if need be we can have another breakout session early next week to work on the refinement, right, rather than having a full discussion now which we might not be able to conclude anyway.

Cherine.

Steve DelBianco: It's just a minor thing for Jonathan. Can you also report what he talked about quarter reporting that we want to be fiscally responsible? Thank you.

Jonathan: And so the other issue that was raised and not entirely resolved, and so we don't know whether - is that ICANN has recently reached a level of financial sophistication that it does fairly comprehensive quarterly reporting, and that a full-on budget freeze would be disruptive to that quarterly reporting.



Now obviously we don't want to go back to the ICANN that we had before where that wasn't taking place, and so that's an issue that we need to find compromises on it and didn't resolve, but that issue was certainly raised.

And the way that it's handled now, I will answer a question because we ran that scenario, is that they actually report on the budget as published with tweaks made down the road. So there is in fact reporting that occurs even if the budget is not yet been finalized.

And so that system won't necessarily work for what we're proposing because that current budget is the one with which we have issues. So just having the continuing resolution be the budget as proposed is not something that we thought the community would find acceptable. So that's, as yet, an unresolved issue.

Thomas Rickert: So we have Xavier in the room. You would like to answer that?

Xavier Calvez: Just a very quick comment. This is another assignment for me to take to find an alternate to quarterly reporting approach in the case there is a veto of the budget that's still bending, and therefore not to budget to compare anything. So I will work on that to be able to try to find a suggestion on how we handle the quarterly reporting in that case which of course we all hope would not happen. The veto would have been resolved before the first quarterly report is produced.

Jonathan: Right.

Xavier Calvez: But in case that would not be the case, we'll try to find a solution. And Cherine and I are very eager about that quarterly reporting because we've put a lot of effort into it and we would like to make sure it works.

Thomas Rickert: Thanks. And this is very promising I have to say. I think we're really at the tipping point of this work.

Asha, you also wanted to add something? Please go ahead.

Asha Hemrajani: Yes thank you Thomas. Asha Hemrajani for the record. I just wanted to say - oops, bad echo. Can you hear me now? Hello?

Okay, I just wanted to agree with Jonathan's report. I thought it was very fair and balanced and he did cover very well the progress we made.

And although we managed to only discuss one possible scenario -- one challenge or one concern -- that the community had expressed out of the many that they had expressed for the veto, I think the fact that we did make so much progress in fleshing that out is really a positive step.

So I like your idea Thomas of continuing this. I was telling this to Jonathan that this is the beginning as in this is the beginning of the first time that we are actually sitting down together and discussing this. And I see that I'm optimistic; I think that we can come to a conclusion. Thank you.

Thomas Rickert: Isn't that good? So this is no way meant to suppress discussion, but I think that with only a half an hour left for this morning's session, what I guess the best use for our group's time is to say, okay, this needs some refinement obviously, but we've made good progress; I hope there's no opposition to that capturing of the atmosphere in the room.

And I would suggest that we make time for another breakout early next week, and I'm sure that as a little treat for all of you, he was already saying that his voice would carry into the rest of the room.

If we reach agreement on the budget topic this week, will you sing "What a Wonderful World" from (Setchmo)?

He can do it; he's done it before. So let's work towards that; let's make it a requirement, right.

((Crosstalk))

Thomas Rickert: Say that again.

Man: You got to earn it; that's right.

((Crosstalk))

Thomas Rickert: Okay, that's in Hans' operation, right. So let's close that topic now.

Thanks to Jonathan and team; awesome work. Thank you very much.

Cheryl, who's next?

Cheryl Langdon-Orr: I think (unintelligible) now.

Thomas Rickert: And the floor is yours Jordan.

Jordan Carter: Is this on? Yes, I'm sick of sitting down.

I take a slightly different (unintelligible) from what Asha just said. I think what's happening, which is quite exciting, is not that we're starting to say the same things, it's that we're starting to listen to each other saying the same things, which is a very positive sign for this group's progress. So that's good.

So I'm talking about the enforcement model. We were tasked with two - unless both ways -- all of us listening to each other. We were tasked with looking at two specific cases of enforcement; we were tasked with looking at the enforceability of IRP decisions and the issue of the separation at review.

And we didn't look at the second one; we ignored the separation review because if the separation review isn't being followed it's going to end up in the IRP. So we focused on the IRP.

Now who did their homework and read those detailed tables that were sent to you yesterday? I'm very disappointed -- very disappointed.

If you had looked at the 15 or 76 million page table that set out the detail, and if you had looked at the enforceability of the IRP, you would have seen that the process is the same whether you've got a single designator or a single member.

There are very few process differences - the reason I'm (unintelligible) is that I have (unintelligible) in a minute. The process is very much the same.

So in terms of process differences, there aren't really any; you end up in court to enforce it. But there is a difference between the two models, and I wrote this down so I would get it right as if I was a lawyer almost-ish.

And in both the models here, it's important to note that there's a legal person; single designator would be a legal person, a single member would be a legal person. And so there is someone with standing or the capacity of the person to be on the other end of a binding arbitration process is just what the IRP is.

In either model, fiduciary duties are important; this horrible F word that we keep rattling around this room. And that's important. The only time when fiduciary duties are suspended or less relevant is in a member model for the powers that are reserved to do that member.

So in all cases in terms of entering into an IRP on ICANN's side, if they argue that the IRP is dealing with issues whether the fiduciary responsibilities of the corporation must prevail, that is an argument that is available to them.

But what the difference between member and designator things come down to is the scope of the IRP can be slightly wider in the member one because when dealing with those reserved powers -- when it's about the budget or the changes to the bylaws or the recall of directors -- because those powers are reserved to the member, ICANN can't say the fiduciary responsibilities of the Board mean that we're not going to enter into arbitration about this.

Now that is dancing in some respects on the end of a pen. It is the edge case of an edge case, so it's important that you understand that. This is not - this is the member - at the very beginning of this is after the entire discussional process; it's after the Board has decided not to exercise the community power; it's after that's been taken through an IRP; it's after there's been a finding against the Board in doing it.

So we're a long way down the rabbit hole at this point and we're dancing on the head of a pen; that would be a sight to see.

So, you know, and then at that end of that discussion, we ask people which one they preferred. And guess what? There was no agreement. In fact, it was evenly balanced by my own scissor hands (sic), and that's not surprising because when this is so similar it doesn't give you the decisional point to choose.

So if our terms of reference were meant to give a nice answer to this group about, well you've got to choose a level X or Y, sorry; that didn't happen.

And the last point I would make is that in thinking about the level of enforceability of those powers, you know, making the IRP scope slightly wider and having the community powers enforced slightly more strongly gives me a slight preference, so that would give me a slight preference for the single-member model. But that's as far as this analysis takes you.

So I don't know that that's quite what we were expecting to get out of this session. One of the things I hoped we could get at some point this week and think we need to schedule is a broader look at the pros and cons of these two again, really head-to-heading them, to help us tease out the arguments and then find the ones that we're locking up on and find a way to resolve them.

But this wasn't delivering that. What I think it tells you is that we have more clarity about all of the powers under either model and how they might be enforced.

So I think (unintelligible). Thomas, Thomas?

So I think if there are any other good (sic) members who think I have kind of left something important out or if our lawyers think I've inaccurately stated, we should get them first and then - whatever you want to do.

Thomas Rickert: I suggest, as we did with the last topic, we will not be able to reach consensus on that today. But let me call for the group members first to add to Jordan's report. Please raise your hand; not all of you are on the Adobe.

So we have Bruce and then Greg and (Sean). And afterwards, we have Avri and we'll add more people to the queue as we move along. Bruce.

Bruce Tonkin: Thanks. And thanks Jordan; I think you had a good summary.

I think one of the key things is that in the majority of cases when there is binding arbitration, the court will enforce that arbitration. I think the lawyers said that is the normal situation. And there's educators where, you know, the court might not rule in favor of a community member.

I think it's worth probably just noting then to get right down to the bottom, that ultimately it's a step past that. Let's say the court didn't back the community, but then in spite of those models they (sic) also have the ability to remove the Board or Board Directors. So I think it's just important to understand that that's another escalation if you like.

Thomas Rickert: Thanks. Greg?

Greg Shatan: Thanks; Greg Shatan for the record.

I think Jordan you gave an excellent presentation. And I think that, you know, unfortunately the F word is exactly what we're going to need to focus on here, that being fiduciary duty.

And particularly in the case while it is true that enforcement of the courts tend to enforce and tend to have every deference and inference aimed towards enforcing an arbitration decision, that when we get to the issue of fiduciary duty and mostly where it relates to cases relating to the reserved power, that's where we get the big differences between the two sides.

So I think what we need to explore really are kind of the communities' potentially cases that they would bring in front of this IRP and look at each one of those in our deeper dive to decide whether those would - how differently they would perform under the two models because the general cases may be different. But the community cases are really quite specific and they all go the issue of whether the Board is exercising its discretion appropriately.

And the bottom line is that in a single-designator model, the Board has a much greater discretion. When it comes to their reserved powers, then in the single-member model where it says the reserved powers don't exist in the designator model, and therefore the Board has kind of the last words on fiduciary duty. And it really makes the IRP and the enforcement of it operate quite differently.

That is I think, while teams like (edu-case), we're on that edge. So it's not an (edu-case) for us.



Thomas Rickert: Greg thanks. I would suggest that we proceed with the queue and that we have Holly or Rosemary maybe briefly respond to that because I think there are other ways to maybe tweak the articles or the bylaws to help with this.

Jordan Carter: That's what we got into a long discussion about. I don't think you're necessarily right on that Thomas, but.

Thomas Rickert: Okay, well then we can skip that. Let's move with the queue.

Jordan Carter: Yes, we have to finish this whole meeting in 20 minutes guys so let's respect what Thomas is doing here.

Thomas Rickert: (Sean) is next. And the queue is closed after (Athena).

(Sean): Yes, this is (Sean) for the record. Initial follow-up with this, yesterday I was following the (unintelligible) because I was engaged (unintelligible).

But during the discussion within this group, I think we realize that (unintelligible) some of the goal of enforcement could actually be achieved without (unintelligible) actually displayed.

So I wanted to ask is there a specific reason why we are restricting to single-designator or single-member. What was the rationale for actually deciding to stick with these two as we try to check for (unintelligible) committee as (unintelligible)? Thank you.

Thomas Rickert: (Sean), I suggest we take this line. We'll discuss this after the meeting ends, okay?

Next in line is Avri.

Avri Doria: Thank you; Avri speaking.

I think boiling it down to angels dancing on the head of the pin is to minimize it unless you're truly into discussing infinite theory and the difference of that.

But I think the difference is actually incredibly significant between whether the fiduciary has, at the end of the day when discussing the powers whether it's a fiduciary or the members that have the slight advantage, in the discussions both before the court and such, I don't think that that's a minimal difference. I think it's actually an infinitely large significant difference between the two models.

And to minimize it as just dancing on the edge of the pin is problematic for me because what you're saying is, you know, I've been using the word trump card all day on it and that has its own problems. But the fact is, at the end of the day, one argument prevails and it's either the argument of members or the argument of the Board. And that is a large difference even if the process looks incredibly similar all the way through.

So I don't actually agree with the characterization that it's an insignificant difference.

Thomas Rickert: Thanks. Would you like to respond to that?

Jordan Carter: Really briefly. In terms of the difference of what might happen at the end of the arbitration process after all of these steps, I think I've characterized the narrowness quite fairly.

In terms of the broader picture about the role of fiduciary responsibilities, I agree with you.

Thomas Rickert: Chris indicated there was a quick follow-up. Since you haven't spoken today, I allow that to happen.

Chris: Thank you so much Thomas -- the Thomas.

And while I agree with Avri's characterization, I'm not interested in fighting about whether it's the head of the pen or not. But I want to make a very -- just for me personally -- a very very clear point.

I have absolutely no problem whatsoever with the Board's claim that it is to act in a particular way would be acting outside of its (unintelligible) duty to be tested. I have no problem with that ending up in a court where the court decides whether the Board's claim that it is inside or outside its fiduciary tested.

I am extremely uncomfortable having a situation where the fiduciary duty claim untested can simply be written straight over the top of by the community in its current form where there is no GT, no set of accountability mechanisms, et cetera.

That is my personal view and I wanted to put it on the table. Thank you.

Thomas Rickert: Thanks. Malcolm?

Malcolm: Thank you. I thought it was an extremely interesting discussion that we had and it was great to have an opportunity for a more interactive discussion with our Council; I thought that was very useful.

I must say I went into this discussion thinking that firstly, that the IRP enforceability and availability was crucial to the choices here, and that for me I had a very low confidence that single-designator was going to be satisfactory and that I had quite a high confidence that single-member would be satisfactory going in.

Coming out, my opinion was rather changed. I'm less confident about the enforceability generally than I was going into discussion. From the discussion that we had, I felt confused about the extent to which the Board would ever be able to argue that, "Well we may have had an IRP decision on this, but our duty is to do something -- to do this thing -- and therefore we have to do it anyway." And to how the court would respond to that in different circumstances.

So I had thought that the single-member was going to be a great way of making that certain and clear and everything would be crystal, and I no longer feel quite like that. But we did discuss, and I want to give some credit here to Bruce here for coming up with some ideas or trying to come up with ideas just to shore that up to other means.

Essentially, I think that simply looking at these two models may not be sufficient to ensure the thing that we really want to ensure which is that we can rely on this independent arbitration process. We may need to look at what other things we could do on top of this that we haven't thought of already as well. That's what I got coming out of this discussion.

Thomas Rickert: Jordan.

Jordan Carter: And thanks. I just want to - Chris, I just wanted to that fiduciary point.

In both models, the fiduciary duties apply to almost everything that the Board does. In the member model, it only doesn't apply to the removal of directors and to decisions about the bylaws.

So if we were talking about a member model that had the member becoming the Board and making all these decisions about ICANN's budgets and policies and stuff that didn't have those restraints, I would be so allergic to it I would probably be dead by now. So just...

Chris: So Jordan, we'll have to take it offline. But I don't think that's - I think some additional characterizations in respect to statutory rise which apply and in respect to which the member can override the Board's fiduciary duty. I'm happy - we'll take it offline.

((Crosstalk))

Thomas Rickert: I think that should be taken offline. (Athena)?

(Athena): Thanks very much. I think Jordan's descriptions capture it exactly the discussion.

And so looking at both two models that were indeed like some minimum changes - sorry, minimum differences, and I was wondering how problematic then the risk is to go to the single-designator model instead of single-member because at the end we're talking about (Ed) cases. And so are we going to really - how long are we going to discuss all of this, you know, (Ed) cases? And we should take into account other implications in this discussion with regards to deadlines and timelines and things like that.

And at the end of the day, we have this indirect enforceability of removal of the Board member. And this is for any of these models.

So I would like us to think clearly and in a pragmatic manner, and also have a proportional solution taking everything into account. Thank you.

Thomas Rickert: Thanks (Athena). Chris, you already spoke.

Steve hasn't spoken so I would allow Steve and then after that we're really going to close this. First, the roaming mic.

Steve: One significant difference between the single-designator and single-member model is that the scope of arbitration the slider (sic) and the single-member model.

But at the same time, would this by any chance give room for trivial arbitration sorts by the single-member or some form of (unintelligible) arbitration proceedings by the single member.

Can you give me some examples of the Board (unintelligible) for (unintelligible) action -- some imaginary examples? Can you give me some examples of some action to which the Board is field (sic)? Thank you.

Thomas Rickert: Would Holly or Rosemary care to respond to that? I suggest we note the question and we try to address it. Certainly the discussion is not concluded with this. I think it's - I have three things that I observe after this.

We see that there are a lot of similarities, so it's difficult for the group to decide which is the first to use. I understand that we're talking a lot about

borderline cases, and I take (Athena's) plea to not look at the borderline cases only.

And the third thing with the tongue-in-cheek - tongue-in-cheek I can't resist to that. We've been talking a lot about not putting ourselves at the disposal of lawyers so much, and it's interesting to hear that Chris obviously trusts judges more than the community.

So with that, let's move to the last section of our report.

Cheryl Langdon-Orr: Which is the removal of the individual board members; over to you Mike.

Thomas Rickert: And here comes Mike to report about that.

Mike: So after the velvety tones of Jonathan and a lot of eloquence of Steve, now you got to deal with (unintelligible) from (Jopeshey). But good news, we're going to end on a good note here. (Unintelligible).

But thank you to (Shawnie) and Cherine and many people who helped and worked in the spirit of compromise and consensus -- yada, yada, yada.

So the end (sic) of this agreement was that in the current proposal from CCWG, the process was there would be a petition by the appointing SOAC to remove their "director." There would be a community forum convened where there would be discussion, but after that essentially the pointing SOAC would take the decision whether or not to remove their appointed director by 75% majority.

And the contra view to that by several commenters in the period was that, "Well, it's okay for an SOAC to appoint a director so that they bring that

perspective to the Board. But once they become the Board, the Board - it's our Board; it's essentially community property and we don't think one SOAC should be able to screw around with our Board that east." So that was essentially what the debate was.

So we went through a lot of discussion and what we ended up with was what was missing in the minds of multiple commenters, and I think that's even supported by Jones Day by the Board's comments into the process, was there needed to be an added step of due process.

So in the new process that we came up with, essentially it would stay the same with the same petition and the same briefing call and the simple majority for petition to removal. We would convene a community forum, as it says now, and essentially in that community forum, the SOAC would present their case why they wanted the director removed. The director would have his chance to, you know, put forward his case why, you know, he thinks he should stay.

And understand this is another edge case that it probably would never get to this. If it got to the point where your community was really unhappy with you and they had a discussion with you, in most cases, you know, the director would resign and that would be resolved.

But in the case where he doesn't want to go and he has support, we would add the community forum which would mostly be for the dissemination of information where you would have both parties explaining their case.

After that though, you would have a formal call for requests for comments and potential recommendation from the community, especially the SOs and ACs. So after they get the information at the community forum, they can go off and discuss, you know, amongst themselves what their position is, and then submit



comments formally back to the petitioning SOAC who then has to consider those comments. And after considering those comments and providing a written explanation showing that they had considered the comments, then they would be free to make their decision after that additional step with the same threshold of 75%.

So this seemed to address the concerns that there wasn't enough due process in the current process for the removal, and also maintained the right of the SOAC to maintain their wanted representation on the Board.

And I open it up to make sure - (Shawnie), if I captured it correctly? Cherine?  
Thank you.

Thomas Rickert: So for the remote participants, (Shawnie) is nodding. Mike, thanks so much for the excellent report.

Those who were in that team who want to add to his report, please do give me a signal. Chris?

Chris: Yes, Mike it's great. I just wanted to - I just thought it might be useful for people to understand the baseline of where that center line came from -- the request for comments.

We started talking about the concept of going back to the beginning of where you have policy. The ccNSO is in charge of its own policy. But in its bylaw, there's a requirement that it reaches out to the ALAC and to the GAC and to the community to have input into that policy. And that struck us as being kind of as a similar baseline for the way that you would deal with the removal of a director. So just some color I thought I'd add that.

Thomas Rickert: Thanks Chris. Anymore team members that want to add? George?

George: Thank you. I want to comment that this was a particularly good experience. We converged pretty much on the solution. I feel very comfortable with this. It meets my criteria certainly as well as I think CCWG's. Thank you.

Thomas Rickert: Where is he? Thanks very much George; excellent.

There are two more Board members that I think were part of the team; Cherine and Gonzalo?

Cherine Chalaby: I want to say that Mike has done a brilliant job. And I shifted my position a little bit because I'm now satisfied it was a process so I feel very comfortable, and this is a good compromise. Thank you.

Thomas Rickert: Can you just tap on the mic? Thanks so much Cherine for that.

Gonzalo: Thank you. Mike, you did a really good job and in trying to convey in all openness that we were expressing the process.

I think this is a good form (sic) in terms of consensus and how we should be working. It adds a sense of due process to what we are having here and the opportunity to get involved in this issue which is important.

And at the end, the final solution is set in a high quorum, you know, to remove a director. So I think there is sense of fairness in this process, so thank you very much for that.

Thomas Rickert: Awesome. That is very promising.

Can I ask you to stay here? We have some comments from the group. We have a few minutes left but nonetheless let's go through the comments I guess.

Malcolm, that was an old hand right? Kavouss, was that an old hand or a new hand? Okay, your hand was lowered in the meantime. I thought you had passed. I'm sorry.

Alan?

Alan Greenberg: Thank you. I assume, although perhaps not formalized that there's a prestep where the organization talks to their own director, explains the situation and gives them an opportunity to quietly resign before this is made publically. Now maybe we don't formalize that but it should be there.

Mike: Formalized in formal discussions.

Thomas Rickert: Okay, so quiet resignation of Board members is not necessarily a community power, but an easy way, right.

And actually it goes back to what Cheryl said; placing this group near to the toilet. Maybe we should recall it the (unintelligible) the community power to flushing the Board except for...

((Crosstalk))

Thomas Rickert: I just couldn't resist that time.

Robin and then Sean and after that we take stock.

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

I have a question about the pink sticker on the right up there. I think it says 75% threshold in order to remove? So that's the new piece, is that right? Is that from the call of this (unintelligible)?

Mike: No, that's in the proposal now.

Robin Gross: That's in our exist - so it's not something new from this morning?

Mike: Right.

Robin Gross: Okay, that's my question. Thank you.

Thomas Rickert: Great. (Sean)? Can we have the roaming microphone for (Sean)? Hillary's on her way. Thank you so much.

(Sean): Yes this is (Sean) for the record. It's a good thing this is an improvement in actually trying to wanting to get your view of the community.

However, I think this too does not remove the fact that the SO -- the appointing SO or AC -- stays as (unintelligible) on who removes the Board. And then if it does not (unintelligible) Dublin, that fundamental impression that it creates within the Board that we have different representatives within the Board.

So I think the question is when the call for comments comes up and the SOs or ACs respond to the appointing SO or AC that was removed, if those commenters advices them not to remove, which we did do, we did really follow that advice or do we still go ahead and do remove and give direction as for removal because that is the main point. And it seems like (unintelligible)

decision to say that or not; we just (unintelligible) remove the consent that we have. Thank you.

Mike: You're correct. It would be advice, you know, similar to, you know, GAC advice. And they would be able to ignore it.

The idea though is that there would be a very public strong vetting of the discussion. And if there was thought it was an unjust removal of both the director himself and maybe, you know, a lot community members would be able to make that argument.

So yes, in the final decision, it would be the SOAC which we had to maintain that because it's their director. And that's actually supported by some statutes with regards to membership (unintelligible).

(Sean): Just a follow-up. How does this affect the NomCom appointed members?

Mike: (Unintelligible) is still the same. NomCom requires, right now, requires a 75% of whatever mechanism we develop. That's subject to what we develop here, okay. So that threshold, you know, will be set in this process here. But that's a complete community decision to remove any NomCom directors.

Thomas Rickert: Thank you so much. I have closed the queue. Bruce, just put yourself into the queue afterwards. I guess you're asking for me to mark the field green on our scorecard?

Bruce Tonkin: Actually I just want to get a little clarification on that last point so I was going to ask the same thing. Just how does this work to the Nominating Committee? Just thought you hadn't discussed it yet.

I'm hearing people say they're concerned that this maintain independence, I guess, of the Nominating Committee appointed members. Does that mean that you're saying a 75% or consensus decision of the Nominating Committee?

Mike: No, in the current proposal, it's 75% of the community decides to remove a NomCom director.

Right, but that's what the proposal is and we don't (unintelligible)...

Thomas Rickert: We don't change the report on that.

Mike: ...very few public comments on that.

Thomas Rickert: Let's just be clear. We're discussing refinements to what we had in the report.

Mike: Right.

Thomas Rickert: There was no objection to what we had in the report on that.

Bruce Tonkin: I'm fine with that Thomas. Just to be clear, I think Mike is right. It is to some extent, it's dependent on what you decide as being a decision model and you're model-model. So it's there, but we're going to need to look at it again depending on - you're calling refining it.

Thomas Rickert: Correct.

Mike: I think it will sit in our (unintelligible)...

Thomas Rickert: But it's going to be there...

Mike: Right.

Thomas Rickert: ...and not here. And I think - that may be brave. I think we can take that for second reading and mark it green. I think the process is well understood; I don't see any significant issues with this. Everybody seems to be satisfied. So let's do that; bring it up for second reading later in the week or early next week.

So with that, I think we can close this morning's session. Let me say you've all done a tremendous job.

Let me call our specifically Cheryl who has been taking care of the sub-teams masterfully. Special shout out to the (explain) guys who facilitated this session.

I'm particularly proud that we seem to have remote participation work for breakout sessions; that is a breakthrough as well. So thanks to the remote participants.

And thanks to all of you, this has been very constructive. Another (unintelligible) moments and we had a few of them this morning. So let's continue the good work and see you soon.

Man: Next occasions Monday, 10:30; Engagement Session. I know; it's going to be in the big room where the opening ceremony takes place. And then on Monday afternoon starting at 2:00 pm, we have a long session which we will design in the next - bear with us until tomorrow morning probably for a detailed agenda. Thank you.

END