

**ICANN**

**Moderator: Brenda Brewer  
October 19, 2015  
8:00 am CT**

Leon Sanchez: We have a lot of work ahead; we have made really good progress in this space, and let's hope we keep the trend going.

As a reminder, I kindly ask you to state your name before speaking. We have remote participants and for the benefit of those participants it would be good if you could remind to state your name before speaking.

I also remind you of the standard of rules of behavior. We call upon all attendees either physically or remotely to abide by those standards of behavior.

And well, I won't take much time in continuing the welcome. The roll call, if it needs to be, we'll have a regular roll call in the (Asian) Room.

And I'd like to go with Mathieu to continue our next agenda item.

Mathieu Weill: Thank you very much Leon and welcome everyone. This is Mathieu Weill speaking, the ccNSO appointed Co-Chair.

Since we had our sessions on Saturday, 48 hours have gone by. Wow -- wow. It may be that some actually discussed Accountability in between as if there were not enough sessions about it. This is just pure speculation.

And as a consensus, we think it would be interesting and useful for further discussions of our group to allow a small session of reporting about what those discussions were about and whether they have brought ideas to the table. And that is why we wanted to offer this possibility.

Do you have the (AC Room) because I'm not in the (AC Room) yet?

Woman: Yes.

Mathieu Weill: Okay.

For any updates on community feedback received to date, to initiate this I would like to report on the very successful engagement session that was held this morning. I think we had a very good turnout and very good interactions in the room.

There were a number of interesting points raised regarding the Board removal that confirmed that some of the discussions we've had are very much on the community's mind.

We've had some statements regarding the need to deliver as fast as possible now because timeline is definitely very high on the agenda of significant parts of our community.

And we've also heard from comments that confirm the interest on some of our Work Stream 2 items such as diversity and SOAC accountability as well as transparency, and I think that is rather reassuring and at the same time it definitely shows that we still need to refine some of the latest developments in our discussions, and that is going to be in our agenda later just after this point actually.

So with that, unless there is a queue forming because I don't have my (AC Room) here yet, anyone who wants to provide an update?

Bruce?

Bruce Tonkin: Okay, thanks Mathieu.

I thought I'd report on some of the conversations and discussions that have happened amongst Board Members over the last couple of days particularly following the CCWG working sessions on Friday and Saturday morning. And I think, you know, it's fair to say that in general the Board is very encouraged by those discussions.

We support the new community powers that the CCWG is working on, and we're encouraged by the progress on how these powers should be executed in the progress that was made on Saturday morning in those discussions.

We also agree that those community powers must be enforceable. We continue to support approaches that ensure the enforceability can be achieved using simple approaches without major changes in our corporate structure. We believe that most disputes can be resolved through a community independent review panel or IRP. But in the unlikely event that a future Board doesn't

comply with the outcome of the panel, the community should have a solid foundation to be able to achieve enforcement.

With respect to enforcing a community IRP in court, we noted that there's been some discussion about what legal entity or even potentially model entities should be used for the community to have standing in court. And then what legal status should we give that legal entity within our bylaws.

With respect to the bylaw status, the Board supports the consideration of the designator model as the closest to our current governance model.

So basically from our perspective, the Board will continue to actively participate in refining how best to implement the community powers and following up on the work that was done Saturday morning, and the Board is willing to participate in investigating how sole designator model could be implemented. So that's where we currently stand with you.

Mathieu Weill: Thank you very much Bruce and thank you for the appreciation and encouragement that you and your Board capacity are providing to our group.

I'm seeing Kavouss's hand is raised, so Kavouss, you would like to - is that a statement or is that a question to Bruce?

Kavouss Arasteh: A statement given in the Chat. I hope you take that into account. I have two major concerns I put in the Chat. Not to take your time, but it applies to Bruce and I also put in the Chat.

Before we talk about, I hope that they do not accept to designator because we are certain of sole-designator but not designator; I think it has many meaning.

If the Board is in favor to preview discussion on sole-designator, no problem. But before doing that, I would like that a two-page comprising paper provided by our legal counsel comparing the sole-designator with sole-membership will be discussed to see what are the shortcomings, deficiencies, difficulties of the sole-designator.

And what way we could remedy or compensate or do something about that by some other complementary measures or similarly enforcement of those measures which are in the sole-designator, you know, not to have the difficulty.

That is two page document of the legal counsel. It's very instructive; a lot of things there. And there are three areas that the issue will not be covered in particular transition will not be properly addressed. And there is one area that it could be, but that area should be reinforced.

So I would like that at some time, whatever or whenever you deem appropriate, (unintelligible) that two-page comprisal (unintelligible). It is very very important. Thank you.

Mathieu Weill: Thank you very much Kavouss and I think you're skilled enough into this type of discussion to provide very expert advice into this. And that is very close to what we are about to after the break this afternoon where we need a substantial discussion with informed by facts so that we can discuss this model based on facts, requirements, in a solo (sic) and documented manner because that is what is expected from our group.

And the three-page paper that you referring to, I would ask that maybe someone reposts the link into the Chat Room so that everyone can ensure we

are on the same page. But it's certainly a very sound basis for that discussion and I thank you for bringing that up.

I have Tijani.

Tijani Ben Jemaa: Thank you Mathieu, Tijani speaking.

Very happy to hear that the Board accepted the sole-designator model. I feel today more confident that the transition will happen, so thank you for your open mind.

Mathieu Weill: Thank you very much Tijani. I think I haven't heard accepting in Bruce's words, so I would like to correct that for the record. But I think we've had already a strong signal of willingness to participate in the conversation, and that is already very much appreciated.

Next is Alan.

Alan Greenberg: Thank you very much; it's hard following that.

In discussions within the ALAC, it became quite obvious that even with people sitting in this room, there are very different perspectives of what the "sole-designator model" means.

I think part of the problem is we are using the term designator, which is a legal term related to appointing Board Members, and extrapolating the sole-designator to incorporate the rest of the ACs and SOs if you look at the decision models we were looking at. And that's caused some amount of confusion.

I know for my own purpose, I'm going to try writing up something later tonight and I'll send it to the list. And I guess it would be useful if other people tell me does that match what they think it means or not because we really need to have one image of what it is if we're going to decide whether we like it or not. Thank you.

Mathieu Weill: Thank you very much Alan. And you're definitely right and we need to be very clear on that at the beginning of that discussion when it comes on our agenda.

Before turning to Malcolm, I think Athina has been raising her hand and was waiting on the list. So when you speak, if you can just raise your hand for a couple of seconds so everyone can see in which direction to look at, it would be I think facilitate exchange as well.

And Athina, yes; I'm not asking you to stand all the time but I know that you have the floor Athina.

Athina Fragkouli: All right, thank you. So when the representatives from the ASO first joined this group and participated in this group, we set some clear requirements on what we expect the outcome to adhere too.

At the same time, we also provided a proposal for a model, and that would be multi-designator's model. And we didn't just this as a proposal, but we also provided supporting documents. And so we really backed this up with legal documentation.

When we saw that the discussions were not very much in favor of this model and they were concerned, we drove back because we understand that if there

are concerns we can be flexible. As long as our requirements are respected, we are flexible to any model everyone else feels comfortable with.

Now we see that we are very very very close to a conclusion. We just have some details to work on and to agree on.

And let's see the bigger picture here. We are also very very very close to a complete proposal for the IANA Transition. The ICG has completed their proposal; they're almost there. And they're waiting for our requirements so that they have a finalized complete and beautiful proposal for the IANA Transition.

Now I understand that there are some details to be agreed upon and that are somehow controversial. But let's take a step back and see the complete picture, and let's consider whether these details are worth delaying the progress we've made and the improvements we are about to bring to the whole multi-stakeholder model with the IANA Transition.

This is the message from the ASO Community. Thank you.

Mathieu Weill: Thank you very much Athina and I think the way you're collecting it so it's positioned is something that should inspire us in our further discussions because of this open-mindset that you personally and you as a community have demonstrated along the process. I think that's very valuable.

Malcolm? Raise your hand, Malcolm is over here.

Malcolm Hutton: Thank you Chair; Malcolm Hutton for the record.



I'd like to thank Bruce for that very helpful and constructive statement on behalf of the Board. I'd like particularly to draw attention to the comments that he made regarding the Board's acceptance that the (unintelligible) needs to be not any binding that in the unlikely event that the Board in a particular case declines to enter into such binding arbitration, that there must be an enforceable mechanism for ensuring that it does so. I think this is a very significant step forward.

In our previous discussions prior to this week, I have been of the opinion that on the basis of the advice that we've given, that the only mechanism that can deliver that assurance is the single-member model.

Following further legal advice and discussions that we've had in our deliberations and particularly constructive discussions that I've had in private with certain individuals on the Board as to their own personal thoughts, I now see that it may be possible to construct alternative mechanisms that would deliver on that requirement that the Board has just said it's so important and that I believe is so important.

And in that, I think that it is possible that we may be able to find some way of resolving the disagreements that we've had about the model that we have so as to achieve solution on this issue at least in a different way.

So I hope that time will be made in our deliberations to discuss the importance of how we go about implementing that, understanding that simply going with one of the other models may not of itself deliver on that requirement, but that the other mechanisms supplementary to those that we've considered so far, may achieve it. Thank you.

Mathieu Weill: Thank you very much Malcolm. And I'm struck by the openness of all of those statements and I take that as a very very encouraging sign as we move forward in our session.

And I think I'm seeing no further hand raised, so I would like now to turn to Thomas as we move to the substantial points of refinements for our model for our discussions.

Thomas Rickert: Thank you very much Mathieu and welcome everyone back to another intense work session.

The purpose of this agenda item is that we try to recap and see whether there is additional need for discussion on the four areas that we've been discussing before the weekend. And that is removal of the Board -- individual board members -- the budget community power, the community decision-making, and the principles, commitment and core values as well as the IRP.

So in the interest of time, let me brave again and suggest that we don't walk through these in detail, but just ask whether the support for the first of these points i.e. the removal of indirect Board Members as defined by the sub team, as discussed before the weekend, as explained by Chris Disspain during the engagement session this morning, stand.

So can we confirm our agreement to that community power? So in the absence - should there be any further comments or requests for changes we could confirm this, but I see that there is a queue forming.

Malcolm, is that a new hand/old hand? Then Chris, Roelof, Kavouss, Alan.

Chris Disspain: Thanks Thomas. I just wanted to say that it became sort of quite clear I think this morning; one that there is a favor of explanation to do about to the community about the principle because there are some who don't understand the principle.

And secondly and perhaps more importantly, we haven't yet matched up what that group put together with what Steve's group put together, and there are some mismatches in that process that we're going to have to try and work out on the basis of, you know, if it's going to be decision of the SO and the AC right the way through, that doesn't fit with Steve's listing -- you've got to have twos do this and threes do this and fours to that.

So I think that line in Steve's chart is going to need to change to take account of the agreement in the consensus in the small group about the Board change. So I just wanted to flag that because we mustn't forget to that, otherwise it will be a mismatch.

Thomas Rickert: Thanks. And Steve, maybe you can prepare for maybe explaining that point, but let's go further down the queue first. Roelof is next.

Roelof Meijer: Roelof Meijer. I think there's almost - I understand that we are time pressed, but may I recommend this.

For each item, one of the co-chairs or somebody else gives a very short summary of what the actual item or what the actual proposition is now because I think that we have people in the room who weren't there this morning. And not to restart the discussion, but just to make sure that everybody is aware that what are we asking to commend (unintelligible) or to agree with.

Thomas Rickert: Thanks Roelof. And I think that listening to you, what you said and what Chris said, it might have some value, and you Steve, for just briefly outlining where we are with the latest change that has been discussed. Is this something that you could do for us?

So Steve, could you maybe do a quick recap?

Steve DelBianco: Thomas, a quick recap of the entire decision-making escalation method, or only with respect to the single board member removal so I understand your question.

Thomas Rickert: The single board member removal.

Steve DelBianco: No, I don't think we should do that now. Let me continue to coordinate with Chris to integrate it into the total process because as you recall, I was not part of that group, and we treated individual board removal to the extent that the community has anything to say about it, we treated it as like the other community powers and did not integrate the individual and AC and SO activity that they did.

So you'll have to give us a later point in the agenda today and I think we can get to it then.

Thomas Rickert: Okay, great. Kavouss?

Kavouss Arasteh: Yes, two points. One, today in this session that Mathieu categorizes as successful by categorizing as a listening community because when you say something and I did not - that doesn't mean that I agree; it means that I understand what you're talking about.

Second, there was a question; removal without cause. I am not convinced Thomas. Imagine that you want to employ somebody and imagine that you employ me as your employee. Imagine that one day you are not happy with me and you want to dismiss me, and imagine you take me to the administrative of your company. And you say that I want to dismiss this person; vote for that.

And well they ask you, "Well, what cause?" And you say, "No cause."

Is that acceptable? Somebody says that (Mr. Eck) wanted this. I don't agree with that.

We need to have a cause. You cannot dismiss anybody because you have elected me -- selected me as your employee. If you want to dismiss me, you should give full reasons.

And then the tribunal says, "Okay, vote for that and dismiss me." You cannot dismiss; this is number one.

Number two, yes, on Saturday we had some arrangements to take care of the community's involvement, but it is not clear properly mentioned. We have to (unintelligible) SO or AC - one AC but no others - decide to remove one Board Member. They consult among themselves and then the community and then come back to decide how that consultation would be carried out.

Is it going to each SO and AC and asking their recommendation or their views, and after that they decide or what? It was very generally mentioned.

If we have clear on this point, we don't have any problem. But I have serious difficulty to remove any Board Member without cause. Thank you.

Thomas Rickert: Thanks Kavouss. Just a quick response to that cause is a legal term. So understanding is, and I think this got a lot of traction in this group, that we would not ask for cause as a legal term, but that a rationale needs to be provided for why the Board Member is to be removed. And I think that I understand what you're actually asking for.

With respect to the second point, the decision is being made by the designating organization; by the organization that places the Board Member on the Board.

Yes, there was a need expressed particularly Tijani and others that this discussion should not take place secretly, and therefore there's now this notion baked into the process as proposed that there would be an open consultation, that the views of the whole community, all the SOs and ACs would be heard so that the organization that puts the Board Member on the Board can then make a decision with all the information from the whole groups.

But for those Board Members that come through an SO, they would actually be then replaced based on a decision made by that designating organization.

So I hope that clarifies but we will see the process being further fleshed out and visualized, as I understand, so that we can recap that.

Alan.

Alan Greenberg: Thank you. With regard to the same process, and I don't want an answer; I just want to point a discrepancy that needs to be addressed as is fleshed out.

Chris, in his talk today, said at one point that if we don't get support of three or whatever the number is, ACs and SOs, it doesn't progress to a community forum. That could be taken to mean ultimately that the ACSO cannot dismiss it.

It sounds like that may be a decision to skip the community forum and proceed to the next step, so we need to clarify that as we move forward.

Thomas Rickert: And Chris wants to clarify so that we can move (unintelligible).

Chris Disspain: Thanks Thomas. And yes Alan, thank you; you're right and I misspoke.

The SOs in charge or the ACs in charge, there should be an obligation on them to have the community forum. If no one turns up, no one turns up. But there is an obligation on them to go through that process. They don't need to have support but they must follow the process.

Alan Greenberg: Thank you.

Thomas Rickert: What you can't from where you're sitting, you made Alan happy and that's a good thing isn't it.

George.

George Sadowsky: That's quite an achievement.

Subject to Chris's and Alan's comments, I want to say that I support this path. I was part of the group that put it together and I commend Mike Chartier for running a group in which every option was considered and we came to a harmonious conclusion.

There are always error of course that one makes when one makes a test; statisticians will go on Type 1/Type 2 errors. And there's always a possibility that the process which isn't as tight as someone might like will admit the possibility of failure.

In this case, my colleague Bertrand de la Chappelle made a fairly eloquent presentation about the responsibility of Board Members to reflect the welfare of the organization as a whole rather than responding to any particular constituency. And I think that's clear and that has to remain in the bylaws.

But in this case, I think I am willing to admit I would take the risk of ensuring that the SOs and the ACs either collectively or individually do not go rogue. And under this process, if an SO or AC decides to recall its director because it didn't like something about it his hair is green or something like that or he voted against us, I think that some kind of consultation that's required here -- the stating of the reason the requirements for the other bodies to consider -- would be sufficient in terms of pressure and in terms of reason to ensure that the right thing happened. And therefore I'm in favor in the process as it is now defined. Thank you.

Thomas Rickert: Thanks very much George; that's much appreciated. Let me also say that on the audio that the queue is closed on this item.

Bertrand.

Bertrand de la Chappelle: Is this working? Yes; Bertrand d la Chappelle for the record.



I wanted to continue briefly on what I said this morning, and I want to in advance to apologize. I know it is difficult to come in at a late stage in the process; I understand there's been a lot of discussions.

But I, maybe like a few other people here, somebody who knows about the internal functioning of ICANN, but has not necessarily dedicated a lot of time following the work. So bear with me for just one second.

My concern with the way it is presented today is that the conditions under which the recalling or the removal of one particular Board Member is envisage in my view should be for failing to fulfill his responsibilities as a Board Member, that can include a non-exhaustive list; conflict of interest issue, it can be lack of fiduciary duty, it can be a behavior that has an element of misbehavior.

I do not think that not following whatever position an SO may have on one topic is a misbehavior for an ICANN Board Member. This is not what I understand is a function of the Board.

We collectively, as a group and as a whole community, create a body that is a collegial body. And I'm concerned about the notion that somebody who has been elected by a particular constituency is entirely and exclusively representing the positions of this constituency.

In a certain way, and I was making the comparison earlier today in a private conversation, this is one of the problems that we're witnessing in the European Union where governments are considering that their commissioner is actually there to represent their community i.e. national interests. This is hobbling the European Union at the moment and I think this is a potential danger for ICANN.

I think the Board Member should become extremely independent when they are designated, and held accountable for their misbehavior as a Board Member and not as the representative only of the community.

I think if there is a list of explicit causes - whether you name it causes or not, it's okay. But if it is a completely open-ended thing, it is replacing accountability by oversight. And I do not think that the community is above the Board; the Board is responsible to the community -- that is different.

And the final point is there are actually three elements that are slightly distinct and confused here. One is the responsibility of a Board Member to what the community comes from. The second one is the responsibility of a Board Member to the organization, and the third which is always conflated with the second - and I think it's wrong - is the responsibility of the Board Member to the global public interests.

There are situations where the duty of a Board Member, in my view and I agree that not everybody may share that, the duty of a Board Member is to think about the global public interest first, the interest of the corporation second, and the fulfillment of the coordination with its originating constituency. But it is a higher task and it's a higher calling than just carrying whatever position their community may have at one point.

Thomas Rickert: Thanks Bertrand. Let me just remind everyone of keeping their statement as brief as possible.

The concerns that you raised Bertrand have been discussed in this group at length, particularly the notion of bringing out the concerns that an individual group has for the Board Members to the public was installed as a safeguard to

ensure that the Board Members are not just pirating the views of their respective organizations. And by doing that, at least those that had raised concerns, have expressed afterwards that with this new process their concerns would be sufficiently addressed.

Let me also say that in practice, I would really like to see a designating organization, an SO let's say, go public and express their views that they're removing the Board Member because that Board Member has agreed to a budget that (castone) that travels a lot. So I think, you know, there's going to be dynamics if you bring out the issues to the public.

Let's move to Cherine now.

Cherine Chalaby: Thank you. I fully agree with the principles that Bertrand has spoke. And I have participated in the work group and I have personally moved my position in terms of the proposed solution because I feel what's on the table now can actually achieve to a great extent to what's been said by Bertrand. And I'm happy to spend time with him explaining that.

The only concern I had this morning is that I felt that the solution presented was not exactly what I felt we reached in the discussion in the small groups, and perhaps it was a matter of emphasis rather than anything else. So I would like to participate in the discussion later on to make sure that - and the specific point is around what happens after the community forum.

What we discussed afterwards is that there should be a process, and even enshrined in the bylaws, where the SO -- the petitioning SO and AC should request a formal recommendation or feedback from the other SOs and AC. And that when they make their decision, all of those feedback and recommendations should be clear and transparent, and the SO and AC that is

petitioning or removing the director has to explain why they're going, for some instances, maybe against the recommendation of the rest of the community. Thank you.

Thomas Rickert: Thanks Cherine and thanks for your continued support to that sub team. I suggest that you connect with Steve and Chris to ensure that when we show the updated visualization of the process that your concerns are addressed.

Bruce?

Bruce Tonkin: Thanks Thomas. Yes, just on this one I think it's probably just something to be a bit clearer as a communications tool.

But when I looked at the diagram from this morning, the individual Board Member removal, that diagram pretty much focused on the removal by a single supporting organization and ALAC. And I noticed there was a question, I think, in that public forum and also maybe a little while ago about the process for removing a Board Member that was appointed by the Nominating Committee.

So I think the only difference in process is that at the final step, instead of being a single supporting organization or the ALAC, the decision maker is actually the single legal entity whether we want to eventually call it. And that single legal entity makes that decision by some threshold of the Supporting Organizations and Advisory Committees that participate within that legal entity.

So I think it might just be worth putting that all in one diagram just to confirm that.

Thomas Rickert: Thanks Bruce. Kavouss, then Tijani and after that we're going to stop this.

Kavouss Arasteh: Yes, thank you Thomas. In reply to my first - first of all, I give what Bruce and Cherine said; this is number one.

Number two, in reply to my question, you said that yes they will concern the community. But the word you use, I don't recall but I would like to deflesh whatever you put and take into account is not considering if you take that as a result of consultation into account. Is not that? Okay; I understand what you say but I'm taking it into account; number one.

Number two; whatever you're devising here, if you go into bylaw, in the removal of one director by the Board itself, the verb is used or noun is cause is not rushing on (sic). We could not have two different terminologies.

So I cannot agree with rationale issued because if you want to put rationale, you could change the bylaw to lay into removal of individual Board Member by the whole - removal of a director by the Board Member, replace by the cause by rationale. But I don't mean rationale has no real legal meaning; cause has legal meaning and we are drafting bylaw, and bylaw is legal document should you use legal (unintelligible).

So I cannot agree with the rationale. Thank you.

Thomas Rickert: Thanks for your view on that Kavouss. Tijani.

Tijani Ben Jemaa: (Unintelligible) Thomas. ((Foreign Language Spoken)).

Man: ((Foreign Language Spoken)).

Tijani Ben Jemaa: So Bertrand, I'm sorry. Since the third month, I was saying exactly what you said Bertrand. And even in bodies at the end of the meeting, I expressed my disappointment, and that's how the committee forum was created -- was initiated.

So the discussion inside the committee forum will limit drastically the possibility to have a removal of a Board director for the narrow interest of the SO or AC.

And the small group on Saturday will add another layer -- another step -- asking the SO or AC who wants to remove the director to formally ask all the SOs and ACs of ICANN about their point of view. So it will be recorded, the point of view, of the others with this. This will also reduce the risk.

I agree with you but we don't have always what we want. I think it is not too bad what we have now. Thank you.

Thomas Rickert: Thanks very much Tijani. As promised, we're going to show the revised visualization of this community power. I sense that we need to work on some details but that there's agreement of broad support for the general approach, and that's a good sign.

I'd also like to commend those that spoke on the willingness to accept sacrifices, and in certain areas that's the nature of the bottom-up consensus approach.

And with that, we would like to end this call, and we're actually changing the order in which we're going to discuss the topics on the agenda. And the next topic is going to be the community decision-making.

Leon Sanchez: Thank you very much everyone. This is Leon Sanchez.

Well we made a lot of progress also in the decision-making and I'd like to ask Steve DelBianco to please provide us a very quick introduction to where we are at, and of course explain to us where we're standing.

Steve?

Steve DelBianco: Alice, are you prepared to put up the stair-step escalation slide at this point?

Alice: I'm not (unintelligible).

Steve DelBianco: Sorry, the slot. Co-chairs, would you like us to start with the discussion we did this morning, because I heard that earlier today, or go directly to the chart, the document, that the subgroup prepared?

Man: (Unintelligible) clarity about what's being discussed, so if you have an actual description of the state of play, that's the best place to start.

Steve DelBianco: Then Alice, I circulated that at about a half an hour ago to PDF, and you don't have it.

Thomas, I would suggest deferring until I can get the document into Alice's hands. The ACCT Staff relay takes forever, so I may have to just send directly.

Leon Sanchez: Okay, so I think we can go to - do you have it already?

Thomas Rickert: It's going to be fine. And Steve, just a very brief recap, not a full presentation, but I thought that when we were trying to do the individual Board Member

removal, people thought that we should have a little refreshment of memory in what we discussed before the weekend.

Steve DelBianco: All right, thank you for putting that up.

This is a table that derived from the chart on the easel we worked on on Saturday morning where we delineated all seven of the required by powers. And then the columns simply show the decision-making process to figure out the three increments. The first increment is having a conference call, the second one is convening a community forum, and the third is actually exercising the power itself.

The co-chairs have asked me to specifically focus on Row 4 which is the removal of individual or directors. So I can see that on the screen you can display the column headings along with Row 4.

So the first point of that discussion is how gets to decide if we have a conference call about removing an individual Board director. In this case, the appointing AC and SO is alone sufficient to ask ICANN Staff to set up an Adobe Connect dial-in in order to host a conference call.

And that conference call would be of course be vitally interesting to the AC and SO who's moving for that director's removal, and I believe it would need to be open to any ICANN participant to listen in and participate. But the AC and SO in its leadership would be in charge of organizing and managing that call.

Chris, does that match with your understanding because those edits came from Mike Chartier after we met on Saturday morning?



Chris Disspain: Yes.

Steve DelBianco: Thank you. And the second column is moving to the decision of should it convene at community forum because at the end of the telephone call, either it's apparent that there's support to continue, or there's doubt about whether they should proceed with the removal of that director.

And it's somewhat more heavyweight to organize a community forum. It requires picking a date and a place to hold an in-person meeting with that AC or SO who's director is being sought for removal, and ICANN Staff will support with travel or designated representatives of that AC and SO as well as Adobe Connect resources for transcription, recording and I guess even translation if it were absolutely essential.

And that one-day forum would hopefully occur during an ICANN meeting on the day before, perhaps the day after, so that it didn't interfere with other things that are happening. And I do hope the new meetings format would allow us to do that to take advantage of travel and the presence of staff even on the shorter four-day meeting.

At that community forum, again, I believe that others could attend but it's primarily focused on whether the AC and SO itself wants to continue to move ahead with the power to remove its director.

The third step is consensus power to exercise and remove the director. While if the appointing SO and AC makes the decision to continue, then that formal consultation with the director is held and all SOs and ACs are invited to comment on it. And I do want to suggest that that happens at the community forum itself. That consultation which is open to the other ACs and SOs and that commenting should happen there.

I believe that at the end of that process, the actual AC and SO uses its own method of decision-making to decide whether it wants to proceed with the removal. So for some ACs and SOs, that may be voting, for other ACs and SOs it could be a consensus determining process.

So Chairman Thomas, is this even remotely close to what you and Mathieu had in mind for this explanation?

Leon Sanchez: Thank you very much. Yes, this is a snapshot of what you've been doing, and I see Chris Disspain has his hand up. Chris?

Chris Disspain: Thank you Leon. Yes and no, there are some critical steps that are missing. So I'm not suggesting we can fix this now; we need to take it away and work on it.

But in essence there are two things; one is that there was a specific part of the process that there would be a call for comment and that comments would come in and they would be - so not having people chatting at a community forum. There would be a formal course of comments from the other ACs and SOs is a critical part of the process.

The second thing I would say is just as I said this morning. I think we need to write into this process the allowance for the possibility that a community forum does not necessarily have to be face-to-face.

If you take Alan's point about it is the SO and AC's decision themselves at the end of the day, they can call a community forum but if no one cares, no one turns up other than themselves. In other words, because the rest of the community knows that it doesn't have any ultimate decision-making capacity,

they simply know they're coming to comment. Actually having to force that to be a face-to-face meeting just doesn't make any sense to me; it would be much more sense - and you might want to do that but you equally might want to say we're having a phone call.

So all I would say is the principle of having the AC or SO actually making the decision is captured up there, but there is some steps in the process. And I think this one is different and doesn't fit in those three columns; it probably needs to be excised from that document and given its own set of columns because it's not that simple.

Leon Sanchez: Thank you very much Chris. Steve?

Steve DelBianco: Okay thanks Chris. Before excising the column, I wanted to ask one follow-up question.

So the two points I took from what you said is that there ought to be an official call for comment from the other ACs and SOs before the community forum is organized, and the other change is that the forum might not necessarily have to be face-to-face; that would be at the choice, I presume, of the appointing AC or SO. Right?

And with respect to putting the call for comment out, do you think that that would be a request that say the other ACs and SOs come back with a yes or no, or is it just general comments on the proposed director removal and the reasons for it?

Chris Disspain: So can I respond? May I respond?

((Crosstalk))

Leon Sanchez: We're going to have a break (unintelligible) and we can further (unintelligible)...

Chris Disspain: Let's do that then.

Leon Sanchez: ...in the breakout session. I think that the two people instead Chris outlined or highlighted were well taken by Steve, and then in the breakout sessions you can iron out the rest of the details.

So next in the queue I have Alan Greenberg.

Alan Greenberg: Again, I'm not trying to settle anything. I think in this particular case, it's rather blatant. In other ones, it may also be applicable.

As we're doing this work, we really need to make sure that whether it's a face-to-face forum, who gets travel funding and things for it may vary from case to case, and let's just mark that as something that we need to fill in the details later. Thank you.

Leon Sanchez: Good, thank you Alan. Next in the queue is Bertrand de la Chappelle.

Bertrand de la Chappelle: I have a parallel question to the one I was raising before. What happens if there is the misbehavior of one particular Board Member regarding the criteria that I highlighted before? (Unintelligible), real misbehavior regarding the global public interest.

And the SO or AC that this person is coming from actually is very happy about this misbehavior and considers that this person is fully promoting the

interest of the SO and AC. Where does the accountability function? This system doesn't allow the community to remove this Board Member does it?

Leon Sanchez: Steve?

Steve DelBianco: I have quite a lot of enjoyment over the years interacting with Bertrand on various subjects and he's always enjoyed the depth and thoroughness of his talking.

In this particular matter Bertrand, is it not sort of intrinsic in the notion that a Board consists of a diverse set of people so that if a particular Board Member is sort of off in one extreme area for any reason whether it's because they're not supporting global public interest or whatever, that is the nature of the fact that it takes a majority at least and sometimes a super majority of Board Member to move in a particular direction that provides the fundamental protection.

Removal of a Board Member is appropriate, I would say, only if the Board Member is particularly disruptive or undermining the functioning of a Board as opposed to simply having a difference of opinion or a point of view that is perhaps not consistent with a majority but is nonetheless not an inappropriate point of view.

And that line between what is inappropriate versus what's just simply a minority point of view is one that I would recommend we be very careful about. I think removal of a Board Member is an extreme measure, and at least in my view, is one that we want to be reticent about.

Having been on the Board for a long time and shared the Board for several years, I certainly understand that we have situations that we have to tolerate

and work with some Board Members that insist us presenting a point of view. Most of the time, and by most here I mean like 99% not like 51% of the time, we can deal with that; we're all experienced members of communities and organizations. And when necessary, there's all sort of soft measures to impose discipline within a Board as there is in any group.

So as I say, I tend to be quite conservative about the removal, and it ought to be in a pretty extreme case.

Leon Sanchez: Thank you very much for that Steve. I mean it is clear that we need to flesh out some details still, and those will be, of course, ironed out.

And now I would like to try and keep the conversation focused on issues that literally are like no-go's like (unintelligible).

So next in the queue I have - I'll tell you what. It was Kavouss but its Cherine Chalaby.

Cherine Chalaby: I'm going to be very brief just responding to Steve DelBianco's point.

Steve, the issue of the formal consultation should happen after the community forum so that the SOs and ACs have the opportunity to hear what the Board Member has to, so there's a fair and balanced input into the SOs and ACs.  
Thank you.

Leon Sanchez: Thank you very much Cherine. Next on the queue is Kavouss Arasteh.

Kavouss Arasteh: Yes, two points. First the disagreement of one Board with the other Board should not be interpreted as misbehavior. The memo of the user council, take

it 12 of October, clarify the matter the Board Member may have different views on particular subject; it is not misbehavior.

That is their views and they are supposed to do that. It is not all the interpretation of all the exact the same.

Now, second, this is late. The important issue is that we are rushing. There are many details to be put on the table before we proceed. Once again, please kindly not rush into any process.

We have to have all details. That is why in one of the comments in the second public comment was that details are not sufficiently mentioned. I've requested this (unintelligible) to put all the details that we know how it's going on; otherwise we are rushing to make something (unintelligible). Thank you.

Leon Sanchez: Thank you very much Kavouss. I'm closing the queue with (unintelligible). And next in the queue is Steve DelBianco.

Steve DelBianco: Thank you Leon. I would like to respond to this general notion of whether or not criteria has to be specified because it's more important than ever that the criteria for Board removal be discretionary. It's more important than ever, if we settle on designator model, where the ultimate element of enforcement becomes removal, to constrain that unduly to be under a certain checklist of conditions which would significantly constrain the effectiveness of that enforcement method.

Steve Crocker has educated many times that Board Members has a fiduciary duty to corporation as well as a duty to the mission and core values which include listening to the community and the bottom-up process.

But Board Members retain discretion to use their own judgment about decision to take to meet the fiduciary power. They retain their judgment to do that, and we had a legal memo to that extent that fiduciary duties is a judgment matter. And as long as it's done in good faith, a Board Member has executed their duties.

However there is a difference of opinion between - if there's a different between the community and a Board Member on what the balance is between the mission, core values and their fiduciary duty to the corporation, that is when you want to try to educate a Board Member that there's an importance to see the broader picture.

But if the Board Member continues to persist in judging fiduciary and core values differently than the community, that's going to lead to an effort to remove. And it ought to be permitted to remove because we're looking for someone with a different perspective than the individual in there who's decided to put the fiduciary concerns of the corporation above that of the community.

So I think we need the discretion. Thank you.

Leon Sanchez: Thank you very much Steve. Next in the queue is Bertrand de la Chappelle.

Bertrand de la Chappelle: Thank you. Just a follow-up question. Can we have two rolls? One with a removal of individual Board directors selected by SO and AC, and another one for the NomCom because there is a lot of discussion about how we're discussing on one and how we're discussing the other. And I think if we add one for A and for B it will be a good thing.



And I would just like to take this opportunity to say I hope -- I hope -- that everybody in this room considers that the diversity of opinion, it's what we need. We don't need to be everyone the same and everyone is talking the same. If we are going that direction, we can empty this room and leave a few people to run the organization. Thank you.

Leon Sanchez: Thank you very much Bertrand. And I think that's a very good suggestion and of course I would encourage (unintelligible) for this subject to actually divide in 4A and 4B so we can have clarity on whether we're speaking on individual Board Member removal by SOACs or appointed by SOACs, or by NomCom. So thank you very much for the suggestion.

So taking stock of this, we have taken into account some precisions that need to be included in the document. We have also heard about the division of 4A and 4B; we have heard some details that need to be further flushed out, and of course the group working on this will be looking into them and hopefully we will have progress in this work in short time.

So I would like now to turn to my co-chair Mathieu for the next section which will be budget.

Mathieu Weill: Thank you very much Leon; this is Mathieu Weill speaking. Hello everyone and welcome to our CCWG accountability working session. And a couple of reminders before turning into (Jonathan) and to give (Alice) time to bring up the document, this is a CCWG work session. We're work in an open and inclusive manner.

Everyone is welcome in our work. But we need to take a certain dynamics which is that of a working group and ensure that we are keeping our

comments concise as well as directed towards the refinement or the adjustments of the proposals.

And I would certainly encourage that we really try and find that right balance between those two so that we're finding the right efficiency.

And I would like also to inform the room there was a comment made by Steve earlier who referred to something that he mentioned accountability staff being too slow.

And for us in the Leadership Team it's absolutely clear that it's - he was referring to a technical mailing list that was too slow where - and not fast.

Man: (Unintelligible).

Mathieu Weill: I mean the accountability staff is tremendous. They are doing wonders. And I know that's not what Steve was referring to but I think yes the room was not necessarily aware.

Man: (Mathieu) I have just a point of order...

Mathieu Weill: Yes?

Man: ...before you proceed.

Are we going to go back to the discussion of the community decision making and look at the other sections?

Because I certainly have some comments about that and I don't know whether were going to get there or not.

Mathieu Weill: It seemed to me that...

Thomas Rickert: (Unintelligible)?

Man: No the what - the chart that Steve just put out we've only discussed in terms of the individual director. Are we going to have a discussion about the charge generally?

Thomas Rickert: Yes.

Mathieu Weill: Okay point taken. We'll - then we'll go back to that.

Man: Okay.

Mathieu Weill: In a moment I guess we have had an extended conversation on the individual board and removal including that particular aspect of it. I take note that we'll - we need to (read) the rest of it. We need to bear that in mind.

But (Jonathan) for the moment the budget a quick reminder of where we are so that we can take stock, assess whether there's any refinement needed and hopefully move to the next stage. Go ahead Jonathan.

Jonathan Zuck: Thank you Mathieu.

As I mentioned in the earlier session we've had a number of meetings already this week on this topic and a kind of a sub team on the budget veto.

And the outgrowth of all those meetings is that there a more consensus than there is difference.

So looking in the areas of consensus the idea of having an outright community veto of the five year strategic plan or five year operating budget was something on the list. There was some consensus and we needed to strap language around that as a separate entity.

There was also a discussion about a lot of the improvements that have made - been made recently in the budget development process and how there's better community engagement, more detail on the budget et cetera.

And the process now involves the community, the individual SOs and ACs, et cetera, has been very productive.

And so there's been the notion of enshrining those new developments into the bylaws, you know, in a way that doesn't prevent change but that enshrines those new developments as requirements going forward because the best place to work on the budget is upfront and not afterwards.

There's also consensus that the PTI budget needs to be treated separately and have its own protection and I - and there's agreement on that and that's in the language drafting phase as well.

So where there was the majority of community comments that we got on the budget veto it had specifically to do with community veto of the annual operating budget.

And there were a number of things that came out of the discussion. The first is that the distinction between the annual operating budget and the plan were somewhat (specious) at some point.

And it made sense to simply say the veto would be of both of them because the real motivation for vetoing the budget would be to make changes to the plan and how that plan was expressed by the budget. So that was an agreement as well.

The concerns I say fall into two categories, the concerns that were raised. One were with what the implications of a veto might be in terms of decision making.

One issue raised is wanted to make sure there wouldn't be trivial rejections of the budget on trivial issues. So there was a very brief discussion about sending some sort of a dollar minimum or something like that.

But we think that the results of the community mechanism discussion that raised such a high bar for a community veto addressed that issue quite well.

Another issue that was raised was about sort of a small number of SOs or ACs kind of ganging up on another one.

And again we think that the high bar that was set by the community the decision sub team went a long way to address that as well. So that had to do with outcomes.

And then the real majority of comments that about the budget were all from people that agreed with the notion and principal but in practice were concerned about what state it would leave the organization in the interim as that process of a budget veto took place and what that would look like.

And we've gone through a number of different discussions about that. What happens to the budget while it's being vetoed if it's vetoed, you know, while

it's being further discussed, et cetera and what state does that leave the organization in?

And so there's been different iterations of that. One was if the organization's forced to operate on last year's budget. Another was last year's budget plus 10%.

But those all share a weakness in that they don't map it all to the priorities of the current year right?

I mean you might have things in last year's budget that are for programs that have already expired for example.

You may have a revenue shortfall this year and that this year's budget is half the size of last year's budget. So that's sort of easy solution of let's use last year's budget was problematic in a number of different areas.

And so the solution actually came from (Cherine) and our sub team which was instead to look at the notion. And this is an area where the vocabulary becomes sticky sometimes. But so we've used a lot of different vocabulary before but (Cherine)'s notion was of discretionary or nondiscretionary items in the budget.

There's also the word that came up yesterday in the sub team meeting was of a caretaker budget.

But the idea is a budget, whatever budget is necessary for the successful operation of the organization.

So both (Giovanni) and I were discussing, you know, what we had back in our home countries. In Europe there's something called the caretaker budget. In US there's something called the sequestration exemptions.

But in each case there's this notion of a minimum budget that would prevent any sort of chaos within the organization. It would prevent staff from not getting paid, et cetera. So we'll find the right vocabulary, the right way to describe it in our case.

What we've done is instead placed a very high burden on Xavier, our esteemed CFO to begin to look at the notion of a framework for a future CFO to look at the budget and define what needed to be in place for the organization to continue to run to meet its contractual obligations, et cetera.

And that would be this caretaker budget would mean that a lot of discretionary programs are put on hold. And so whether it's your favorite project or the board's favorite project that pain would be shared equally and would cause some organizational discomfort but really be minimal in terms of sort of human impact or suffering because people aren't getting paid or something like that.

So I - that was something around where we've - some great consensus in principle. And Xavier has promised to work on that over the next couple of weeks. There's a lot going on this week obviously. But we'll look at that framework. And I think that we'll be able to reach some consensus about what that framework looks like.

And that addressed a lot of the concerns, the different concerns that were raised about the state of the organization during a veto.

So I feel very optimistic that we'll be able to reach a consensus position on that which is why I've colored these checkboxes yellow, an ugly yellowish green. That's because they are on their way to being green I think in fairly short order. And I'm happy to open up the queue to discuss it further.

Mathieu Weill: Thank you very much Jonathan. And I would just like to check with the other participants first whether that's was in line. I see Cherine noting. I've seen (Asha). I think she was noting that it was a fine summary of where we are. And I think that's good before turning to the queue.

And next in the queue is Sebastien. Oh, is that an old hand? That's an old hand Sebastien? So I have (Chris). I was not qualify you as old hand. Anyway, Kavouss?

Kavouss Arasteh: Thank you Jonathan. I hope finally you put it in a non-telegraphic language and more clear.

Second in the presentation today in the previous meeting of the engagement it was a different presentation. You referred to that not blocking the entire budget but blocking an area that we have difficulties. And you were some other terminology used it is not here. Could you please kindly refresh our mind on that what you proposed this morning was more clear than now in one area?

Mathieu Weill: That's a good point Kavouss. I tried to put on the record something that describes accurate what the area of the veto would be for our further reference if that's possible. What would be your best shot at this (Jonathan).



Jonathan Robinson: Okay I'll do my best because we keep trying to come up with new words that better describe it. And that may be adding to the confusion and I apologize.

The new concept that came out of the sub team that met on Saturday morning is that the budget that would be in place under the regime of a veto would be kind of caretaker budget. It would be a framework for deciding what that meant but it has to do with what have been called the nondiscretionary components of the budget, contracts that are in place, staff that may need to be paid that the rent -- things like that.

So the point was never to put the organization itself into any type of chaos or distress but simply to put what we might call discretionary items on hold.

And so it is a budget that is a less than the budget that was proposed. And we will come up with a framework for determining exactly what that means.

So we've been calling it a caretaker budget. And that just means a budget that takes care to make sure that the organization is still running effectively. Does that help? Okay.

Mathieu Weill: I would - yes I think that the way I'd capture that, try to capture that in a sentence without using any summary word because I think sometimes summary words are a trap would be a budget that ensures that nondiscretionary expenses are covered so that all that - all the localization has the ability to hold to its commitments whether it be commitments to staff to any providers that outcomes - any contractors and the minimal level of commitment is provided.

I think that's the kind of idea that I had understood. I just wanted to check whether that's still covering because I think it is value if we really set that as a requirement.

Once again we want to have a requirement based approach and then obviously Xavier has a big challenge of finding us the solution just like in other areas who would turn to an expert in legal. This time we'll turn to an expert in finance.

But I think the idea behind this requirement is that. I see - I think Cherine raised his hand. So please Cherine?

Cherine Chalaby: So yes, I'd like to support Jonathan what he said. It's we're very much in agreement on this line.

And just to add context to the community because you used the word minimum budget and I thought that people should just get a feel of what it is.

So if we were to take this year's budget as an example and I'm only going to be very brief which is the cost is \$118.5 what is non-discretionary is about \$94 million.

So what is left is something in the order of \$24 million or so. And remember that we'd be working for a period of six seven months on those cause this is where all the discretionary projects are.

So I like this part because it's also the chances of it being exercised will be seldom but it's there to give the community.

But I just wanted to give an order of magnitude. Thank you.

Mathieu Weill: Thank you. Thank you very much Cherine. And we need to - so this 80%, 20% balance is absolutely classic in any organization. I think that's not very - not too much of a surprise.

And we need to remind ourselves on the chart here that for the overall size of ICANN's budget the appropriate way to interface on it is more accurate in the five year plan because you don't restrict any organization's core expenses on the one year basis. It's much stronger.

And I think that's something that needs to be said. The 80% there is still an influence from the community of use in the engagement but also through the veto right for the five year strategy plan.

So I think it's just like the other items we're striking in my opinion a compromise that takes everyone's perspective into account so that it's a very workable solution.

So thank you very much for - I think we've had extremely good exchanges the last few days on this matter and it's a testimony of what a collaborative approach can provide.

Next in the line I have (Alan) and James and then we'll move on to the next item. I will close the queue. (Alan)?

(Alan): Thank you very much. I just want to note that this really neatly finesses the problem of protecting the IANA budget even if it's an increased one because that's clearly a non-discretionary item.

Woman: Good point.

(Alan): So it completely removes the need to have special provisions for that. So I think it's really neat.

It's just observe something else without commenting on whether it's good or bad.

There are certain discretionary items where if you can delay the decision for two months it's no longer applicable, just interesting side effect.

Mathieu Weill: Thank you very much (Alan). And (James )?

James Gannon: (Merce), a point of amusement more than anything else. I've just realized going back to the days of the CWG that myself and Chuck Gomes actually came up with almost the exactly same plan for this for the PTI budget on June 4 this year.

So it's nice to know that the CCWG is still trying to catch up with the CWG.

Mathieu Weill: You know what? I don't find it that amusing because that means for all this time you have been abstaining from sharing this interesting idea with the group.

James Gannon: It was so long ago I forgot.

Mathieu Weill: Wow. Thank you very much (James ). I think that's very good. I have (unintelligible) queue Xavier wants to add something. Where is Xavier? Yes you're here there - no? Okay.

Confirmation that you're right and we trust in your expertise to find us the right way forward.

Xavier Calvez: Yes we'll work on it over the next couple of weeks and we'll provide our proposal.

I just want to your point earlier on vocabulary discretionary is a notion itself that's very complicated to define. And if you ask 1000 people that question you're going to get 1200 answers.

So this is why (Jonathan) has brought forwards the topic of the caretaker budget because discretionary does not mean that it does not have to be spent. Let me take an example.

If the elevator breaks down you can decide not to replace it. I don't know if that qualifies for the notion of discretionary or not but maybe in certain languages it does.

So do you have to replace the elevator or not is a decision that you can make to either do or not do. Is that the right thing to do and is that something that we want to avoid in - during a veto period, probably not.

So bottom line we simply need to define for ourselves what we think this caretaker budget should be so that it's a non-issue as opposed to creating issues at the end of the day.

Mathieu Weill: Thank you Xavier. And I would add that I think this notion might evolve over time and that's pretty fine. That's something we need to remain flexible about somehow in the process.

And that's probably an item to be considered in the five year budget what is the kind of flexibility we're giving to ourselves.

And with that I think thank you very much (Jonathan). And everyone who's working on this budget item because the progress made has been outstanding this week. So I think they deserve a big round of applause.

And now we are turning back to the community making decision making.

Thomas Rickert: And for that we'd like to get the chart back on. And I suggest that we now test with this group the individual community powers whether there are concerns or otherwise would like to confirm the common understanding and take it to the next phase, i.e., fleshing out more details.

So I - let me call for comments on the first community power budget detail. Is - are there any comments on that?

And again this is just for refinement purposes for confirmation purposes. We can't have full discussions on that. But I understand that (Chris) is - has a view on some of those and would like to comment and...

Chris Disspain: Yes.

Thomas Rickert: ...let's hear those views.

Chris Disspain: I was only going to talk about the Number 5.

Thomas Rickert: Good. But then let's hear about concerns if any for community power Number 1 block operating plan, strategic plan and budget.

So Kavouss I understand that's an old hand or...

Kavouss Arasteh: Yes.

Thomas Rickert: Fire away.

Kavouss Arasteh: Yes, a new one. New hand, yes.

At the meeting of a small group I suggested that when you talk of objections it may be interpreted in two ways. One way is voting. The other way is expressions of agreement and so on support but not voting as such.

That is why I have added after objections all no advice to from one or two, whichever you wish on the contrary.

So I want to put advice in order to enable the advisory committee to participate in that decision making if Stress Test 18 allowed that.

Currently Stress Test 18 blocked that. So we'll discuss that later on. So we would like to have advice on that because sometimes an AC may decide not to participate that decision making but continue to provide this advice.

This advice may be in agreement of that proposal or may be against that proposal so of any advice against.

This is the term also used in the comment from the board which I like it very much. Thank you.

Thomas Rickert: Thank you very much. Let's go to the - to Malcolm and then we'll get back to that point.

Malcolm Hutty: I have a question actually following that last point. I wonder if Kavouss could explain to us...

Man: (Unintelligible).

Malcolm Hutty: ...if the consequence of an advice in the negative is to prevent the action being taken? How does that differ from participating in the decision making so as to take the decision that it shall not happen?

Kavouss Arasteh: Is a very complex issue. We have to first discuss that many governments but not all believe that currently there is an attempt to block or to prevent the government to participate at any level at any decision making in whatever way is possible.

And this is lies within the frame as Stress Test 18 which has been written for this purpose which has nothing to do with (this) ability, nothing to do with accountability, nothing to do with anything that when one of the purpose is this one there is another purpose.

So until the time that we resolve this issue what we don't like we should have no provisions to disable the AC to participate at decision making in the form of advice.

How this advice have influenced that is something else. But they would wish to have this possibility if they decide on the particular issue to have an advice. There should be no way to prevent them.

Currently Stress Test 18 prevent them to that. Because at the level of discussion whether or not they participate one country could block. No I don't



want so that the whole GAC will be disabled not to participate at all because of that.

There is a link between that very (unintelligible) point. Some people will have not found that but some people they found that. We have discovered that. There is a link between this.

So either you want to discuss it now or later. It's up to you. Thank you.

Thomas Rickert: Kavouss let me try to translate that into concrete language.

I guess what you're asking for is that the GAC can use the vehicle of GAC advice to express objection or support so that you don't need an extra process for that.

Kavouss Arasteh: Yes with the proviso that Stress Test 18 does not prevent the GAC to provide that advice.

Because if 146 or 152 country are there and 151 wants to provide that advice positively or negatively one country could block that. And that is not good.

That is the Stress Test 18 designed for that particular purpose. Thank you.

Thomas Rickert: Good. I guess we can conflate the Stress Test 18 discussion with this particular discussion. That's at least my suggestion because I think that we're not allowed for us to close on this matter.

I suggest that we clarify that expressions of support or objections can be done via GAC advice so the GAC can use that vehicle for expressing concerns or support.

Man: Yes.

Thomas Rickert: So let's sit that w- with us for the moment in order to - for everyone to think about it. Let's move to James and then Steve.

James Gannon: Jan before me?

Thomas Rickert: I apologize, Jan?

Jan Scholte: Yes hi, Jan Scholte, Accountability Advisor. Just a clarification, are there reasons why three and six are so different from the others that they need three rather than four just for the consistency sake or is that just different groups have come up with different numbers and then in the end we have variation?

And the second thing is do a - does this presume that the numbers of ACs and SOs remain fixed into the future and how would one adjust the numbers if additional ACs and SOs came in?

Thomas Rickert: Very briefly I think we - there are discreet processes that are required so it's not an error in the system. Yes. And with respect to the point of new entries we would need to revisit that scheme anyway if there are more groups coming.

Steve you wanted to add to that?

Steve DelBianco: Your answers are basically correct but I could add a tiny bit of color to it.

Absolutely Jan. You weren't part of that group Saturday. It would have been great to have you on there.

But these thresholds are different on purpose. Each one was chosen. There are four of them with that that require a full four ACs and SOs to move forward with decision. That was budget fundamental bylaws. We're calling the entire board in a challenge to an IANA functions review.

The others required only three ACs and SOs with the absence of more than one objection. There was a purposeful discussion on raising the bar for certain decisions that were particularly disruptive of the corporation and the activity that it does.

In other words they're meant to raise the - I shouldn't say disruptive but items that for the community power should require higher degree of consensus. And that was all chosen on purpose.

And then as I think the second point (Thomas) you answered that one already. Thank you.

Thomas Rickert: Thanks Steve for that clarification. I'm going to close the queue after (Alan). Let's move to James now.

James Gannon: Extremely briefly because I believe it's incredibly important that the record is reflected because these transcripts will be used back in the GAC and they'll be used in national ministries to clarify Stress Test 18.

It is not about telling what - the GAC what to do. That is not the intention of it. It's to do with telling ICANN what it must do in response to GAC advice.

Stress Test 18 is not here to try and restrict the GAC. We need to be extremely clear on the record about this.

Thomas Rickert: Steve now?

Steve DelBianco: Steve DelBianco. James is exactly correct. So Kavouss and other GAC members please understand Stress Test 18 would have nothing to do with the ability of the GAC to indicate its preference and decision for any of these decisions.

It's not giving advice to the board. Stress Test 18 addresses only advice to the board. And none of these are advice to the board.

The exercise of a community power will return to the GAC just like a multi-equal stakeholder and say GAC what say you to whether we should block this particular bylaws change?

And just like everyone else you'll use your own procedures to come up with a decision. Then that decision we can call it advice. We can call it a vote. We can call it a resolution.

But there's never any situation where the board is going to work out a solution.

Thomas Rickert: I think the points are clear. Let's not have this transform into a discussion about Stress Test 18. Thanks for the clarification.

Next is Steve and then (Alan).

(Chris).

Chris Disspain: Sorry, me, me, me. It's all about me. So have we actually - we're now moving on to talk about all of these blocks right, so not just one of them?

Thomas Rickert: I needed to get the discussion structure. So I'll close the queue on this. So let's hear what - let's try to get this track completed. I've not closed the entire section on the agenda. So...

Chris Disspain: All right, so we're still only talking about Number 1 or Number 2?

Thomas Rickert: Yes and we got derailed.

Chris Disspain: Lovely.

Thomas Rickert: Right? So (Alan)?

Alan Greenberg: Sorry. If we're only talking about Number 1 and Number 2 then my hand isn't up.

Thomas Rickert: We got derailed. I wanted to get this sidetrack information ended.

Alan Greenberg: Okay.

Thomas Rickert: And we're now talking to the sidetracked discussion. Let me just confirm that we're good with (power) Number 1. And I don't see any more hands on that which allows us to go to Number 2.

So I'm seeking confirmation for Number 2 please and only Number 2.

Steve DelBianco: (Thomas) it's Steve. Let me just clarify to people if you scrolled in the document -- and I realize that (Alice) I believe sent it around to everyone - if

you scroll down the document to the bottom you'll see the other preliminary conclusions that were reached on Saturday's breakout and then working in comments that came from a subgroup that had done work on the community forum a week or two ago.

So there's quite a bit more information in the document than just the table at the top which indicates the thresholds.

Thomas Rickert: Thanks for that clarification. Kavouss is that a new hand? And please not about Stress Test 18.

Kavouss Arasteh: No, not that. The Amendment you made to Column 1 applies to all five columns or...

Thomas Rickert: (Unintelligible)?

((Crosstalk))

Kavouss Arasteh: ...advice yes, correct.

Thomas Rickert: I was...

Kavouss Arasteh: Thank you.

Thomas Rickert: ...making the suggestion which could of sort of preface the table. Let's now move to the third point block changes to regular bylaws. Any comments on that or can we take that as confirmation? I will pause for a few seconds.

And again, this is the basis for fleshing out further right? So you will not have the table in our final report.

This will be further formulated. But we need something to lean on as we progress. So we need to take stock of the interim steps that we took.

Individual board member removal? Anything to add to that? I think we've sufficiently discussed that point.

And then we can move to Number 5. I understand that there are hands being raised on that. But before we hear those Milton your hand is up.

Milton Mueller: This is a comment applies really to all of these. Again I really want to know what units we're talking about here, ACs, which ACs in particular are we talking about?

And, you know, if you're giving inherent numbers here, two, three, four, one I think there's an issue that still needs to be discussed and you told me this morning would be discussed, was not closed yet regarding who we're talking about particularly when some of these ACs have indicated that they don't want to be part of this process.

Thomas Rickert: Our current data phase that the community is the combination of all SOs and ACs. We've moved away from a voting based system to a consensus based system. So the whole community can chime in.

We had the definition of the community in our previous report. So that would be all the SOs and ACs.

And...

Milton Mueller: And you received significant pushback on that in the public comments which you seem to be disregarding.

And when you say four and one you're talking about voting. I'm sorry, that's not consensus. You're talking about voting unit is the AC and the SO. Don't shake your head (Leon). That's a fact. You're counting numbers.

Leon Sanchez: We can't agree to disagree Milton. I'm sorry, I can shake my head.

Milton Mueller: Yes you can shake your head but I mean I'm not satisfied with that as an answer and it's never been addressed in the public comments. How many public comments objected to that? Do you even know?

Thomas Rickert: We can put the information out that no problem Milton.

I guess what we need to take into account when having this discussion is that when we had our first - our second report out we had a few organizations that would cast weighted votes. And that is something that a commenters took issue with.

So we moved away from the notion of voting in our discussion towards a consensus based model. And as we do under some definitions of consensus in the ICANN ecosystem we would look at objections.

And so there is consensus with certain caveats. And we're trying to define this here. And I would suggest Milton that rather than refuting the idea of proceeding as we do you might come up with concrete proposals as how to we - how to address the obviously the risks that you perceive we associate with this.



Next in line is Alan please.

Alan Greenberg: Thank you. I thought we were talking about Item Number 5 so I'm going to try to do that.

I believe since we have been talking about removal of the whole board as the nuclear option as an option which if we ever do it the impact on the organization and our - the - how we are perceived throughout the rest of the Internet governance and government world will be radically changed potentially that I would think that this would need a significantly higher threshold than some of the other ones which are relatively mundane. Thank you.

Thomas Rickert: For which column would you like us to change which figure to what?

Alan Greenberg: Well I - sorry. I am looking at Column Number 4.

Thomas Rickert: Correct.

Alan Greenberg: Yes.

Thomas Rickert: But you said that you want different thresholds. Are you...

Alan Greenberg: Oh, if - you're asking me to make suggestions.

Thomas Rickert: Correct.

Man: Yes.

((Crosstalk))

Alan Greenberg: Well the asterisk certainly includes one suggestion. That is any objection will kill it. Another alternative is to have a higher number of yeses. I'm...

Thomas Rickert: Good. But then obviously...

Alan Greenberg: ...suggesting that.

Thomas Rickert: ...your view is reflected with the asterisk, correct?

Alan Greenberg: That would be one way of addressing it. If that's not acceptable I would consider requiring a higher number than four.

Thomas Rickert: Understood. Thank you. (Chris)?

Chris Disspain: Yes, I wanted to make that point as well I think. If you look down the list you'll see that the highest level is four and no more than one objection.

And I think to use that for some of those others ones are not - and have the same level for the removing of the entire board is just not a sensible. I strongly support that NSO or AC should be able to object and then have that dealt - and have that block it.

I'm not suggesting that you couldn't build a process under which there would still be something that needs to happen even if there was a block such as a, you know, some sort of mediation or whatever.

But fundamentally I think you could have a situation where one of the SOs, the ASO, the ccNSO, the GNSO, the policymaking bodies in ICANN were

very strongly against doing that. And I think that just to me sounds like a step too far to say we can ignore your objection.

I feel indulge me, I did want to say one other thing about the whole system. I'm fine with it generally. But I do think that we need to build into it for the future that there may be more SOs and ACs. And I would recommend that we use numbers and percentage so that we can move forward with that without having to revisit.

Because with a percentage you can build obviously but you can't with the numbers.

Thomas Rickert: That's a good point. So I suggest that we add that as a clarification that the thresholds are spelled out both in concrete numbers as well as in percentages.

I will close the queue on Number 5 after Steve please. All of your...

Man: (Unintelligible).

Thomas Rickert: I think you've - you haven't tried hard enough then. But I'll get to you in a moment.

Next is George.

George Sadowski: Yes thank you. I'm happy that this discussion is taking place. I was a part of the community that dealt with Number 5 on Saturday. And my sense was that it was a fair - it was a large discussion of a lot of things. And it was fairly rushed. And I'm not convinced that the minority there is represented appropriately.

The vote was taken very, very quickly. I think it - this deserves further discussion. And I'm in accord with my colleagues here. I think any SO and AC ought to be allowed to object. And that should trigger something fairly serious.

Because this is if it ever occurs it's a cataclysmic effect and it's going to change ICANN in ways that I don't think any of us here can predict. But I don't think I'm going to like it if it happens. Thank you.

Thomas Rickert: There are a lot of hands going up. Even a lot of hands went up after I closed the queue.

I understand or I would anticipate that some at least of you want to speak to the threshold question. And I would like to make a practical suggestion on how we deal with this particular issue.

I think the threshold required for board removal will depend on the model of enforceability that we use. You might look at that question differently if board removal is the only enforceable remedy rather than if it weren't right?

So I would suggest we park this point for the moment until we have discussed the model because then maybe it will be easier for us to agree on thresholds.

Those that don't want to speak to that specific point keep your hands up. For those who want to speak to that point I would beg you to lower it so that we can proceed.

Next - or I give you some time to lower your hand if you could.

Man: Nice try.

Thomas Rickert: So Sebastian - George. George has spoken. Sebastien?

Sebastien Bachollet: Yes just to say that all the example given on the other hand you have one AC who is composed by the board then it's something we need to take into account and if we don't want to have this if we put threshold that it's not possible to achieve even once if it's really needed then let's keep this possibility out. It was my (unintelligible).

But if we want to have it then it must be workable if not there is no sense to do that. Then the indication is quite weird. Thank you.

Thomas Rickert: Thanks very much Sebastien. Steve you really wanted to keep your hand up?

Steve DelBianco: Thank you, Steve DelBianco. With respect to Milton's question about voting I thought I would describe what we did in the subgroup to come up with these thresholds.

Voting is something like where you have weights, where you have splits like GNSO might have five different votes and (unintelligible) percentage thresholds where you count the number of votes and if you exceed a threshold that's enough to win. And that's what voting is strictly.

Where this came about Saturday morning was heading down the road of we wanted to understand consensus as being strong support in the absence of multiple objectives, strong support in the absence of multiple objective and that is completely different then doing voting with percentage thresholds.

And the reason we suggested multiple objections instead of a single objection was the terms of reference and we went into that session on said that under all

of these powers none of them should be defeated or blocked by a single AC or SO.

And so it was a very clear set of principles in our terms of reference and we followed your instructions to move away from voting and go to a model of consensus.

And we used the model of consensus that's used in several groups given here like in the ccNSO which is strong support in the absence of objection or multiple objections in this case. Thank you.

Thomas Rickert: Thanks Steve. Before we move to the remaining speakers Jordan as repertoire you wanted to add to that?

Jordan Carter: No at the end, at the end.

Thomas Rickert: Okay Roelof, did you lower your hand?

Roelof Meijer: No I didn't (unintelligible).

Thomas Rickert: He said he did not lower his hand but he agrees with the fact that it has been lowered. Kavouss and since Anne hasn't spoken we're going to hear Anne after that we're going to move on.

Kavouss Arasteh: And thank you my knowledge about Milton Mueller is he's a professor. He may also be a lawyer but what he said is absolutely right.

When you talk about number you're going to the voting. You cannot deny that you say four in favor one against your voting.

So we cannot mix up the things. The formulation saying that in the absence is better. But when you say four again in favor one against you're going to voting exactly. So please try to be clear.

It is very difficult. If you want to end up this meeting thinking that everything is okay so far so good but the job is not done.

If you want to do consensus the only way to say that in the absence of consensus in the absence of and put that objections and advice but not four and one, four and one is voting and I fully support Dr. Mueller.

Thomas Rickert: Kavouss you made this point on a couple of occasions. I think our group in broad parts of the group want to define consensus as having certain support in the absence of certain objection.

That's perfectly possible. And we're doing that. And your nodding which is a good sign so I think we're on the same page. Anne please.

Anne Aikman-Scalese: Is this thing on? Can you hear me? Okay just three quick points. I think that there's been a lot of concern expressed about capture and not keeping things open to capture.

And from my standpoint if one SO or AC can completely dictate the nuclear option that you use thereof or no use thereof that would be a capture situation.

So if only one can completely block that's capture. That would mean one SO or AC can capture. So I agree with the way it's formulated now.

Also I think very much agree that this question should primarily be considered after discussion of the model because it's - the item in the community power

is very much dependent on model because in the single designator model that is the only true enforcement mechanism is removal of the board.

You don't get specific enforcement. And it's just a question of whether the community wants to have the specific enforcement of the decision that it makes or remove the directors. So it's very model dependent. And I think you're absolutely right to defer that discussion.

And then lastly I would say very quickly that of all of these decisions and community powers Number 7 most closely relates to the considerations in the IANA transitions.

And so when we do come to looking at models I'm hoping that we'll have a robust discussion beginning in reverse order with Number 7 since Number 7 is essentially the backstop that is currently the role of the NTIA.

And that's because they have the ability to place the IANA contract elsewhere. And so this community power has a very direct relationship to the IANA transition. And I would like to potentially discuss in reverse order when we come to the models. Thank you.

Thomas Rickert: Thanks Anne. And also thanks for confirming that we're guiding the discussion the correct session according to you. Roelof have you raised your hand or has it inadvertently been raised by Adobe by the Adobe ghosts?

Roelof Meijer: No. I raised my hand. It seems that I was being overly cautious with this process. Since we are discussing it I might as well do it now too.

My point is that already the chance of the whole bore going rogue I think we would consider it very small.



The chances of the community collectively going crazy is probably far smaller. And I think the effect of...

Man: The community just went crazy.

Roelof Meijer: ...there - well at least part of the community just went crazy on me, yes.

So maybe I'm being overly optimistic. But I think we should bear into account that the same quantitative threshold will be more difficult to reach if the impact of the power is more severe there will be no frivolous voting to out the whole board.

So I don't think it's a good idea to raise the threshold for this particular thing because it will make the power inexecutable, the big stick will become a twig. Nothing will happen.

Thomas Rickert: Thanks very much Roelof. And just to remind everyone tonight is the opportunity for all of you as a community to go crazy in (Templavar).

But after that we go back to work and try to do a good job here. Jordan as repertoire you wanted to make some concluding remarks on that point?

Jordan Carter: You might some of you might not find this helpful hopefully all of you will find bits of it helpful. We're under a lot of pressure. And we're working together better than we have been for a while and this decision making thing this new consensus model did feels a bit like that.

Sometimes when a large group or a small group depending on how you look at this is working under pressure like that you get group thinky.

The public comments that we had in response to our first proposal were pretty down on the idea of equal say for each of the SOs and ACs in whatever community decision making process that we had.

And that's why the CCWG kept the same allocation of authority in a second draft proposal as it did in its first.

And we - the feedback that we got in the second as I recall it from the public comments no one has ever argued to those public comments really that everyone on of the SOs and ACs should have the same thing.

So I know that we are talking about this as a consensus making process and in some ways it is. But that there are still numbers on the table and the numbers are the numbers of participants in that consensus making process.

So where you have numerical thresholds and you have numbers of entities expressing views people outside this room are not going to buy the idea that that isn't a voting system I would argue.

And people outside this room are not going to buy the argument that we're not giving equal weight to each part of the ICANN community.

So I'm only saying that to make sure that as we keep working and developing this we have to think about that external reality because we're going in a direction you can argue logic says you can argue that is against the feedback that we've had. So I just wanted to put that on the table so people are clear about what it is we're doing.

Thomas Rickert: Thanks Jordan. We're closing the discussion on Number 5. Any comments on Number 6, or seven, let's take them in combination in the essence of time?

Good there don't seem to be any comments. Kavouss I thought that was an old hand. I'm sorry.

Kavouss Arasteh: Yes the point that Anne raised is absolutely right. When you say no more than one that means you captured everything in hand of one.

Suppose SSAC will participate in the discussions and they say no and they block everything. So we should increase one by two not one. One is total capturing he was - she was absolutely right. Thank you.

Thomas Rickert: Kavouss I might be a misunderstanding. It's no more than one. So one objection can't hold up the train two at least two would...

Man: Yes.

Thomas Rickert: Okay great. Kavouss is nodding just for the remote participants we're on the same track which is a good sign.

So with that I suggest we had the discussion on this. We will note that on Number 5 we have not concern what's in this chart. We will revisit that after we have discussed the enforcement model.

And with that I'd like to hand over to (Leon) to take us through the next agenda item.

Leon Sanchez: Thank you very much (Thomas). And our next agenda item deals with principles, core values and commitments.

And for that I would like to yes I would like to ask Becky if she could walk us or give us an update on the latest state on the discussions of this issue and it's principle core values and commitments. Would you like to join us here Becky? I think that's the latest version of (unintelligible) right?

Becky Burr: Correct. This looks like the correct document. I hope everybody is looking at this in the - on the screen because in the Adobe room it's tiny. Any possibility of getting it bigger in the Adobe room?

I did circulated earlier. Okay just to walk through we have a pile up of agreement but not (unintelligible) agreement.

And we do have -- sorry I'm losing my voice here let me just get it up -- and we do have some areas where there we definitely need more work to be excuse me I just want to open this up on my comments if I can see it.

So first of all if we scroll down a little bit to the areas of consensus there was general consensus from the 33 commenters who addressed this that we are moving in the right direction that we generally support the notion of tightening and clarifying the mission statement.

I'm not going to be talking about the issues of human rights which was the subject of further work and Work Party 4.

In the - our mission statement there are a number of commenters who expressed concern about the prohibition on ICANN's use of its power for regulate services that use the Internet's unique identifiers or the content they carry.

It wasn't that they objected to this particular provision but they were concerned that this language could be interpreted to prevent ICANN from enforcing contracts, registries and registrars.

This is probably the most difficult issue that we have before us. And it is one that I think we need to have a breakout on specifically.

I believe that there is the possibility of finding consensus and clarifying the language getting some clarifying language that everyone can list with but at this point we don't have it.

The ALAC also expressed concern about the language being problematic if domain string itself is considered content.

And we did have a few other groups who expressed similar concerns for example in particular with respect to child exploitation issues.

In the summary of comments we have two responses. One is that consensus policy and I think in addressing the first concern the contractual enforcement issue we will have to find a way to state explicitly that consensus policy is within ICANN's remit to enforce that it is necessarily by definition within ICANN's mission statement.

And in that regard we - specification one does specifically provide for the resolution of disputes regarding registration of domain names. And in the registrar case including policies taking into account use of the domain name.

Likewise the new gTLD applicant guidebook which was consensus policy prohibited use of or prohibited strings that would be contrary to general principles of international law for morality and public order.

So I think this is an example of how once we clarify the first language to ensure that consensus policy is not subject to the properly defined consensus policy is not subject to the regulatory prohibition we can address it.

We had two comments suggesting clarification of the language. On the prohibition that they are minor and they are wording changes. And these appear to be acceptable so I don't think we need to do work on that.

ALAC raised a question about language and commitment too regarding the obligation to preserve and enhance the neutral and judgment free operation of the DNS.

This was - it was language that was taken specifically from NTIA requirement but ALAC's view was that it might be to open ended.

There was a solo comment and we don't have comments in response to that. So, you know, to make sure that we have addressed all of the issues we need input on that.

Commitment five -- I'm really sorry about my voice -- reference says the following. It obligates ICANN to employ open and transparent and bottom up multi-stakeholder processes led by the private sector including business stakeholder, civil society the technical community academia.

We have two different sets of comments on that. The first is that several commenters urged us to include end users in the list of private sector members. I have not heard any opposition to that concept.

Second although the concerns were expressed in different ways I think the government of Spain and this was further reinforced by Switzerland has suggested that if we include a reference to the private sector leadership there that we should also reference the role of government which is articulated in Core Value 7 that suggests that or obligates us to duly take into account the public policy advice of governments and public authorities.

I think that Brazil and Argentina if I am interpreting their comments correctly objected to the reference to private sector leadership but I don't know if the solution proposed or the approach proposed by Spain would work for those commenters.

Having said that I want to note that there was many comments in support of the retention of the reference to private sector leadership.

We have two places in Core Value 2 and Core Value 4 where the current bylaws referenced feasibility and appropriateness.

In the first comment round I think in response to the suggestion that the UK government that these caveats were not necessary particularly because we have a balancing test built into the core values that this was not necessary but ALAC did object to the deletion of the language regarding feasibility and appropriateness.

We do have one commenter who objected to the language in Core Value 4 about depending on market mechanisms on the grounds that ICANN was created in part to regulate competition in the DNS markets.

I would note however that this language is not new language. This language has been in ICANN's bylaws since December 20 - 2002 there these are the evolution and reform bylaws.

In the first draft of this Core Value 4 which is now Core Value 5 which relates to Core Value 5 in the core bylaws we were attempting to build some of the affirmation of commitments in to this.

And so we had a phrase that ICANN would depend on market mechanisms to promote healthy competitive and environment that enhances consumer trust and choice.

As a result of quite a lengthy discussion in the working party we moved the affirmation of commitments language into the review section because it's affected as a provision that relates exclusively to the new the introduction of new gTLDs.

In doing so we moved the consumer trust and choice language there and the UK government noted that that was problematic.

And also several commenters objected to moving the language that had been in the first draft into the review section.

I just want to reiterate that the affirmation of commitments language that we moved one related specifically and exclusively to the introduction of new gTLDs.

So there were some who thought that in an overall mission and core values having a specific reference to new gTLDs was not appropriate.



And two that the language that appears in the affirmation of commitments is in fact part of the affirmation of commitment review language.

Okay and then finally you may recall that in the first draft of the report we had a provision that limited ICANN's obligation to duly consider public policy advice to advice that was consistent with ICANN's mission and core values.

This received enormous pushback from members of the GAC. We spent a lot of time talking about this. We confirmed that the intention was not to modify the GAC's position with respect to ICANN's obligation to consider its advice but to clarify that in acting on any advice from any advisory committee ICANN must nonetheless know that no matter what the advice is act in a manner that is consistent with its bylaws.

So to accomplish this goal and I don't think it was a compromise I just want to say it was really a process of listening to what the governments were saying and teasing out what the concerns of the community were.

So it was really a listening and exchange process. We removed the language that received objection from the GAC out of this.

We included a general expectation that advisory committees would provide a rationale for their advice in Article 11 which deals with advisory committees.

Let me just state because some people have asked that does not affect ICANN's obligation to work in good faith with the GAC to reach a mutually agreeable selection but it does reflect the ATRT 2 suggestion recommendation on a rationale be given for such advice particularly with reference to national and international laws that come into play.

And second in the independent review a document we provided the opportunity for people to bring an IRP on the basis that an action or inaction of the ICANN Board including action or inaction taken in response to advice was inconsistent with the bylaws.

Again this does not prohibit or limit the GAC's ability to provide advice on anything it wants. It does not limit ICANN's ability to act on that advice. It merely states that in doing so ICANN must act in a way that is consistent with his bylaws.

Although I think that this satisfied the government's concerns. We got quite a few comments in response to the second draft report saying that this language should be returned and that is why I raise it.

And I think really it's probably just - that is probably just a discussion point. So those are all of the summary of the comments that we got. I hope that they are pretty comprehensive. And as I said overall there was strong support for the direction we were headed and some request for clarification.

Leon Sanchez: Thank you very much Becky. Well as you can see the comments have been taken into account. There are changes made by the working group working on these the working party working on this.

And of course now the floor would be open for comments and questions. But I just wanted to note that I seen in the chat that Megan Richards hand wasn't recognized in the Adobe Connect room.

And I would like to of course hand the floor to Megan Richards because it was first hand and then we'll go up Malcolm and Milton, so Megan?

Megan Richards: Thank you very much (Leon). In fact it was in the previous thing I think it's because I'm registered as a guest. I can't figure out how to sign on as a participant. I'm over 21.

So and it was really on the previous discussion that my hand was recognized. On this one I've written it in the chat and it really relates to commitment Number 5 where now I don't think the most of the GAC members agree and certainly within your opinion that private sector led has been in the bylaws for many years, it's something that exists.

But now if we expand that to say the private sector includes academia, Texaco community, end users everyone but there's no mention of governments and their role in public policy.

This puts a very unusual wording into what is in the commitment which are at a higher level than the core value.

So I think that's something that we really should look at it a bit more detail. So that's the comment. I put it in the chat. Thanks.

Leon Sanchez: Thank you very much Megan. And this is just some of the feedback that we received when we met with the GAC was exactly in this direction. So I guess that's - you've already looked into this right Becky?

Becky Burr: Yes. I mean I think that this is a fair question that there is - we have not resolved. I think that there are, you know, several options one is to retain the language as it is.

The second would be to insert the phrase suggested by the government of Spain that references dual consideration of government advice on public policy which is the language that is now appears in Core 7.

And I guess the third option would be to take out the reference to private sector leadership. So those are the three options on the table.

Leon Sanchez: Thank you very much Becky. Okay well yes so from these options that Becky just highlighted would like to hear thoughts on which would be the one that most likely would address the concerns that we have just heard. So...

Man: I said in Number 2 that...

Leon Sanchez: It's in Number 2 that - the one that - which one was proposed by the government of Spain?

Becky Burr: The approach offered by Spain is certainly one of the approaches that we can follow. You know I don't have any input from other members of the community to judge consensus one way or the other.

Leon Sanchez: Okay. So I remember a couple of supportive comments in the list with regards to the language proposal by Spain.

So I think it could be a safe way to go but we'll of course - anyway we would have to confirm with the rest of the group. Yes (Thomas).

Thomas Rickert: My connection was tied up so I couldn't raise my hand in the Adobe. But it looks like Becky from what you said that the proposal made by Spain picks language that we already have.

Becky Burr: Correct. It just repeats the language in Core Value 7.

Thomas Rickert: And if that does the trick to make everyone happy why not seize the moment? While we can confirm for eternity now what we can - what I'd like to understand and I see a lot of nodding in the room is whether anyone in this group has an issue with that otherwise why don't we take it as our let's say interim solution to be confirmed at the next meeting?

Again my connection has been cut off but I don't see any objection here. I see that you, Denmark nodding I think it must be...

Becky Burr: Could I just make a suggestion? We have hands up in the room but, you know, unless people are going to address that that's certainly something we could go...

Leon Sanchez: Yes. Let's go to the queue and maybe Anne will just confirm whether we have any objections or not on this language. So next in the queue is Malcolm Hutty.

Malcolm Hutty: I was going to speak to one of the other points that Becky raised so if you wish to close out this item first by reference to the (clue) only chair I will wait my turn to speak to the other point.

Becky Burr: I think you could just go ahead and we could come back to...

Malcolm Hutty: Okay.

Becky Burr: ...if there are no comments there are no comments and it will work.

Malcolm Hutty: Okay. In that case it was a comment with regard to the comments that Becky had on the definition of consensus policy the suggestion that consensus policy

should be made to be I don't mean is should be made to be by definition within ICANN's scope.

This would if it were taken forward seem to be a very significant change to the scope of ICANN's mission. It would empower the consensus and policy process to make policy in all areas without limitation to the scope of ICANN. That would seem to be a very significant step if that's what's being intended.

Now I understand that specification one has certain limitations in it as well but they as they currently stand point back to the current mission.

So I think that any suggestion of changing the scope of what consensus policy may cover in this area will need to be looked at very carefully. And we need to see any wording before we could give an agreement that this could be passed directly to the lawyers to implement. Thank you.

Becky Burr: Could I just respond? Anybody who knows me knows that I am the last person in the universe who will ever suggest changing the definition of consensus policy or the picket fence.

I suspect that I stand out to no one on defense of the picket fence. So you have my assurance that, that - that the full definition of consensus policy as defined in specification one is the only thing that I would consider an appropriate change here.

The other thing is by the way we can't change that anyway if we wanted to. That is embodied in every single registry and registrar contract.

Malcolm Huty: Thank you.

Leon Sanchez: Thank you very much Becky. And I'll encourage you to keep it very concrete and focused. And we have ten minutes before the break.

So - and we still need to go through the IRP. So I'm closing the queue with Robin Gross and next in the queue of Milton Mueller.

Milton Mueller: Yes. In some ways I'm reflecting what Malcolm said but I think I have a different take on it. Becky my understanding of the mission and core values as a commitment was that it was a limitation similar to like a bill of rights okay?

And when you say consensus policy would still apply does that mean that if we agree as a consensus policy that the use of domain names as part of the registry policy they must require that all these domains let's say only allow content that supports a particular religion if that becomes a consensus policy does that mean that ICANN can do this?

I would've thought that this is meant to be a rights limitation that prevents consensus policies or any policies from doing certain things.

Becky Burr: So consensus policy by - as defined in specification one by definition I believe would preclude that. This said there's a long story.

So we will need some additional wording but consensus policy when I'm talking about consensus policy I'm talking about specification one not policy that is the product of a PDP but policy that is within the four corners of the subject defined in specification one.

Leon Sanchez: Thank you very much Becky. Next in the queue is Kavouss.

Kavouss Arasteh: Yes Becky thank you very much. And we are sorry we bother you so much and you lost your voice.

What to of added you're among the most respectful and the most recognized person that we really appreciate your work.

Now what I said in the GAC yesterday I'm talking of an individual. We have to see whether we want to go to the reality and/or privilege.

I think if you take the reality it may not be harmful to retain private sector rooted or private sector leader or leading doesn't change anything.

ICANN Internet continues to work whether somebody is private sector rooted or private sector leader.

But it will be a mistake if we expand that that would not mention the government. It is a mistake because ICANN working a multi-stakeholder inclusive. So I have much in favor if you expand that we should include government in appropriate place in a sense.

Thirdly there is some language (unintelligible). Private sector can be some people read it private sector includes business, academia and so privacy does not include academia, academia is academia.

Perhaps private sector includes business. And then after that the other goes and government. So there's a little bit of linguistic style that we have to correct.

But this is my personal view. Let us not to talk about the privilege, superiority and feel that we are subordinated or not subordinated.



Leave the private sector as they are but include not expand that to include government in appropriate place. And correct the sentence to not meaning that private sector include civil society include academia and so on and so forth. Other (unintelligible) only includes business. If I'm wrong please correct me. Thank you.

Leon Sanchez: Thank you very much Kavouss. And I think that that's pretty much with Spain.

Becky Burr: Yes.

Leon Sanchez: So...

Becky Burr: I think that the approach we're talking about would address.

Leon Sanchez: Exactly. Next on the queue I have Andrew Sullivan.

Andrew Sullivan: Hi. I'm Andrew Sullivan. And I'm Chair the Internet Architecture Board. We sent some comments about these documents both the first and second reports.

And part of the discussion here that's going on right now I find a little frustrating partly because there's a lot of scoping discussion

And the point of the comment about this area that the IAB sent was precisely that if you drew the mission statement more narrowly to focus exclusively on the registries which is what ICANN's job is then you wouldn't have this problem because you wouldn't be talking about the whole Internet you'd just be talking about the registries.

So I really strongly encourage you to reconsider that point because it has - it would help a great deal not to draw you into discussions outside of ICANN's remit if you had this mission that said no, no we just work on registries, that's what our problem is. Thank you.

Leon Sanchez: Thank you very much Andrew. Next we have Greg Shatan.

Greg Shatan: Thanks, Greg Shatan. Just briefly and this is partially in response to Kavouss but also to make it another suggestion.

Clearly when these documents were first drafted private sector meant everything other than government it did not have the narrow meaning that Kavouss is trying to ascribe to it.

In the interim in other Internet governance documents and fora the word private sector has been used differently in the more narrow sense to mean commercial and business interests.

But that does not mean that this use of private sector is wrong but it does mean that it has become confusing.

So a suggestion an alternative to adding kind of the list of all of the types of private sector interests that would be in the broader definition of private sector to clarify that it's not the narrow definition of private sector.

Instead of getting into all that listing we could just say the nongovernmental sector which is what was meant as opposed to the - it was the public sector and the private sector. That was pretty easy. That's pretty binary.

If you don't want to use private sector to describe everything that's not the public sector say nongovernmental sector and then you don't have to worry about who didn't get into the list. Thank you.

Leon Sanchez: Thank you very much Greg. Next in the queue is Alan Greenberg.

Alan Greenberg: Thank you. Two things just for clarity, Becky has been talking about consensus policy in spec one.

Spec one is a term used in the new gTLD agreements not old ones and not in the RAA. So if we're going to use a term we should try to make sure it's the - it's applicable to everything.

You made reference before to these things will come back for a second reading. When it does can we please have current bylaws propose new bylaws side by side or blank and brand new bylaw provision so that when we're saying, you know, giving our blessing to that we really know exactly what it is we're changing because my short term memory is not all that good, my medium term memory is probably failing and I never had a photographic memory so just make sure that when we're getting sign off we all know what it is we're signing off on. Thank you.

Becky Burr: Okay. Just for your reference that document is posted with the second draft report. There's a sentence specific side by side but I mean we'll do...

Alan Greenberg: No, no I - yes but I'm talking about when we...

Becky Burr: Yes.

Alan Greenberg: ...have now made these refinements that is what we are - what we should be using to do the sign off on. Thank you.

Leon Sanchez: Thank you very much Alan. And last is Robin Gross.

Robin Gross: Thank you. Excuse me this is Robin Gross for the record. I just wanted to support some of the statements from Malcolm and Milton regarding concern for expanding scope.

And Becky I really appreciate that you're saying that isn't what we're going to do here. But I think we need to be careful even if it isn't what we're intending maybe when we get the language specific language back it could be interpreted in such a way.

So I think it could be very dangerous. And so I think we have to look at it very, very carefully. And, you know, over some time have a period of time where we can actually sit with the language and work with the language before we have a meaning about it because I think it's - it could be a real problem unintended but it's just so - it's such a crucial issue that we could expand the mission or expand what's in spec one. So I just wanted to raise that we need to look at that very carefully going forward. Thank you.

Leon Sanchez: Thank you very much Robin. And I think this is I think a way forward could be to actually task the lawyers when they look into drafting the corresponding bylaws to verify and make sure that there is no expansion of the mission and the scope of ICANN's remits. So I think that would be a way forward.

And I would like now to go back to confirming whether we have any of oppositions on the proposed language by the government of Spain.

I think that really didn't have any opposition when we first asked and as opposed to opposition sites or a lot of nodding as (Thomas) pointed out.

So this is the last call. Is there any opposition to going with the suggested text that was proposed by the government of Spain in regard to Commitment 5 that's right? Yes Kavouss.

Kavouss Arasteh: Not opposition but I think we should stop as the government but not expanding government in the respect of (unintelligible).

So include government like others but not go government in detective of what? So I would like to generalize the issue that put government like others. Thank you. Without specifying areas in which they are responsible.

That are responsible in the collective (unintelligible) in the entire process you don't limit that. We are not WSIS thank you.

Leon Sanchez: Thank you very much Kavouss. So there's no objection and I hope that Becky can take that last comment into account.

So we'll now go to our break. And when we come back we will go to reviewing IRP.

And I don't know how many time does our boss lets us have as a break but I think it's a 25 minute break no I'm sorry it is a 15 minute break. I was overstepping with 25. But no it's 15 minutes break. We shall reconvene for 48. Thank you.

Man: All right. Welcome back everyone, the second part of this session and thank you for taking your seats.

We have one outstanding agenda item from the category that we previously discussed which were items where we made significant progress Friday and Saturday and we wanted to take stock and have clarity about the next steps. And this is the enhancement of the Independent Review Process also known as IRP.

And to remind everyone here the next step that we said we would consider on when we discussed it on Friday was create an expert group that will work with lawyers to refine implementation of the IRP as we had discussed that we had considered that our requirement work was complete.

And I'd like to use the opportunity of a half full room to have this confirmed by acclamation, obviously that's a good practice. And confirm that we will indeed organize this so that we can move forward on this very, very much expected aspect of our proposals so that we are demonstrating our progress.

Man: We don't need unintelligible.

Man: Okay. So that's for the IRP. That was just a warm up to enable everyone to get back into the room.

I hope you've stretch your legs and arms. It seems to be the theme of the day and did a little bit of dance outside because we're now going into one of the major aspects of our work today which is the collaborative work that we need to have to find a way forward on the models.

A way forward that needs to be that it needs to be acceptable to all that everyone can live with. And I will strongly encourage everyone to keep that definition in mind that we can live with.

So we are going to try and address this in a manner that is requirements based, fact based so please leave aside the statements of anyone's interest or positions, we need to look at the facts and requirements. We want this to be documented. Actually we want this session to form the core of the documentation that we will have to provide for the choice that we are going to make.

And we wanted to remain in the spirit that we've seen for the last few days, which is the spirit of collaboration, and now the spirit of working against each other. We'll pay particular attention to clarifying the underlying concerns and requirements so that they can constitute the basis of a robust discussion that was asked earlier by, I think it was Anne. But also substantial discussion and not talking past each other.

Finally, remember there is no gala dinner until we found a way forward. So there is going to be actually three small parts -- three or four. First, we'll do a little bit of contact setting; that is going to be (Thomas). We'll try to take stock of prior discussions we've had already on the models just to bring everyone on that.

We will certainly - we will also look at - remind ourselves of the materials and the information we already have, which is pretty extensive, about the options and the assessments that we've received about the consequences of picking one option or the other.

Then we'll try to assess what are the requirements in this discussion and move on a short list of models to look at them carefully and compare them carefully. That is the intended approach.

Of course, we'll be - well, we know you're a group with which we have to be flexible sometimes, although definitely not our favorite characteristic, to be flexible, but will certainly lessen.

With that, I think I will move to Thomas for a bit of contact setting.

Thomas Rickert: Thanks very much, Leon. And welcome back after the coffee break. I hope you are fully energized for this discussion.

Just to put things into perspective, we have established earlier this triple E approach, or EEE, approach. We have the engagement phase. We have the escalation phase and then the enforcement phase. If we are doing a good job in the engagement phase -- let's say on the budget, community interacting with the board, making sure that there are no misunderstandings, that all the information is traded back and forth -- then chances are good the board will pass a resolution on the budget that meets the criteria and meets the requirements of the community.

And it is only then after the fact that on a finite list of enumerated powers, we can have this escalation pass, which, again, would start with the board decision. And then if all else fails, there could be the need for enforceability after the board has failed to accept the community's wish to redo or revisit its decision after the board has failed to take the signals coming out of the community forum where things have been discussed publicly after the board has failed to accept a budget veto coming from the community, after the board has failed to accept an IRP decision favorable for the community.

Only after all that happened cumulatively, there will be the need to enforce the community power. And that's exactly what we're talking about. It's really a last resort scenario.



So what were the options for enforcement models that we've been looking at? You will removed the scale between the trust base model and fully enforceability. On this scale, we had the status quo, which is basically a trust base model or some have called this the collaborative model. Then you have the board proposal with the MEM, which is an arbitration base model.

Then you would have the community mechanism as so designated. You would have the second proposal community mechanism as a sole member. And the first proposal, first report, multiple member model.

All these models we have discussed. We also discussed the multiple designator model that we happen to include in this chart. So you see that there is a spectrum between trust and enforceability.

And we were just out to confirm with you that we are abandoning the notion of maintaining the status quo. We know that there are minority views that would like to do that, but that didn't get sufficient traction in the CCWG as well as based on community feedback.

We would also like to rule out what we had in our first proposal; i.e., the multiple member model with the olders amongst us will remember this model.

That leads us to a short list of models. And if we can go to the next slide then, we have a short list that basically focuses on two variations around a main topic of pooling the community powers in a single entity, be it the designator, be it a member.

So why are we discussing this first? Because we think that if we take this first and put it in front of the bracket, then we can really focus on the differences between a member-based model and a designator-based model.

So why are we not -- this is our understanding -- why is this group not willing to pursue models based on multiple entities interaction with ICANN? We learned from the commenters that they want us to avoid relocation of power. They want us to avoid a concentration of power. They want us to avoid the risk of capture.

And if you have individual designators, multiple designators, or multiple members, each of those could potentially exercise rights of their own and do things by passing the community processes.

Also, since they would need to assume legal personality, we would force single groups in our community to change their status or recognize that they already have a status that they don't want to publicly acknowledge, right. So we want to leave the current SOAC structure unaltered. We want to avoid the risk of capture by pooling that so the community part shall only be jointly exercised.

And that you do with the notion of single. So this is our understanding from previous conversations. And you will remember that we want to a single member because we got public comment after the first report frowning upon the notion or multiple, right. So we went to single.

And we want to confirm with you that we would like to keep the notion of single; i.e., pooling the whole community into a single entity that would then interact with ICANN.

Jordan?

Jordan Carter: I just want to add one more piece of context for those who may not remember. In terms of the multiple - when we were talking about the multiple approach, we only talked about it in respect to those who are pointing boards directors, which is arguably the status today with some of the SOs and ACs being legal persons.

If we were going to have collectively exercised powers among the whole community in multiple situations, we would have to establish legal personality for all of the SOs and ACs and with very clear signals from the GAC as one of the SOs and ACs about how they feel about the idea of membership in a legal person.

So that was another of the reasons that we paid very good attention to the very strong feedback we got in the public comments on the first proposal to add to all the things (Mathieu), that (Thomas) has said about why the multiple model was not nice.

Thomas Rickert: Thanks, Jordan. Alan?

Alan Greenberg: I'm going to say something which will either be illuminating or confusing, and I'm not sure which it will be to everyone but I'll try. No thank you.

I agree that we have no choice but to use a communal single body to represent the ACs and SOs in order to take legal action or take formal action; that there is no choice in that.

It is relatively transparent, however, to the designator part. We've been using the term "designator" and then applying it to the larger community. The

designator is a legal term, which is about appointing board members. In fact, if we were to keep - right now if the ccNSO appoints a director, they write a letter to the secretary of the board saying, we've made a decision.

In the combined model that we've been calling the "sole designator," they have to tell the designator and the designator writes the letter. Okay. We could keep the ACs and SOs that appoint directors writing the letter themselves. We'd still need the communal organization to enforce the powers. In fact, a multiple designator, but single entity to enforce the powers. The two are almost identical except who writes the letter to the secretary of the board.

For those who are adamantly still trying to look at a multiple designator model, they're effectively the same in terms of all of the powers and all of the rights. It's really only who does the designation? Who writes the letter to the secretary?

Thomas Rickert: That's very helpful and I found illuminating, to my surprise. Usually I'm not that bright.

Sebastien.

Sebastien Bachollet: After this illumination, it will be hard to follow.

A different point. The first one -- I know that the world can't, but I really don't like those image because I consider that I am part of ICANN. And it seems that we are designing something to go to somewhere, and somewhere it's not us. ICANN -- it's all this system. It's not just the bubble at the top. And we have to find another world and other image for that because we are part of ICANN.

I have one question. Is designator currently the body who appoints voting board director? Or can we imagine, or can we name the other who appoints a liaison and also designate somebody to the board? We're not doing the same thing. The only thing they are not doing, it's not voting. For the rest, have the same powers as anybody else, even at the end of the month have the same treatment.

My last point is that I think if we go to the wording of "sole designator," I would like to suggest to add something like a "coordinated sole designator" model. Because it's not that we want one, we want one to coordinate what we are going in the current situation. I think we need to find. I don't know if it's a legalistic character, but I think in the term or image it could be good.

Thank you.

Thomas Rickert: Sebastien, I have asked for this visualization. And if you find it ugly, that's on me. Let's find a name. Let's try to do a good visualization. I would like to confirm your agreement with the notion that we need one body, one entity, to help us communicate to ICANN what the community has decided. So I guess that's the purpose.

And I don't see - (John), your hand is up?

(John): I want to refer to the point that Sebastien made about labels. We keep (geekily) and intensively in our deep and detailed discussions trying to come up with labels for things and then not realizing that in broad audiences those labels might convey things that we don't quite know. So I would like to just keep whatever we call this thing as a working title for now and not assume it's what we're going to label it in the final report.

We know we have to do a much better job communicating whatever we come up. Let's include better labels as part of that effort.

Thomas Rickert: Good. So the queue is empty. So I take this as a good signal that we can move forward on the assumption that we're looking for something sole, provisionally. Might get a different name as we move on.

Next slide, please. So having removed the status quo as well as the first report enhanced SOAC membership model that leaves us with these three options that we should keep under comparison. We've been asked to have a discussion with you that would look at the pros and cons of the future of these options, and we honor that wish.

We're basically looking at three options as we move on. This is just a reminder that we're having three items on the continuum from trust to enforceability.

Next slide, please. We also said that we wanted to have this discussion requirement base with you. So we're going to look at and confirm which of the models meet CWG requirements and also which ones fulfill NTIA requirements. So you can expect that to happen anyway.

But when it comes to a decision making, there are other factors that seem to be important to this group as well as to the community. And we want to make sure that we're looking at the right criteria.

Enforceability has been and is a big issue. So we need to look at the question and the pros and cons of direct versus indirect enforceability. We need to look at enforcement delay in the worst case, because if you look at enforceability, it's not only to have the enforceability, but we also need to look at how

quickly you get the results that you wish. How quickly does the community get its wish?

And cost potentially - since we want to be cognizant and accountable when it comes to budget, we might wish to take into consideration cost factor when looking at enforceability.

Then there is the risk of capture. There was the risk of derivative action against the board as being a scenario of capture. The right to dissolve an organization is a risk. The (benefit) between the SOs and ACs so that no single or not subset of the SOs and ACs can do things to the dislike of the rest of the community; the scope of issues where the board can have its business judgment exercise its fiduciary duties with a discretion that can't be challenged in an IRP or in court.

Then we have the issue of transparency. Access to (coffered) records is an important factor for at least some in this room as a feature for their decision. And complexity. We've been discussing this over and over again that we need something, and we've got a lot of public comment on that. We need to ensure that what we are doing here can be understood if we're not leaving the rest of the world outside this room or outside this convention behind understanding that this enhanced ICANN, what this post-transition ICANN looks like and what remedies it offers to the community.

So complexity can lie in the need for establishing additional legal persons. It can lie in the fact that natural persons are required to take action and act on behalf of the legal person. Ease of understanding: We want people to understand what we're doing. And the ability to explain that the changes that we're applying are minimal.

We heard a lot about ICANN being well-established as a multi-stakeholder organization. And that we might get push back if we give the impression that the ICANN as we know it today is not really as good as everybody said it is because we need to complete to read that bit. So minimal change was also a requirement criteria on for assessment, according to some, if not many.

We will look at these points again. We just wanted to share with you an assessment methodology to allow for more objective decision making. If you think that we're missing important points on this, let us know. We can add that. We don't have to edit now because we will come back to these points. But if you think that a point that is important for your decision making is not reflected here, let us know.

Next slide, please.

((Crosstalk))

Man: I think we need to take stock of that carefully before we move to the next step. The question was: This was an attempt to recap and sometimes rephrase most of the concerns, requirements and discussions that we've had related to the models within our group on the mailing list as well as during the public comment sessions.

So it is our good face attempt at doing this. And I think we need to really ensure we have captured everyone's concerns here one way or another regarding the choice of models. We've heard simplicity. Of course, that's the complexity aspect of it. We've heard concerns about derivative rights several times in the first public comment. We've heard concerns about transparency and access to corporation records on a certain number of occasions.



I want to ensure we're all in on this and that you actually can read these ugly slides which were surprised by the coaches and especially me, and I apologize for that. We've been bashed by the relevant people for providing slides that have not been vetted for readability. And it's a fair comment.

I see more. That's good. That's pretty complex already. But I think that shows the amount of discussion we've had so far that we can tease out so many of the key aspects that we need to check.

The next point is to look really at what kind of material we have at this point to inform our discussions on the assessment of the model. As Kavouss -- I'm sorry he's not here because he's been insisting so much about us going into this absolutely excellent memo that we received from our lawyers comparing a number of aspects of those three models -- there were more than three on the table. I think it was four.

So there is a wonderful three-pay memo that is worth just looking through so we are all aware of what kind of information is in there and how it can be useful to inform our discussions.

For that, Jordan, the three-page memo? Are you prepared to take us through it? Or do you want me to do it?

Jordan Carter: Why don't you do it and I interrupt if I think anything needs to be added. I did five hours on Friday morning, remember?

Man: Good. This is what I call collaborative effort. I'm sure that's very readable.

Jordan Carter: Isn't their version of that table with the same contents but only the two columns that involve single members, single designator?

Man: A version of this?

Jordan? It would be easier to read. Do you want me to Skype it to you?

Leon Sanchez: Just while (Alice) does the usual wonders at finding specific document in a pile of thousands of e-mails and tracks. Just a couple of comments about the context.

This was to assess the various models against the ability to deliver on the powers, the seven requirements of the CWG, which were the basis of this, as well as provide additional information about how it would practically work out. That's why it's relevant to our discussion today. Excellent. The two columned one. Wonderful.

So I think we should start with - let's go down to Power Number 7 to follow (Ann's) suggestion earlier and look at row number 7 -- consideration, rejection of a board decision relating to the reviews of the IANA functions including ability to trigger a separation of PTI also known as IANA enforcement (suprability). As Anne was saying, that's probably one of the most complex aspects and one of the most central to IANA transition, in a stewardship transition - I slipped.

So what this table shows is how we would play out on the left column on the sole designator; on the right column on sole member models. And so on the sole designator -- I need to adjust my glasses. The sole designator would have the right to trigger both consultation to specific number of times with bylaws restriction so we would have a process. Thank you.

The sole designator would have standing to directly enforce consultation rights. And then arbitration would probably not be available or not be fully efficient for a separation decision because of the (impression) that would ultimately rest with the board because of the tight relationship with some of the core aspects for the corporation because of how it might effect.

Once again, we are at the end, at the end, at the end of a process where it's most probably that all of the bodies convinced that - the board does not - it is not assumed in this paper that the board would say no. It is just in the case where that would happen because it's most probable that the board listening to the community would follow on as (Thomas) reminded us earlier.

There is uncertainty whether an IRP decision would be enforceable over the board in that case. But the community would have the ability to record a board and reinstate a new board based on its intention.

On the sole member model, you can find that the bylaws would reserve powers for the sole member to override both decisions such as this and that would go over the fiduciary duties of the board. As a consequence, enforcement would be direct instead of going through the board recall.

There is a more direct way to enforce on this particular one, and that is what the table is designed to say.

I'm seeing some confused looks as well as a queue. So I would like to turn to (Alan).

Alan Greenberg: Thank you. I have a question. The lower left subcenter box says "arbitration is likely unavailable for a separation decision." I'd like clarification from the lawyers. When you say "separation," do you mean separation of PTI as an

affiliate of ICANN? Or do you mean separation of the IANA function?

Because one of the ways you can get separation of the IANA function is to keep PTI there as a quasi-subsiary but just contract with someone else to do the work.

Was that specific to the former type of separation or applicable to both?

Man: Would you like to...

Man: Sure. I'll clarify that. It would be for either way. Something significant is that the powers that are being talked about are the powers in NXL of CWG, right. It's a process. So if the arbitration is unlikely available for the actual separation decision, the board can be bound to follow the process in NXL. So that's an important point -- that the board can be bound through arbitration to follow the process.

So I think we don't have any problem with hitting the CWG contingency on the designator model.

The point I'm making is you can have separation by severing the relationship with PTI. You can also have it by simply issuing an RFI or an RFP and issuing a contract to someone else other than PTI and leaving PTI there. I was hoping for clarity. Thank you.

Man: So the answer is first...

Man: Both.

Leon Sanchez: First case. Good. What I will try to do with the lawyers around all this session is just ask very clear yes/no questions confirming that our own requirements

or assessments are accurate but not going to lengthy legal discussions because I think that would be dangerous.

(James )?

James Gannon: Thank you. I came to CCWG from the CWG. In the CWG, we worked through our process and we came to a point where a number of us felt we compromised on certain aspects of how we worked in the CWG in order to come up with the separated PTI in an affiliate structure on the basis that we were given assurances that the CCWG would be able to give us the enforceable right to split off that PTI entity.

Those who have known me through the CCWG know that I'm very strongly in support of the membership model, and this is why. This is the core of why I have supported it.

Looking at these two options up here, on the right I have confirmation. I have "yes," we have a direct enforcement of it. On the left, we don't know is basically the answer because that indirect enforcement, which is a form of enforcement, is not a guarantee for us, which poses concerns for somebody in my position. I'm not a member of the CCWG. I have no voting power or whatever else. But I want to express why we have this concern. And I don't think I'm alone in it either.

I think a number of us like other things of that membership, but the core of us, a number of us, feel the push for the membership side of things is for is to have that requirement that came over from the CWG, no just necessarily in the direct text of it but in the feeling of why we went down this road.

For me, personally, as designator stands on its own, I personally don't feel that it meets the spirit of the requirement of the CWG. If we can have something above and beyond just the rights to recall the board. If we have some other additional mechanism that our lawyers or that the community can come up with in order to give us an additional layer of certainty around the ability to separate this critical thing, which is essentially what the entire transition is for.

Leon Sanchez: (James), would you agree with that your concern is that the board would not follow a separation discussion? That's your core concern?

James Gannon: Yes.

Leon Sanchez: Okay. And we've heard that indeed the member has direct enforcement and designator - it's a form of indirect enforcement that can be enhanced as was said earlier by a verity of bylaw process that would add to the basic designator. The question that we'll have to ask at some point is whether that is sufficient or not sufficient to address our underlying concern, which is that the board would not follow the community output for bad reason. If it's for a good reason...

James Gannon: Briefly to respond. I think that...

Leon Sanchez: I see Jonathan Robinson is right behind you in my line of sight and raising hands. Is that to provide some CWG perspective?

Jonathan Robinson: Yes.

Leon Sanchez: So I think that would be very appropriate at that point.

Jonathan Robinson: It's Jonathan Robinson for the record. I respect (James's) opinion. I understand where he's coming from. I think for us the test is: What did the CWG recommend? Not what each of us individually or in different groups felt but in the CWG?

I don't think the CWG made a call as to a specific enforcement mechanism. I think for me there is a critical separation between those two points. Like I say, I respect those that would like a strong or the strongest possible enforcement mechanism. But if you think about it from a CWG perspective, we simply requested enforceability, and we didn't really specify to you. We expected you to determine enforceability.

So we were not that much in the detail as to these mechanisms. So I hope that's a helpful supplement.

Leon Sanchez: So it's your view, Jonathan that the level of enforceability on both sides here, none of the sides is in contradiction with the conditions of the CWG at this point?

Jonathan: I think that's a fair way to represent it, yes.

Leon Sanchez: That's something very useful to have in our deliberations at this point.

Next is Chris Disspain. Chris?

Chris Disspain: It is indeed. Thank you. This is Chris Disspain.

I want to make a couple of points. I can't help but be this as a lawyer. I'm slightly perplexed by the wording up here. If you look at the left-hand column,

it says "arbitration likely unavailable," so it doesn't say it is unavailable. It says it is likely unavailable. So I don't understand what that means.

On the right-hand side, it says "sole member would have greater latitude, although issue is not certain." Which sounds to me as if that means that we don't actually have the answer to that one either.

I'm actually a little perplexed at the way that - in other words, I'd much rather see us say it's uncertain in both cases or it's not certain or it is certain. But having said that, my understanding...

Leon Sanchez: Can we interpret this as there is uncertainty which is what Chris would prefer to hear. Just to make sure we get that clear. Obviously the wording can always be confirmed. Is that reflecting that there is a level of uncertainty? Certainly, we don't want uncertainty. It's unintended. Is that correct?

Man: There is some level of uncertainty under both columns; however, one should not overstate for the fact that we could not define it, give an opinion to use the lawyer term. You could not give an opinion that would definitely happen. But there is a likelihood that it would be enforceable. And the sole member -- and as we said -- the process.

Leon Sanchez: I think it's fair to say we all have to live with some level of uncertainty.

Chris Disspain: Just to be very clear, my understanding is that the separation will be in the bylaws and that the arbitration is used if we violate our bylaws. My understanding is that violating our bylaws is a breach of our fiduciary duty.

So I'm unclear why we're having an issue here because if the separation is in the bylaws and if we violate that bylaw, then we are in breach of our duty. So



how can we claim that we don't have to follow our bylaws? Because that is what this about, right? This is about a finding - or have I missed something?

Leon Sanchez: My personal understanding is that there is always room for interpretation. There might be conflicting views on the bylaws interpretation and that is the source of interpretation.

Chris Disspain: So the key there is the word "always."

Holly Gregory: For clarity, the bylaws to the extent that they provide a process, you can definitely go for enforcement under the sole designator model just as the sole member model. What the difference is, is whether or not you could bind the board to follow a decision that the community was trying to dictate.

So if you look at NXL in the CWG proposal, it sets out a process. That process can be enforced through the bylaws under either of these models directly.

Leon Sanchez: I think the distinction you are making, Holly, is between a case where a process is set that says if the decision is green you have - the board must do this versus provision that would say is it a report with a recommendation and the board...

Chris Disspain: No. But that's not true because if the bylaws say subject to this process...

Leon Sanchez: Yes, but we're in agreement. If the bylaws say subject to this process...

Chris Disspain: We will do X...

Leon Sanchez: You will do that.

Chris Disspain: And we will do X.

Leon Sanchez: Then Holly is saying this is enforcing in both cases. But if it's not specific in terms of process, then there might come this conflict...

Chris Disspain: But why are we talking about it not being...

Leon Sanchez: What Holly is saying is that in the CWG report NXL -- and I think that's what maybe Jordan wanted to tease out a little bit, so I'll turn to him in a minute -- there is a process which can be put into the bylaws.

Man: Paragraph 391 in NXL is the one where it says "there is no prescribed result." That might be to the process. That's the key.

Leon Sanchez: Jordan, do you want to tease out with that?

Jordan Carter: I do because I'm looking at the end of the NXL and the CWG report. It's got CCWG accountability dependencies listed. It says ICANN fundamental bylaw to define this review. That's easy and that could exist in both models.

It says it wants to describe the procedure for that and its functions and established voting thresholds and approvals, blah, blah, blah. You can do that as well.

It says it wants approval by a community mechanism derived from the CCWG accountability process to approve the final selection of the SCWG. Now you can put that in the bylaws and you can assume that ICANN's board will follow it. But if ICANN's board chose not to follow the decision that was made under the designator, you could not have standing against that. You could not uphold that.

Under the member model, if the right to make that decision was granted to the member, that would be enforceable. So that is a distinction based on text on the CWG report which is a requirement. Then further down it says "per the above separation process, the selection of the entity that would perform the IANA naming functions would also require community approval through the established functions.

So in either case, the community approval can be put in the bylaws and can be exercised. And we can assume the board would agree with it. But the difference between the two models is if the board doesn't follow that (co-decision), the decision rights is given to the member, not the designator. So it's a distinction.

But I got back to what I said the other day. I think it's a distinction that is dancing on the head of a pin.

Chris Disspain: Yes and isn't it true to say that -- I agree with you. Isn't it true to say that, in effect, with a designator model, it, in effect, forces an extra step because you have to then go to - you can force through arbitration, right. Because at the end of the day, it doesn't matter the arbitration is about, the arbitration is binding.

Jordan Carter: No. As our lawyers advise right there, arbitration is likely unavailable to the separation.

Chris Disspain: It doesn't say that it's unavailable. It says it's likely...

Man: There is a queue forming. I hope you can - there is a queue forming. Please adhere to the queue.

Leon Sanchez: I'm aware of it. And we need to make sure we're not getting into - sidetracked. There are other discussions. This is a queue one. I think what is - what I understand from this discussion is of course there is a more direct way to enforce in this particular case on the member track. But the difference is something that needs to be assessed. It certainly has abilities to be seriously constrained. And we're not in breach -- or at least obviously in breach -- at this point with the CWG requirements in either way. That's my key point at this point.

Next is Anne.

Anne Aikman-Scalese: Yes. Thank you. Anne Aikman-Scalese.

In trying to understand enforcement in the sole designator context with respect to this issue, a question arose earlier in the chart, and I would like to flesh that out a little bit and ask about it. As I understand it, when we're talking about this hypothetical example of PTI separation, it would be the decision itself to separate PTI, whether - in either one of the two ways that (Alan) mentioned before.

The difference between the two models is that if the board thinks, for example, that PTI should not be separated and the community thinks, for example, that PTI should be separated, what we are saying is that in direct enforcement under the sole member model, once we get up at the end of the Stairmaster -- which I love James term for that, the "ICANN Stairmaster -- and we've gone through a whole lot of communication. But still there is an honest disagreement between the community and the board.

In sole member, the community directly enforces because the board is not liable for the exercise of a fiduciary duty under the membership corporation. In the sole designator model, the board continues at all times with fiduciary duty in the exercise of all of these decisions.

So the ultimately power of the community in sold designator is the removal of the directors if, for example, the board declined to follow and IRP decision saying we will not follow it because we cannot do so in the exercise of our fiduciary responsibilities.

The (unintelligible) question that came up in chat is: Suppose we go sole designator and we say, so, the community strongly disagrees, feels PTI should be separated strongly, has a strong consensus on that, according to the various thresholds, so we're going to remove these directors.

Then the question becomes: When you're going about the process of appointing new directors, how does the community get the result that it's looking for? Do you prequalify directors who say they will separate PTI? Is that a fair way to look at how one qualifies directors? What type of interview process by the NomCom is involved there? What is the practical effect of the power to remove directors as an enforcement mechanism in respect of this issue?

Leon Sanchez: Thank you, Anne. I think you're raising a couple of very interesting points. One is that directors have to exert their fiduciary duties and I think we want board members who care, are loyal, and provide their business judgment into their function within ICANN. So I think fiduciary duty is really, really a good thing.

What would not be a good thing and has been expressed by James and others would be to actually have fiduciary duties used as an excuse for not doing something. It's not fiduciary duty that is an issue. It's being - using it as an excuse.

And then you're raising the point about effectiveness of the board recall and basically how long it would take would be interim board be empowered to do this separation.

Anne Aikman-Scalse: No. Actually, also the bigger question of whether you get directors who will affect the separation or whether you're not really entitled to do that. In other words, does the community get the result that it wants? Or is it not really entitled to do that?

In other words, at a point all new directors because it has the right to remove them, do they then vote to separate PTI?

Leon Sanchez: Well, I think if the community - I mean the basic thing in the framework is that the community appoints board members. The community selects the NomCom which in turn provides NomCom-appointed board members. If the community selects board members that are indiscriminate with at this point a very, very significant will because we've been through - I mean at this point we've been through at least a year or a year-and-a-half of process saying we want separation.

If the community appoints board members or is not able to come up with board members that are willing to do that, then I think we have something more profound that's not working.

Would the interim board members make that decision themselves? Or would that be delayed until the proper board is reinstated? I don't know. But I don't

think that delay -- that extra delay -- of two to three months really is that significant compared to the overall process.

Anne Aikman-Scalese: Yes. I'm not speaking of the delay. I'm speaking of the ability to affect the separation, can you say, to a new director that you're going to appoint? We're only appointing you if you agree to affect a separation. And I agree it's unlikely ever to be used but it's trying to...

Leon Sanchez: If you agree to follow a community recommendation that is compliant with the bylaws that the former board did not want to apply, because you are at a point where the board did not follow a provision that's in the bylaws that is in the process.

Anne Aikman-Scalese: So you can select a director on that basis?

Leon Sanchez: I don't see how it could be (else).

Anne Aikman-Scalese: I'm glad you know the answer.

Leon Sanchez: I have difficulty imagining that after all we've been through, and it is such a remote case of the board not following the process that has been decided on, that we could not replace them and be effective. Anyway, it is so remote. I don't want to spend so much time.

We'll move to the others in the queue. (Kavouss)?

Kavouss Arasteh: I'm sorry. Perhaps I missed you. I'm sure that you have not missed me within 45 minutes.

Leon Sanchez: On the record, (Kavouss), we have missed you.

((Crosstalk))

Kavouss Arasteh: (Mathieu), we are dealing with the most crucial issue which is directly related to transition. As a liaison of ICG, I would have difficulty on Thursday to tell the ICG that the issue under number 7 is going to be totally covered. For me, it's not covered because first of all thanks to Holly and thanks to (Rosemary) for the very good (unintelligible).

It says that arbitration is likely unavailable. The only thing that you have is the call of the board member. You (pin) something to some other thing which also is not currently clear, or removing the entire board. How long it takes? How would we do it?

It is very important. In my view, this provision is not sufficient for the transition. We need to put necessary, supplementary element or procedure in order to complement what is missing here.

If you look at this sole member, you have all possibilities there. You have that. But here you don't have it. Property compare this to. Something is missing. If you do not fill up this gap, we have difficulty for transition.

We received many comments that this PTI is not good process. We told them don't worry; we have the (suppression) process. But now the process is under the questions. So the whole thing is under (unintelligible).

Please kindly put "necessary attention to this one currently." And I don't agree -- I'm sorry. Excuse me. Apologize to Chris -- I don't agree that (unintelligible) will do that. You will not be there when this thing will happen. It is not we and you. It should be legally in the document.



Leon Sanchez: That's what we - I don't know if you were here when Jonathan Robinson provided us with his personal - his assessment at this point that both models were - none of the models was obviously not complying with the CWG condition on this. So it is viewed that those both can work at this point. Comply with the expectation that was the condition that was set by the CWG. And I'm looking at it to see whether it's nodding or not.

So I think that's something that indeed needs to be very, very carefully looked at. I think it's good that we're spending some time on it because we need to be very clear. It would not be appropriate at this point to say that one is ruled out on that basis, because that's not the feedback we're getting from the CWG at this point.

Next is (Samantha). Sam?

Samantha Eisner: Thank you. Samantha Eisner from ICANN.

I raised my hand earlier, so it might not be directly in line with what we're talking about, but it's also on this chart. I think it's important to realize, because I know that one of the other things that we would be talking about in this situation is timing of process and how things follow.

It's really important to remember as far as I understand that the CCWG's second draft proposal included, even within the member model, as one of the limitations on the member power that you go to IRP first before you go to court.

We're looking at that as a source defining arbitration. In some ways, we're very equal here in terms of what you have in terms of timing because you go to arbitration first. Then you go to court to enforce it. The more you go to a

designator model, the more you have a person or persons legally in an unincorporated association, or however you want to look at it, who is able to then go to court to enforce.

So then it sounds like a lot of what we're talking about here is the ability to enforce. Clearly that's a place where we're having some disagreements about the ability to enforce and the scope of that enforcement.

Earlier today, following on from the small group conversation that I was in on enforcement model, I talked a little bit with our counsel (Joe and James ). We shared a memo that they completed this morning and sent to Sidley and Adler. There is a fundamental disagreement between the scope of that enforcement. You'll see in that memo -- and I encourage all of you to read it -- and I know Sidley and Adler have not had a chance to respond to it. I'm not stating that it's the final word on anything.

You can take the question as to whether or not the board's action in any of these events was a proper exercise of their fiduciary duty. That can be arbitrated. You can wind up with a binding arbitration decision about that. That's a really important point to realize. If you can't arbitrate whether or not a board has properly exercised its fiduciary duty, you could never take a decision of any board that's obligated to operate under fiduciary duties of arbitration.

It really is that logical of a statement. So I urge you to keep that in mind as you're reading through these documents.

Leon Sanchez: Thank you, Sam. From the points that you made, one is very important - several are very important. One is that on the timing aspect, it's very similar in both cases, in the worst case. That was one of the criteria we mentioned

earlier. There is no real benefit on each side in terms of timing of enforcement.

Then the other part on the arbitration, I think for us as a group of non-lawyers, my personal assessment is that I can see there is discussion amongst lawyers. I tagged this as legal uncertainty and a certain level of risk if we move in that direction, which doesn't mean anyone is right or wrong at this point. But if you get into these discussions, I mean lawyers of 10 years and 15 years could get into these as well, and that might not be the place we want to be in 10 to 15 years. So I think that's my takeaway from this exchange on this particular question, which I am absolutely not qualified to take part in.

I will close the queue after (James). And Milton is next.

Milton Mueller: I'll go. Yes. I have a comment and a question for the lawyers.

My comment - (Mathieu), I think you may have inadvertently sort of diverted our discussion of the issue here because, in effect, you appealed to Jonathan and you said, "Jonathan, you're the chair of the CWG. Does the CWG plan make us - help us decide between these two models?"

And the answer is, "Of course." The CWG has no idea which model. The CWG designed a system that was designed to enable separability of IANA. I was in the committee. You could have asked me that question.

The point we're debating now is: How do we enforce separability? What is the best way to enforce it? We do not - the CWG is in no position to answer that question. Jonathan is not in any special position to answer that question. We have to decide on the merits here in this CCWG.

Mathieu Weill: What I said is the CWG conditions do not constrain that discussion in our group.

Milton Mueller: Exactly. Nobody is saying...

Mathieu Weill: It is our judgment call.

Milton Mueller: (Mathieu), it's my mike right now. Okay? You've had plenty of time to talk. And I would just like to make the point that we have to debate this issue on the merits. Of course it's true that the CWG plan does not require us to go designator or membership. But the CWG plan does require enforceable separation.

And what we're trying to do here is have a discussion of whether we can get enforceable separation with either of these two models. So I'm asking you first, please, do not constrain that discussion by appealing to the CWG chair as if he was in a position to rule on that, and I'm sure Jonathan would agree that he's not.

Okay. So that's my comment. And I'm sorry if you felt put on the defensive by that. But I do think that we were getting into a...

Leon Sanchez: Inadvertently.

Milton Mueller: Yes. I think it was inadvertent.

So the question is for the lawyers. Is it possible for us to create a membership structure that only applies to or comes into existence for the IANA separation and nothing else?

Leon Sanchez: Wow. Is there a yes/no answer to that?

Holly Gregory: We would need to go study. I have some doubts but I would not want to give a definitive answer without going to study. We would still have issues around statutory powers, et cetera, as we've said in the past.

Leon Sanchez: The next is (Bruce).

Bruce Tonkin: It does seem that we're truly in the (unintelligible) here. I've just gone and read the CCWG - CWG report. And it basically says that this is the recommendation from that report, which seems to have wide community support. I was in a session earlier this morning. There wasn't a single question raised. I'm taking that as a degree of community support.

It basically says that there will be a cross-community working group to decide whether to do separation. And then that cross-community working group can define an RFP for selecting the new operator. Then it says that they (unintelligible) a decision to select that new operator is a combination of a decision by the ICANN board and a community mechanism to this group.

So let's say the community mechanism is this single legal entity that we're constructing. So it's a joint decision. It's a decision by the board and that new entity. That's what they've asked for. And I can't see any difference between these two models and how that would work.

So in both cases, if the board didn't follow the bylaws with respect to that process that they've asked for, in both cases you can arbitrate that. The decision of the arbitrators, whether we've followed our bylaws, that decision is binding. Either a member or a designator can enforce that in court. That's the process.

If you don't like the board decision, which is what the CWG actually asked for, then get rid of the board. In both cases, the single member and the single designator have the powers to recall the board. So we're really debating something that's - there is no difference between these two models.

Leon Sanchez: Thank you, (Bruce). I would like to just point out that there is not only the separation discussion. It might be useful to flesh out what your perceptions are about are there differences about the two models so that we get a complete picture and not only on this one, which is indeed a very important one.

Next is Jonathan Robinson. You have a question that was in the queue?

Jonathan Robinson: I had a hand up and you skipped me.

Leon Sanchez: Okay.

Jonathan Robinson: Very sad. It follows up from (Bruce's) question. And it's a question for the lawyers, which is there is a difference between the models, I think. It's just on that decisional point. As (Bruce) says, the CWG asked for a co-decision process on separation or community endorsement of the process.

The question - I'm sure we can put that in the bylaws. Whether the board is able to share that decision with some other entity and whether the decision that gets made can be enforced. Again, I think we're on the head of a pin. But is that the difference between the models?

Holly Gregory: To the extent that what we're talking about process, we can enforce a process under both models. To the extent we're talking about some ability to try to override a decision of the board, then we cannot. I think that what you're talking about is really a process. I think we're in the first column on that.

Jonathan Robinson: That's not a process requiring co-decision. That process can be enforced in either...

Holly Gregory: It's the co-decision part that we are struggling with as to whether that is process or substance. I'm sorry. I know it sounds sort of like we're waffling, but these are fine points that have not been decided that we're aware of.

Leon Sanchez: So if we were to make this or a command that is made a process, the distance between the two models would be extremely narrow. That is what you are positively saying, if I reframe, correct?

Holly Gregory: And I read NXL, which is the CWG provision, to be largely process.

Jonathan Robinson: Thank you.

Leon Sanchez: So I hope I'm not lost in the queue, but I have Greg waiting.

Greg Shatan: Greg Shatan for the record. I moved up to the battle table.

((Crosstalk))

Leon Sanchez: Can you provide an ID?

Greg Shatan: I have not been carded yet. There have been a lot of things that have occurred since I put my hand up as well as the things I put my hand up to speak about.

But just very briefly, in responding to what Chris was saying about the issue of uncertainty -- and I'm going to speak about this as a lawyer -- lawyers tend to qualify things, especially when they haven't done huge, massive amounts of research. When I write a legal memo, I often write it very assertively in the

first draft, and then I start inserting the qualifiers in the second draft because you always can't be quite sure.

So you use tendencies rather than absolutes when you draft these things. That does not mean that you don't know what the heck is going on. It just means that you're shading a little bit. I know it's maddening, especially when you pay many hundreds of dollars for that memo. Frankly, it's just keeping a little bit of uncertainty in the process, because there is a little bit of uncertainty inherent in the law. That's just the end of it.

So if somebody is saying something is very likely, that means you pretty much can be on it. And it's very unlikely the other way. You're just not going to get the (unintelligible).

The other point -- again, speaking as a lawyer -- and I've been thinking about this a lot over the last few days, which is kind of what we've been mandated to do. I'm not sleeping much. In terms of this group as a corporate governance client, I think we're a difficult client. We're very rewarding on every level as we've just seen, but difficult.

Can you imagine us as a litigation client? That will be interesting. I think - I'm a retired or recovering litigator. I hate litigation. I hate it when I did it and I hate it when I don't do it. So we will hate litigation. That does not mean we should not litigate. We shouldn't be afraid of litigation. But real litigators file a couple of complaints before breakfast without even thinking about it.

Litigation is nasty, brutish and not short. That is - as an alternate to spilling the board, that needs to be considered. Frankly I think this community would be more likely, given the choice between spilling the board and entering into lengthy litigation, to spill the board.



I think, frankly, if we get to the point where the board is to intransigent and so out of step with the community, spending three years litigating with that board while they remain in power or taking three months to get them the hell out and get in a board that is in step with the community is much more likely.

Thank you.

Leon Sanchez: Thank you, Greg. I hear your point as unlikely to get to litigation that would be my summary.

Greg Shatan: Fairly unlikely.

Leon Sanchez: I like conciseness. Robin?

Robin Gross: Thank you. This is Robin Gross for the record. I just had a point and a couple of questions that I wanted to ask.

The first was I wanted to point out on the slide that we saw earlier on our requirements that we were missing the actual CCWG requirements and we were missing the stress tests. So those are kind of really important things that we should have on that slide.

And then I also have a couple of questions about this fiduciary duty issue, because as you know this is something that I've been a bit concerned with trying to figure out a way to constrain this. There is concern that if fiduciary duty and defining it - or the global public interest basically amounts to carte blanche for the board to overturn the community in a designator model.

And so we had some discussion on Saturday about trying - how to constrain that. Is it possible to put something in the bylaws that fiduciary duty requires following the bottom up multi-stakeholder model? Is there a way we can constrain this so that (whole) as many of us are concerned about, concern that a truck will be driven through, can actually be constrained in some way? That's my first point.

And then my second question on this was: It seems like we could be in a situation where we have a conflict between two fiduciary duties -- the fiduciary duty to exercise your own independent judgment on a specific issue versus your fiduciary duty to follow the bylaws. If these two fiduciary duties are arguably in conflict, how would that be resolved?

Thank you.

Leon Sanchez: Thank you, Robin. On your first point on requirements, I think we've made an attempt to capture -- I shouldn't say capture -- to take into account the main stress test requirements, stress test-induced requirements, and I'd include capture. I mean we've got a lot of stress tests about capture. That includes complexity because we know that more complex the change is the more likely we have some unintended consequences.

So we've tried that. We may not have succeeded fully. If you can just elaborate on exactly what kind of requirement of stress test you think is not taken into account, I think that would be perfectly eligible and the requirements we are seeing now as well.

We won't put requirement as a whole because it's too wide. We've tried to be more adequate, but maybe we're missing something concrete. If that's the case, please speak up and say it.

Regarding the fiduciary duty, the option to constrain fiduciary duty -- my understanding at reading the memo and I'm looking at the lawyers -- is that you don't constrain fiduciary duty because that's legal; however, what I understand is that the fiduciary duty includes serving the purpose of the organization in an organization like ICANN.

So you can be - maybe you can be more explicit about the relationship between the community and the board in the articles of association. I'm seeing some nodding that this could be a way to clarify - to mitigate the perceived risk that the board would not - would go at odds with the community. And that could be investigated.

Holly?

Holly Gregory: Agree with what you just said. One point of clarification, the bylaws are the bylaws. They are the rules for the corporation. There is no fiduciary judgment about whether or not to follow the bylaws. There may be some (in judgment) involved at times about how to interpret them, but there certainly isn't a fiduciary out for the board on following the bylaws.

I do want to underscore there is a lot of confusion about this point. We certainly agree with what Sam Eisner said earlier, that the board cannot simply raise fiduciary duty anytime it wants to avoid arbitration. And I hope no one ever thinks that that is what we said.

We do think that there are areas where it is difficult to constrain fiduciary judgment when it comes to the very core of what a board is expected to do.

Leon Sanchez: Thank you, Holly. So that's something to keep in mind. We have potentially an option to bring this more into clarify in the articles of association which

might help bridge the perceived gap between the two columns in that table.

That's very useful. Thank you very much, Robin.

Next is, if I'm not mistaken, Avri. Avri, you have the floor.

Avri Doria: Thank you. Avri speaking, actually for the first time today.

I want to apologize. I'm not a lawyer. I'm educated in philosophy and tend to even be more confusing than lawyers, I think. So when I look at these, first of all, I really got confused at the discussion about the word "likely" because in one column I saw that something was unlikely, and the other column I saw that something was likely.

In my world of interpretations, there is a world of difference and an infinite number of angels between those two words. So in the first column I see that we basically - arbitration is unlikely. In the second column, I see arbitration is likely. Certainty -- I don't believe there is such a thing, so it really doesn't matter whether the lawyers tell me there is certainty or not, because there is no such thing.

You're arbitrating in this case the PTI decision. There was a PTI decision to move - the question was: What are you arbitrating? That's sort of a side issue and what I was going to go to. But let me try. Right.

The separation group has come up with a recommendation to separate as part of it, and I also confess to having been one of the authors of NXL, which probably makes it unlikely that I understand it. However, because obviously once you abandon writing, others interpret it.

Anyhow, you have made a decision at that point. You've made a recommendation to move. The community separation group has made a decision to move the naming -- and they're not even separating IANA -- they're separating the naming function from IANA, from ICANN. So they've made a decision to do that. They've even made a decision of where to take it.

At that point, that has been written that at that point the finalization of that decision is done jointly between the board and the community mechanism. So what you have there is we have our community mechanism and we have the board. They both agree to it. Great. You move forward.

They don't both agree to it. Then the presumption there is that you arbitrate...

((Crosstalk))

Man: I think you're hitting the crux of the issue. When you arbitrate, you have to arbitrate against something. So arbitration is not an arbitration between the board and this community.

Avri Doria: The arbitration is between two decisions. One was to move and one was to not move.

Man: The way we've set up the...

Man: It's supposed to be a joint decision.

Man: No, hang on. The way the independent review panel is set up for arbitration -- just be clear -- is about whether we have followed the bylaws or not. Arbitration is not used to decide, did the board make a good or a bad decision?

That's not what arbitration is about. The arbitration is: Did we follow the bylaws or not? That's all it is.

What is in that (Annex) and I've just read it in the (Annex) you've written, which is great, so we're talking the same thing. It basically says that group comes up with a recommendation just like the GNSO comes up with policy recommendations. And that goes to the board; that is what this is. Then the board can reject that, presumably with a supermajority decision of some sort.

You can't actually arbitrate that.

Avri Doria: But then the community mechanism has the right - and it's supposed to be a joint decision. It's not supposed to be like a GNSO decision.

Man: That's not what it says.

Avri Doria: No. It basically says -- and if you look at the last paragraph, and I guess we can go up -- and it really does start to look like...

Man: Because you've got to be...

((Crosstalk))

Avri Doria: But I didn't finish my comment here.

Leon Sanchez: And I'd like to hear the end of your comment, Avri. And we'll look at the separation paragraph later. I think we've been through it. We ground it a little bit already. Unless there is something really illuminating that comes back at us, I think we have what is necessary at this point on this particular point in terms of assessment of how it would play out in both models and how it could inform our decision about a model.

Avri, please finish your comment that you have.

Avri Doria: Yes. Thank you.

When we're also talking about likelihood and unlikelihood, I think both going to a protracted court case, taking the board to court or offing the board, are pretty much equally unlikely. I don't think we're going to do either of those. And I think the likelihood that we do it ever do either of those is equal; that we are going to get into endless discussions like we do here to try and come up.

I think that basically we have a platform where in one -- the membership -- there is really much more of a cooperation model between the community and the board. Because they basically both have responsibilities.

In the single designator model, the only power is to be offensive. The only power is to get rid of the board. We're constantly talking about, you got a problem, you get rid of the board. Whereas in the membership model, you basically have two (unintelligible) on some of the severely designated, limited powers. You've got the ability of two units, each of which has some right to decision making to get together and come up with a common decision. In fact, NXL is meant to be finding a way to find a common decision.

For me, there is really a significant world of difference between the single designator, as I say, that it means a battle. It means is, you don't like what I got to say, get rid of me. As opposed to the other one which says, you don't like what I got to say, we got to find a way to resolve because we each have some say in this matter.

Now the last thing I want to say, there was a comment that came up about if you look at our rules, we really don't have the bottom-up multi-stakeholder model. This is something we actually need an acronym for, and BUMP would be a good acronym for the bottom-up multi-stakeholder process.

Anyhow, we don't have that in the bylaws. We don't have that in the articles. We have presumptions of multi-stakeholderhood. We have some presumptions of bottom-up nature. But we really haven't enshrined anywhere in this.

I still very much support the membership model because I see it as much more as a cooperative model as opposed to seeing the designator as an oppositional model. In any case, in either of these models, we really should think about enshrining our BUMP, enshrining our bottom-up multi-stakeholder process in either articles or in bylaws. It's not my idea. I've heard it from many people far smarter than me suggesting it.

I'm done.

Leon Sanchez: It's very clear.

Avri Doria: I'm supporting the model because I think it's a non-oppositional model.

Leon Sanchez: And you're supporting the model because you think it's more cooperative. I would suppose it's not intuitive. I would like to hear all those if they also believe that the (unintelligible) has the most cooperative approach. It was not my personal impression that was a significant difference in that part. I would suggest that we get some input about it at some point, because to me, personally, it was counterintuitive when you said it initially, but I had not considered it seriously.



Avri Doria: Philosophers are known to being counterintuitive.

Leon Sanchez: I'm closing the queue after (Bruce) because we'll certainly have to wrap this up.

(Matthew)?

(Matthew): Thank you, chair. (Matthew Shears) for the record.

What has become apparent to me is that we clearly need to do a little bit of work in terms of how we mesh the processes that are in the CWG proposal and the CCWG when it comes to the IANA function.

But the point I wanted to make was this: Making the decision to move the IANA functions operator is not small decision. And when you think about the decision-making process and the engagement of the community that that requires under the CWG proposal, that's quite extensive. And then to take that through whatever set of enforcement and resolution and escalation processes we've got that we're outlining here is yet another major step.

By the time this gets to the point where we're actually facing the board, we're pretty certain that at that point in time that the community needs this, DNS needs it, we need it for stability and resilience and everything else, to have the uncertainty that the board, for whatever reason, might at that point in time say, no, we don't agree, which would be even more disruptive. I think it would be really problematic.

I don't agree with those who would kind of throw around, oh, well, we can recall the board. That's very disruptive as well. I think we're underestimating

how disruptive that element can be, so I don't find that a very viable alternative.

I think for that reason, I think, the sole member model and that ability to override the board as its noted up there is essential to stability and resiliency.

Thanks.

Leon Sanchez: Thank you, Matthew.

Thomas?

Thomas Rickert: Yes. I have put myself in the queue in order to play devil's advocate, try to spin some of the arguments that have been made into another direction. We've talked about the risk of capture. We've talked about the risk of destabilization.

Let's remember that when we started, we really talked about replacing the big stick U.S. government provided. We came up with membership as a result of our request for less invasive powers. We didn't want more powers. We wanted to have a more nuanced repertoire to be able to intrude less than with board removal.

Now we find ourselves in a situation where we have two paths. Let's think them through. We have a membership model. We can spill the board. But we can also force the board in court to do what the community wishes. That will be at least a year's worth of court action under the global eye. It will be watched. It will cost a fortune. I think that in itself can be destabilizing for an organization. It will take away so much trust from ICANN if that happens other than a quick removal, replacement of the board and move on. That's one thing.

Also, if we have the designator model, there is the risk the board will not honor an IRP decision for the membership model. Do you really think -- and that was (Roelof's) point -- we will keep a board that we had to take to court in order to get our will? I think it's highly unlikely. I think having a board that has been so much distrusted will also destabilize the organization.

Now let's talk about designator. We have a designator model where the board wishes to not implement an IRP decision. They claim they exercise their fiduciary duty in the best interests of the global community and refuse in this case to allow for the separation to take place.

Now there are two aspects to it. We're always talking about a rogue board, just refusing the community's wish. And if that is actually the case, we take them out and we place a new board. But it's also possible that they have good reason for exercising their fiduciary duty in a certain way.

Let's assume the community has a weak moment and is captured. We talk so much about capture in unlikely cases. But let's assume for a moment the community's capture makes this resolution, takes its decision and directs the board to do that. Then we have - then this decision has actually been implemented. We can get that enforced. In that case, it can turn out to be valuable to have an extra safety net if the board members can exercise this fiduciary duty.

If we think this is a pattern and if we think that they are constantly doing this at the detriment of the global community, we take them out. If we take them out, we can do that in almost no time. There are far less costs. There is less time needed. If they refuse to leave after we want them to go, we can get a preliminary injunction and get them out and move forward.

I just want to add that to the discussion because I think it might help us put the unlikely cases into maybe a little bit different perspective. I think ultimately we need to ask ourselves what the probability of success reaching consensus in this community is either the one or the other model.

I think if we are so close in terms of meeting requirements, they're both delivering on the requirements, and I do not fully agree with the power or the authority that Jonathan has. We've asked: Do you think this will fulfill CWG requirements and CWG requirements had an enforceability component in it? And he confirmed that the enforceability requirement from the CWG will be delivered by both models. And I think that's quite a strong statement.

I should pause here. Thank you.

Leon Sanchez: Thank you, (Thomas). (Malcom), you're next.

Malcolm Hutty: Thank you, Chair. Oh, dear. I don't like disagreeing with the chairs and not both of you at once. It's not the way make friends and influence people, but I'm afraid I'm going to have to.

On that last (unintelligible) from (Thomas), there are a couple of things there that I don't think can stand. I mean the talk of the community being captured. Well, the ICANN community structures to SOACs. There are needs to be checked that they can't be captured. But the community as a whole, I'm sorry, but the concept of the community being captured is an oxymoron on the face of it. We need to discard that.

Thomas Rickert: I was talking about unlikely cases, right. So I don't...

Malcolm Huty: No. It's not that it's unlikely, it's that it's an oxymoron. There is no such thing. The capture by the community is what - the community is a capture. The community is what we want. The notion of the community being captured, the structure maybe. But the concept to community it is not a concept, it's not a valid concept. And similarly you talked about that then capture communities, you're forcing the board to do something but looking at these powers you know what power does any of them have to force the board to do anything? The only one is PTI and we have a whole separate structure, the CWG, to make sure that could only be happening in the correct case. So I don't think that it's useful to wave these (unintelligible). But I'm afraid I'm going to also have to disagree with the other co-chair because (Matthew) you put up a slide of what you called assessment criteria and then we moved on and we didn't have a discussion about that and I thought okay that's fine it's not the time for it.

Man: (Unintelligible).

Man: Yes but when (Robin) challenged you on that you actually chose to take that comment and not rule it out of order and you gave your response to that. So I don't think that, I don't want to leave that response lying on the table, I want to challenge in. You said, so (Robin) said and I agree with her that the assessment - (unintelligible) assessment credit cards area of the (NTIA) requirements and the stress test. And to that I think we would add the SWG requirements and community consensus which is actually included within the (NTIA) requirements. These are the assessment criteria. Boiling those down including 36, 37 stress test with all the nuances that are being brought in by all the community onto a single slide you line out so much of the analysis and so much of the assessments that it becomes - that you use the assessment of what actually are the real criteria. So I don't think you can boil that down to a single slide.

I don't mind you having a slide to use but you can't present it as these are the criteria. The criteria are much more elaborate and developed than that and people will continue to use those other criteria that are not on your slide as being whether they find the proposal acceptable. So I am - so I need to say that because I don't - because the status of that slide I don't think that it can be this is (unintelligible) assessing what the model is, these are the criteria we're going to use. It's a tool and I'm fine with it as a tool but we mustn't...

Man: We're in agreement.

Man: So we mustn't give it any higher status, thank you.

Man: And I'm glad we're in agreement because I hate it when I'm not in agreement with people in the room. Next is (Unintelligible).

Man: Thank you very much (unintelligible) for the record. First, Malcolm apologies for my ignorance but I'm not a (unintelligible) speaker and I didn't have a classical education. What kind of moron is an oxymoron?

My second point is on (unintelligible) submission, I don't agree at all that a model that has more possibilities to legally enforce powers is (unintelligible) that stimulates more collaboration. In my opinion it does the opposite because it lowers the threshold of going to court and solve issues there. If you have a (mobile) that only allows for the legal enforcement of a decision that has a maximum impact I think it will force both community and the ICANN board to go to very, very long ends to solve this collaborately before going to court and get their asses fired so to speak.

Man: Thank you a lot, I think that we can just check that there is different views on this so that's at least something we can take from that view. Was your comment finished or did you have something else?

Man: You want some more? No, no, no that was it.

Man: I'm not asking for more.

Man: This is (unintelligible) or something.

Man: Turning now to (Bruce) (Tonkin).

Bruce Tonkin: Thank you (unintelligible). Just want to separate decision processes versus abiding by our laws. So we have a set of laws that the community agrees which are the bylaws, the board must abide by those bylaws as (Chris) had mentioned earlier. And we have an arbitration process to ensure that we meet those laws and we have an external court enforcement mechanism in case we don't follow the outcome of that arbitration. So its (unintelligible) models, that's the we must obey the law process.

Then we have decision processes in the community. The board - the supporting organizations advisory committees basically appoint the board to make decisions. Board members are appointed to three years and in fact 1/3 of the board gets appointed every year. So a lot of flexibility of appointing your decision making body. Then in terms of (Avery) talking about decisions are made in a cooperative way, that's how they build into our laws. Our laws require major policy decisions to go through a supporting organization and advisory committee processes.

And then the board can only reject those decisions with the 2/3 majority of people that you elected to make those decisions. So you've actually elected those people to do the very thing that they're doing which is making a decision. Now if they can't make good decisions remove them, it's as simple as that. So I think we confused the decision making process. You're electing people to make good decisions. If they're not making good decisions, replace them. Separately we must obey the law and the law of the bylaws. And we have an arbitration process with dealing with that and then we have a final court mechanism if we don't follow that arbitration. That's if we're not obeying our laws. So separate decision process from obeying the law.

Man: Thank you (Bruce). Anne?

Anne Aikman-Scalse: Just very quickly. I think that when we talk about ultimate enforcement mechanisms we're not really talking about whether the community will actually pursue those but whether or not you have sufficient incentive or bargaining power or big stick and on the (unintelligible) side we have that so called you know nuclear option removal of all of the directors. And then on the sole member side we have what I call the specific enforcement option seems to be clear where we actually if directors were not going to follow the IRP decision that you could get specific enforcement and effective decision. I think it's really not a matter of whether we'd actually go to court but rather the reality of having the power to do so. I'm not actually saying that that's necessarily better, it's just clearer.

And I think this whole question that, maybe it's (Robin) who raised it first, as to whether you can within the bylaws define what constitutes the exercise of fiduciary duty and put parameters around board decisions that relate to defining that duty in terms of taking into account the community action that



really would be interesting to investigate. Whether you can define fiduciary duty in the bylaws or not. And I don't, certainly don't know the answer to that.

Mathieu Weill: Thank you Anne. Is there - okay so I assume there's no need for clarification or anything on this. We've come a certain way; twist too far, basically on that imperfect just global guideline type which is certainly not capturing everything. We've discussed about enforcement, we've discussed about the most important aspect of enforcement which is the PTI which I think is once if we ever solved the PTI then we've solved everything. I think we've covered that quite well.

We've touched upon capture with some disagreement about exactly what kind of risk of capture is we're talking about. There's capture of the board, there's capture of the community which has been challenged by (Malcom) as the concept which I believe in terms of our stress test there is a stress, I don't have the number with me here, about risk of capture of the community by what in French we call (entrism) and I think that's far from a far-fetched concept in any group or community that was - it has been demonstrated as being something that happens in some organizations at some point in their history.

So we've touched a little bit on that but we haven't been very far. We haven't discussed transparency much and I know that (Ed) is here and he's been very vocal on the fact that the (Mendel) model provide access to corporate records to members whereas a designative model does not provide that. And we haven't talked much about complexity although it is clear in many of the inputs we've received that it's very significant requirement for many out there. Including the (NTIA) criteria which are - one of them is being the security and stability of the organization, of the service, then the organization. Now the consequence complexity must be taken with very, very seriously because the

gaps always in use. Some a potential for insecurity or instability. We haven't touched upon them so we'll have to.

We had a discussion, a quick discussion on the chat which we would extend until 10 pm or midnight and unfortunately I have to report that we didn't come to a consensus which is - yes we couldn't choose a model for expanding and it's a shame that we - yes, we would have expected some objections but I think we need to probably pose here, takes talk of this, think of a way to probably map the differences in a more - in a more efficient way. And sure we capture everything because focusing only on enforceability does not address all the aspects. And maybe we're missing some others. And I'm honestly, totally I think it would be extremely helpful if you see something missing in here and you take the night to think of it that we actually inform our decision based on the actual requirements so we can review all the stress test and think, does that mean that we have a concern that is not captured here? That is not taken into account? Let's do that by all means.

And then what we'll prepare for tomorrow's session because tomorrow's session will have to be a follow-up on this one, I mean there's no other way, there's no way to - won't do anything else until it was sorted is prepare some form of table comparing those models and looking at whether there are differences in how they address the requirements that are current - that are outlined here. We'll try to do some prep work on this but obviously it's going to be fully reviewed with you and I think that's - that should take us to the point where we'll have to look at these pros and cons in a way, with the eye of once again what willing to die in a ditch for and can it be addressed?

And before we do that there's one point that I heard in the conversation which I think we should take them both right away is this idea of looking at whether we can narrow the gap or actually the discussion on the potential of conflict

between taking onboard communities input and fiduciary duties. And that's been a very useful suggestion by I think it was (Robin) and then echoed by (Avri) to look at how this could be the articles of corporation could highlight that the purpose of the organization itself is also to promote the stakeholder model and the bounce with that correct. We would avoid acronyms in the articles of our corporation I would say. I'm hearing this as quite consistent with one of the interior criteria to be certain that sort of ringing like oh I've heard that before.

So I would try and take - there's a couple of things we've actually achieved in this meeting on that section. It might surprise you; (unintelligible) was very surprised. We've achieved to narrow our choice to two so far. In our investigations to two models that's one thing. We've taken onboard that suggestion that would be an interesting one to proceed with and we've also captured a number of items that we can take onboard as our shared view on the different models.

We've seen that the member approach got a very logical way of doing the separation and the enforcement of the powers because it's really embedded. But the difference itself with the busy nature is not that large and can be narrowed through this approach. We've heard - we know that it's not - those models can meet the conditions of the CWG but does not mean that we do not have to exert our judgement and study the merits of each to see which one has the best enforceability or the best characteristics. But at least we're not in any of these in violation with the CWG conditions that is I think an important one.

We have acknowledged a certain level of uncertainty with some aspects of arbitration, I think we could leave it at that it's the case in both models so it's not really a very important aspect of our work precisely on this part so let's leave it aside. And we've been reminded that enforcing some of the powers

and especially for the members there are more powers if we want to think of it as legal action and not (unintelligible) recall that's a years' worth of litigation, litigations are apparently hid something of bad things apparently, I don't know. But we know that it's time, its money, may not be the most efficient way forward so we need to take that into account as well. And that the IRP in both models, the arbitrations in both models I mean basically the enforcement would - the litigation apart take as long a time in both models so that's not the differentiating factor.

So that's the key takeaway that I'm taking from this session which I will try to recap in an email or in the records or the notes. We'll check that so that it's part of our - we take that onboard for our deliberations tomorrow and further assess those models along to this. On Wednesday, Wednesday sorry. I would hope we would be already on Tuesday but apparently that's not the case.

And so tomorrow's Tuesday and Tuesday's a very interesting day in the ICANN meetings because we get to discuss with our respective communities so I would strongly anchorage every one of you taking that on board to discuss with the respective communities not what is your preferred option but what kind of requirement does my community want to die in the ditch for. All the rest we cannot afford. This is a slight preference but I can live with it, let's acknowledge it, move on. If it's really a critical issue then we need to discuss how we can address this. But let's focus here about serving our respective communities, we will not be capture, we will be worthy of what the way we're seeing the community empowerment when in these rooms everything we say is inspired by what we think is the interest of the communities we represent. That is - even as individuals you can think about interest the global individuals you're here to serve. So I think that's, that would be my recommendation for tomorrow so that when we reconvene on Wednesday we

are obviously with an open mind but also focused on ready to say I don't like this but I can live with it, and this is something I would die in a ditch for.

Mathieu Weill: Would you like to say final word (Thomas)?

Thomas Rickert: No just to say that we will re-label the Wednesday session, right, the Wednesday session we will re-label so that we can have witnesses from the outside but we will re-label it as a working session. Not an engagement session, right.

Mathieu Weill: I'm sorry I didn't make that clear but that was indeed the plan.

Man: (Unintelligible).

Mathieu Weill: And no, no, I'm not going to - so with that I think it's time for beer, lots of beer, may that bring you to eliminating moments so that when we reconvene we get to that conclusion. Thank you very much.

Man: Ladies and gentlemen we do need to turn this room around if I could please ask you to promptly depart the venue out into the foyers and carry on your conversations in the foyers. If I could ask you to please move outside we need to turn this room around ready for the next meeting. Thank you.

END