

ICANN

**Moderator: Brenda Brewer
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Coordinator: The recordings have started. You may proceed.

Mathieu Weill: Thank you very much. Welcome to this CCWG on Enhancing ICANN's Accountability call Number 65 on Tuesday, November 3. Hello everyone from everywhere. Very good to talk to you again.

We have quite a busy agenda today but I'd like to do the traditional call for anyone being on audio only at this point. Hello? I have apologies to convey from Thomas Rickert who is currently flying and will join us but on audio only in probably 30-40 minutes. So you will not hear his well-known voice until we are back a few items in the call.

And I'd like to start this call with a reminder that obviously we are working on a tight timeframe on the way to our third report. However, while we know the time constraints are high, we are very aware that this is creating some tension and a difficulty to exchange on ideas that we need to make sure we avoid as much as possible.

And I'd like to encourage participants and members to keep what I would call the Dublin spirit remaining inclusive in listening to each other base our

discussion on requirements and using the arguments that we hear each other's speak of so that we find ways to bridge gaps and build consensus.

And I think that's going to be extremely important in the next few - in the next few minutes when we get into the substance of this call where our agenda is going to try and take - identify the way forward in three different items, the mission and core values, the decision making and the human rights.

And with that I see that Kavouss has raised his hand. Kavouss.

Kavouss Arasteh: Yeah, good morning. I'm sorry, I will be only on audio from 1715 UTC - from 1715 UTC that means 8:15 Geneva time on audio only because I'm traveling from my home to international (unintelligible) in Geneva for a board (unintelligible). I'm sorry, but just wanted to tell you that I will be on audio only from that time, 45 minutes - last 45 minutes. Thank you.

Mathieu Weill: Thank you, Kavouss. This is well noted. And with that I will now turn to Leon for the next agenda item. Leon.

Leon Sanchez: Thank you very much, Mathieu. This is Leon Sanchez speaking. And as you can see our next agenda item is mission, core values and commitments. But since I - okay so we have Becky on the call so I will turn to Becky to let her walk us through the work that Work Party 2 has been undertaking on this issue. So, Becky, could you please walk us through what you did with the working party?

Becky Burr: Yes, can you hear me?

Leon Sanchez: We do hear you.

Becky Burr: Great. I sent in three slides. Can we start with the - yeah, this is the one. There are three issues that we have been dealing with and we've been dealing with these largely on the list in general. One the IAB reraised concerns that it had raised in comments regarding the provisions in the mission statement as they related to port and parameter numbers. And so this is the first issue.

I believe that there has been a fair degree of consensus on the list regarding the description of the allocation of port and parameter numbers itself, which currently is kind of lumped into the general ICANN coordinating at the overall level, the global Internet system of unique identifiers.

The proposal - and this is something that IAB had raised early in the comments - earlier on. The first proposal was to change the description of ICANN's mission as coordinating to supporting. And then the second was to change the reference to the global Internet system of unique identifiers to certain core Internet registries that are described.

And then specifically when it came to protocol, port and parameter numbers to describe ICANN's mission as collaborating with other bodies as appropriate to publish for registries needed for the functioning of the Internet.

I don't think that there has been a lot of contention with respect to the last point, the description of the protocol port and parameter numbers collaboration, rather I think that the concern has largely related to changing the word "coordinated" to "support" and this is something that we had discussed early on as a change that might well be appropriate for protocol, port and parameter numbers but something that had bigger implications for other aspects including naming in particular.

So I think that the issue for us is, you know, both a timing issue in terms of whether we can make an adjustment at this point to address the concern and whether there is a word between coordinate and support that people would feel comfortable with. So let me just state again that I think that there is concern that changing the word “coordinate” to “support” is a significant change that does not necessarily correctly address ICANN’s role in particular with respect to names and other things other than the protocol port and parameter numbers.

I see a number of hands and I think we might as well move directly to discussion of this point. This is something that has been discussed on the list so I think we can move to that discussion.

Leon Sanchez: Thank you, Becky. So going with those that have their hands up I will start with Greg. Greg, could you please take the floor?

Greg Shatan: Thanks. Greg Shatan. And I do have concerns about “coordinate” which seems to be, you know, a primary role to “support” which is definitely a secondary role. And however, I have bigger concerns with the rest of this of chapeau overall text of changing the focus of ICANN’s mission from the global Internet system of unique identifiers to dealing with core or certain core Internet registries. That seems to me to be a - frankly a bigger problem and a bigger change in focus.

And given that the problem or the concern is kind of down at the protocol port and parameter number level I’m not sure why we’re changing the overall focus of ICANN’s mission so significantly from dealing with unique identifiers to dealing with registries. Recognize that, you know, IANA, you know, is a registry but, you know, for - until the IANA transition came along most of us would not have said that we were basically in the IANA business.

So I think that I would not change the latter half of that set since everything else that takes place below that is a subsection of the overall mission. And if we don't think that ICANN's mission is about unique identifiers then I think we have to discuss that or if we think that Internet registries is a - embraces unique identifiers among other things, that's possible. But I think (differences) the entire new gTLD program seem to me to be about unique identifiers but not about registries. So those are my thoughts. Thanks.

Becky Burr: Could I just ask a question here, Greg? If we said the global Internet system of unique identifiers described below, I mean, I think that the point is the breadth of that phrase as opposed to ICANN's names, numbers and protocols that it has been and the root server system which has traditionally been how it's described. Does that resolve - I mean, is there a way of narrowing it that would not be problematic for you so that we resolve - that we narrowed it to the list of things that has traditionally been addressed by ICANN?

Greg Shatan: Yeah, I think that could work or if we, you know, changed, you know, referring specifically to names, numbers and protocol parameters as opposed to making this a competition between unique identifiers and core Internet registries we could just, you know, try to be as plain spoken about what it is if unique identifiers doesn't, you know, fit.

And I did see Andrew's argument about why it didn't fit but dealing with, you know, the individual side of email addresses I don't think this qualifies the idea that ICANN is dealing with the Internet system of unique identifiers. But I don't want to go too far down this rabbit hole. I just don't want to kind of inadvertently kind of, you know, cause a seismic shift in ICANN's mission. The idea here is to describe it accurately. Thanks.

Becky Burr: Thank you.

Leon Sanchez: Thanks, Greg. Thanks, Becky. Next in the queue I have Kavouss.

Kavouss Arasteh: (Unintelligible) please.

Leon Sanchez: Yes, Kavouss.

Kavouss Arasteh: Yes, do you hear me?

Leon Sanchez: Yes we hear you.

Kavouss Arasteh: Okay. I was in ICG when IAB raised this question. I was in general in favor of considering their position but issue is very, very sensitive and delicate and we have to import minimum changes to see whether we could generally meet their requirements. If you don't mind for the first item I suggest the following.

When we say "coordinate" I add the comma. And "support where necessary." Then Number 1, read "coordinate, and support where necessary." And the remaining would be unchanged. So I would like to make a very minimal changes. I understood that they are not (unintelligible) seeking for coordination but also support and so on and so forth. So we leave it to the case by case - each cases. So that is my first adding "and support where appropriate." This is for one in order not to ask the (unintelligible) again.

For the second one I suggest that when we say "domain name including associated root zones in the current system," "Domain names including associated root zones." And then the rest unchanged. The third one, "coordinate and collaborate where necessary," and the rest unchanged.

So minimal changes and don't go to those things they publishing core registries which may (unintelligible) to some difficulty. These are the three suggestions. I hope the secretariat have taken note of that. And I think you may kindly put them to discussion. What I'm looking for minimal changes. Thank you.

Leon Sanchez: Thank you very much, Kavouss. And I think that proper use of everyone's time in this call would be not to deep dive into the word meaning of the mission statement but to ask ourselves whether this is something that's required as - for the position to happen.

Some have said that it is something that could be undertaken on the Work Stream 2. Some think that this would be a Work Stream 1 issue. But rather than classifying it either as Work Stream 1 or Work Stream 2 issue my question would be whether this is something that actually is a requirement for the transition to take place.

So having this in mind I would like to - I would like to listen to the thoughts of those who are on the queue as to whether you consider this to be a requirement for the transition to actually happen. So and I see that Andrew Sullivan is on the queue so that will be very helpful to hear from him. So next in the queue is Izumi.

Izumi Okutani: Hello everyone. Sorry for the echo.

Leon Sanchez: We have a lot of feedback.

Izumi Okutani: So basically I - from reading through the thread I totally understand where this proposal from the IAB comes from. And that you want to be more accurate about the role that ICANN plays especially given that this will be put into the

fundamental bylaws. And that I think the purpose of this bylaws revision is exactly this, that on any part that needs more clarity or any part that is not accurate it needs to be reflected properly. So I don't see why this comment from the IAB should not be considered.

And I think there are ways that we can still try to work on the exact language, but in essence I think the language supported - suggested in the IAB proposal is - would actually describe the role of ICANN in more accurate way. So I don't think it's suggesting to limit ICANN's role in all of these areas identified. It's just on the very high level part that it says ICANN's mission is to support but then on the other part that ICANN has direct involvement it actually clearly remains to say that ICANN coordinates or collaborates. So I think that is actually making it more clear on what area ICANN play certain roles.

On the first point about - on the first bullet point where I think certain core Internet registries described below, I can - I'm open to other suggestions if, for example, Greg or other people have concerns with this suggestion. And I quite like Becky's suggestion that maybe we want to be more clear than the current text where it says "the global Internet system and unique identifiers" the scope is too open. So maybe we may be able to refer as these identifiers described in the coming sections or something which would hopefully address IAB's concerns as well as being clear about what we are trying to address here.

On the question about whether this should be Work Stream 1 or Work Stream 2, I would like to think a little bit more. But I think if we are able to reach a rough agreement on this that would be more desirable than putting this into the latest stage so I'd like to see how the discussions will (unintelligible).

Leon Sanchez: Thank you, Izumi. You're cutting out or is it only on my side that you're cutting out? Okay so maybe it's me that's cutting out but I'm not sure. But thank you Izumi. And I just want to say that this is in no way an attempt to discard the comments from the IAB but rather to pull back the discussion into requirements instead of wordsmithing here. So next in the queue I have Roelof Meijer. Roelof, might you be on mute? And I'm closing the queue now with Andrew Sullivan. Roelof, we cannot hear you.

Roelof Meijer: Leon, this is Roelof. Can you hear me now?

Leon Sanchez: Yes, we can hear you now.

Roelof Meijer: Oh okay. Sorry for the ambient noise, I'm calling from my car. To be honest I fail to understand why we think we should be dealing with this. Just to you partly on the Work Stream 2 or 3 or 4 but definitely not something we should deal with before transition or something we should deal with as ICANN's accountability to the level that is crucial to enable that transition.

I think what we see here is - I think we do see or part of the community taking advantage of the momentum of change and the pressure of time to try to push something forward that has nothing to do with this process. The fact that we've already spent 25 minutes on the call on this subject also proves that this will slow us down again like so many other items that we discussed that are not really into the sphere of our work.

So my suggestion would be that we stop this immediately, we move it to Work Stream 2 or - and tell the IAB that this is something that will have to be resolved in a space when the change has taken place and everything is settled. But it's not something for now in my opinion.

Leon Sanchez: Thank you very much, Roelof. And I note that Tijani and Athina have raised their hand but I have already closed the queue after Andrew Sullivan. So if it's something that you must say then I would encourage you to say it in 30 seconds. But if it's something that you can hold well of course I would appreciate your understanding. Next in the queue I have Andrew Sullivan.

Andrew Sullivan: Hi there. Thank you and thank you for allowing me to join you today. I appreciate the difficulty that this is just -- just to get something off -- I completely understand the difficulty that this is presenting right now. And I want to emphasize how committed I am to coming to a successful conclusion. This is really super important to me. But this is a serious problem for the IAB and I think that we reflect that in our public comments both times, in fact the second public comment said quite explicitly that this is a critical issue for us and we're not sure that we would be able to support going ahead if this is not dealt with.

The reason we are concerned about this, and we've lived with the nation as it was -- as it is currently in the bylaws for a long time and it's a thorn under the saddle but it's not you know, it's not the end of the world obviously because we are functioning and we're happy with ICANN's provision of the IANA services to us.

But the proposal -- all of the proposals that have been put forward so far create a significant new accountability measure, and appropriate accountability measures we think, that are all founded on the mission statement. That's what they boil down to. And this mission statement includes in it a bunch of stuff that ICANN doesn't do and it includes in it, importantly from my point of view, a bunch of stuff that the IETF does do. It's our legitimate purpose in fact, that's the reason we are meeting this week in Japan is to do this stuff.

And because of that we need somehow to prevent ICANN from being able to work in that area just as if you were dealing with any other vendor who claimed in their mission to do your job you would have to look pretty hard at whether that was an appropriate vendor for you.

Now we are trying to propose various kinds of language that will narrow this mission in such a way that it actually outlines what ICANN's role is as we understand it to be. And we think that ICANN has a primary role in managing the root of the DNS. It doesn't, in fact, have a role in managing any other part of the DNS.

It has a policy role in - that it gets by virtue of contract with respect to registries immediately below the root. But it doesn't have a role in the rest of the DNS. And shouldn't have a role in the rest of the DNS because the DNS is designed in fact to prevent that kind of role. That's the whole point of the DNS.

And it certainly doesn't have a role of coordinating anything with respect to the protocol parameters. That's just false. That's what the IETF's job is. Now the reason we think that this is so important at the beginning, you know, to do right now, is because the other accountability measures are going to depend on this and this is going to become a fundamental bylaw.

It's going to be very, very difficult for us to address the - or make these changes in the future because the expansive definition gives other people room to act that they shouldn't have. So if we can find a way - and, you know, the IAB has never been wedded to any particular language, but if we can find a way to appropriately circumscribe ICANN's role - the real role that it has

and I think it's an important role and I'm not trying to minimize it, but the actual role that it has then we would be in support of that.

I see that Greg is asking whether ICANN has the ability to start promulgating RFCs. Well actually anybody could promulgate RFCs. But the point is that ICANN would have the ability under the existing text because it says well we can coordinate these things. If it got disputes attempts at IANA registration from another organization up against the IETF registration it could claim the authority to make the decision in that place. And we believe it does not have such an authority.

And this is not an imaginary case. We had one with MPLS only a couple of years ago. So this is actually a serious problem and it created serious problems on the Internet because certain vendors in countries were angry about the decision that the rest of the technical community picked and so they decided to go venue shopping for it.

So this is - like a serious problem actually for our real work on the Internet. And that's the reason that I'm worried about it. The way that this has been handled in the past is that the NTIA has been there effectively to tell ICANN you're not to have a policy role in these protocols. And so the mission statement, you know, could have this exaggerated sense because we had this other protection.

But when that protection is gone then we need to make sure that the mission statement is correctly limited to what ICANN's mission really is. That's what our goal is, that's what our issue has been all along and that's the reason we've been so consistent about this. So I hope that makes it a little bit clearer.

Oh I see Becky is proposing skipping the whole chapeau. That's an answer too.

Leon Sanchez: Okay so thank you very much for this, Andrew. Next I have Tijani and Athina, please do keep it very short because we're already 30 minutes on this call and we still need to deal with some other issues that will also consume a lot of time. So, Tijani.

Tijani Ben Jemaa: Very short. I have a question for Andrew. You say that ICANN mission is to support at the overall level (unintelligible) core Internet registries means that there is some which are out of the scope. What are they?

Andrew Sullivan: Yes, so in fact ICANN does not operate the eNom registry is just one example. The eNom registry is operated by RIPE and that is a registry that is defined in IETF protocols and it's defined in such a way that, you know, it could have been in the registry but it happens not to be.

ICANN doesn't operate on all of the reverse DNS zones either. Those are critical Internet registries and they're operated by the RIRs. So there are lots of - in fact ICANN doesn't operate the Com zone. And I think there's a pretty good argument that, you know, the dotCom zone, which is operated by VeriSign, is a pretty critical core Internet registry. If you can't get to dotCom you can't get to an awful lot of the Internet. So there's lots and lots of registries that ICANN doesn't operate.

But it operates certain really core ones, critical ones. This is not trying to minimize the important of ICANN it's just to try to state precisely which, you know, that there are some registries that ICANN operates and others that it doesn't.

Leon Sanchez: Thank you, Andrew. Thank you, Tijani. Athina.

Athina Fragkouli: Yes, hello. I'll be very brief. Actually I think that my point is somehow touched upon in the chatting room. I see that there are different roles for names for ICANN than for protocol parameters or numbers. And while the current mission is accurate for names, from what I understand, correct me if I'm wrong, it takes too roles - too broad for protocol parameters and numbers.

So why do we have to keep one unified scope for everything (unintelligible). That would be my suggestion. Thank you.

Leon Sanchez: Thank you very much, Athina. So I see that Izumi is saying that she could analyze Becky's suggestions. So I would suggest that we actually continue this discussion offline either - and if we don't do it that we're going to be here for the next two hours discussing this. So let's have Becky's suggestion as a new reference model, let's continue this discussion offline. And let's remember to have these be a discussion based on requirement-based concerns.

And we would kindly ask Andrew to provide us with documentation on the reasons that IAB would see for these changes to happen so we can document these on our side. And from there I think we could find a way forward.

Okay so I will now turn back to Mathieu for the next agenda item which is decision making.

Mathieu Weill: That won't be that easy, Leon. I think we still have a couple of items in the mission and core values section.

((Crosstalk))

Mathieu Weill: I think you have another two slides.

((Crosstalk))

Mathieu Weill: Yeah, you're not over it now.

Leon Sanchez: I thought I was getting away with it. Okay so you're right, let's continue with Becky. Becky.

Becky Burr: Okay if we could have the next slide. Okay the issue that we discussed in Dublin in the - in the working sessions and then over two brown bag lunches is modifying the prohibition on using - on regulating services that use the Internet to make identifiers so the content that such services carry or provide.

I believe that we came out of those lunches with a consensus that on the one hand ICANN should clearly have the ability to enforce its contracts but that there was a recognition that ICANN could and perhaps had in some cases, you know, used sort of last minute imposition - in contracts - with contracted parties to bypass both the policy development process and the consensus policy definition in a way that left registries and registrars with either take it or don't play situation on the one hand.

And on the other hand that everybody in the community deserves the ability to, you know, rely on the contents of ICANN's contracts to be enforceable. So we had - I had circulated briefly after Dublin language slightly different but the language here in blue was an attempt to capture that. And let's recall that what we're talking about here is not absolutely bylaws language but language to be given to the lawyers to craft bylaws language.

The notion would be that, you know, contracts would be enforceable but that, one, the community would continue to have the rights that it has under IRPs for people who are materially affected by ICANN's actions in violation of the bylaws themselves also the community IRP but also to have something like a mechanism to be developed whereby registries and registrars could register a reservation and an intent to challenge a particular provision of the registry contract or registrar accreditation agreement on the grounds that it exceeded ICANN's mission to put ICANN on the community and the community on notice early on of its intent to do so but nonetheless to be able to find those registries and participate while making the challenge.

So that's the language that's here as it's intended to capture what I believe was a high degree of consensus albeit with a relatively small group of people over those two lunches.

Leon Sanchez: Thanks, Becky. We have already two people in the queue. Kavouss and Greg. Kavouss.

Kavouss Arasteh: Leon, I am really disappointed. Ten times I commented on that and 10 times somebody says yes and 10 times did not act. This is not proper. ICANN shall have no power to act. I said that ICANN shall not act. Why we say shall have no power to act and many times people says that they will change that.

And then we're going shall have no power then act in accordance with - in accordance with what? The rest of the sentence is a combination - and as reason of the appropriate to achieve mission. What is in accordance with - in accordance with what? In accordance with core, with bylaw, in accordance with the article of incorporation? In accordance with what? This sentence is not complete. And I said...

((Crosstalk))

Kavouss Arasteh: ...appropriate. What does it mean two times reasonably appropriate. Who try and make a judgment that is reasonable? Who make a judgment that is not reasonable? Who make the judgment that they are appropriate? Who make the judgment (unintelligible)? Please can you once forever please correct this sentence. ICANN shall act with something and so on so forth but shall not have the power. Why we are talking of power? Thank you.

Leon Sanchez: Thank you, Kavouss. If I may comment on this as I understand it ICANN has no power to act other than in accordance to its mission and as reasonably appropriate to achieve its mission. Next in the queue I have Greg.

Greg Shatan: Thanks. It's Greg Shatan for the record.

((Crosstalk))

Greg Shatan: Becky and I have had an exchange on the list today. And I don't feel that what's here in blue completely captures what we discussed in Dublin or responds to the concerns that we had in Dublin.

At least at the second of the two brown bags I was conflicted out of the first one, there I think at least half the people at the table that day, which is of course is to some extent a random sampling given the number of different places people had to be, but I think, you know, around half of the people at the table that day had concerns with the content regulation issue and thought that that could be used to nullify whole sections of the agreement.

You know, that said, I'm trying to look for a surgical and conciliatory position without conceding the issue entirely. So rather than rehash the suggestions we

had on the list I'm - I am thinking of a different one which I will float out here. Rather than saying - in the blue language rather than saying in service of its mission, which is I think, you know, fairly implicit in everything that is said here anyway, rather than saying that - begin that with notwithstanding the forgone, and then continue the rest of the statement the way it is. I think that would actually meet the concern I have and yet not, you know, leave the rest of the statement the way it is and deal with the concerns that others have as well so that would be my suggestion to delete "in service of its mission" and put in place of it "notwithstanding the foregone." Thank you.

Leon Sanchez: Thank you very much, Greg. So having this amendment in mind would there be any objection of having the amended proposal after Greg's suggestion as our new reference? Okay I see no objection so I would take this back to Becky to see how Greg's suggestion may fit into the proposed language. And if it does - if it does feed and doesn't interfere with other issues then we can take it on board. And now I will go back to Becky for the next item. Becky.

Becky Burr: Okay, we have one more slide I believe. And this is the transparency proposal. What I have here is just the - Brett's abbreviated proposal from earlier today. Basically we discussed in Dublin the need - since we were moving from a membership model to a designator model to ensure that the provisions related to transparency that were - that were inherent in the membership model were addressed in a designator model context. So that's the right of inspection for the sole designator and that is provided in California corporation code.

A couple of other things, review of the - and update of documentary disclosure, the DIDP policy. That has been on the table as a Work Stream 2 item since the beginning of this. The argument that people are making, and I'm sure the people are on the call who could make this argument more eloquently than I, is that because of the change from membership to transition

it makes sense to address the DIDP issues as a Work Stream 1 issue at least in the preliminary way and the compromise proposal that was put on the table today is that an IRP be permitted to challenge appeals to any DIDP policy coupled with a commitment to review the DIDP within two years.

And finally, particularly as relevant and important as part of the tradition to provide more transparency and clarity with respect to ICANN's interactions with governments to provide just a quarterly report with respect to interactions with governments and a description of those discussions at a high level.

So what I've got on the table here is what I think was offered as a compromise in response to those who were arguing that really the first bullet point was what was necessary and appropriate to capture the transparency commitments that were lost in translation in the move from membership to designator.

Leon Sanchez: Thank you very much, Becky. So are there any comments on these slides? I see that Rich Lane has his hand up. Rick.

Rick Lane: Hi, this is Rick Lane. Thank you very much, again, for the opportunity to speak this evening. You know, when ICANN was initially created the whole purpose was to allow the multistakeholder community to have a strong voice in the future of the Internet. The big concern was government playing too heavy handed of a role in the operations and the technical functions of ICANN.

You know, in the world that we live in there's the avert government takeover of the ICANN functions which is one of the things that we've been trying to avoid since the creation of ICANN, having those functionalities and policies move to the ITU. But there's also an undue influence that can occur of governments on ICANN's operations and policy decisions. And there is no

way for us currently to know if those conversations are happening between ICANN or its representatives and governments.

For example, when Fadi met with the president of Brazil, and created the NETmundial meeting and after that the NETmundial initiative, we only know about those meetings because Fadi told us. If he had not told us about those meetings we would never know that those types of conversations have taken place.

You know, the purpose of - at least the last bullet point is to ensure that we know if there is really an undue influence taking place by governments in any type of quid pro quo with ICANN on policies that are going to impact the community as a whole.

This also has the benefit that we had a long conversation about mission creep. And this would allow if ICANN begins to get into policy issues that are outside its scope with governments, like the NETmundial initiative, we would know that those conversations are taking place and we could ask for documentations and other references to ensure that ICANN is not going outside its own scope.

Leon Sanchez: Thank you very much for this, Rick. So are there any other comments on this slide by Becky? If there aren't then I think we can - oh yeah, there are some comments. I have Steve and Greg. Steve.

Steve DelBianco: Hey, Leon. Steve DelBianco with the CSG. On the slide we have in front of us, the second bullet, references something that I circulated to the list earlier this - earlier about two day ago which was calling to attention the fact that in our second draft proposal we came up with an interesting policy for confidential disclosure to an Affirmation of Commitments review team.

ICANN Legal helped us with that and we received no concerns in the second public comment.

And the point I'm making about this second bullet is it's already part of our Work Stream 1. In other words this notion of being able to press ICANN management and staff to disclose what they're considering confidential documents is something we'd already anticipated and are working on.

So Becky's second bullet is about expanding that in some sense so that it'd be available outside of this review team cycle, which is perhaps as infrequently as once every five years. There may be opportunities to press the staff to disclose what they call a confidential document when you're not in the middle of an ATRT review.

So I can recirculate that and Brenda can display it if the queue wants to discuss that second bullet in detail. But this is something I'm saying we can do in Work Stream 1. Thank you.

Leon Sanchez: Thank you very much, Steve. I'm closing the queue with George Sadowsky so next in the queue is Greg Shatan.

Greg Shatan: Sorry, I was on mute. I don't have, you know, significant issues with this and I do agree with what Rick has brought up in particular. I am concerned as I am with the issues that Andrew Sullivan brought up on whether we have the bandwidth to deal with this right now and whether this means similarly to that issue that we don't trust Work Stream 2 to be available in the same way that Work Stream 1 is available to deal with significant issues. And if that's the case I think we have a bigger problem in terms of Work Stream 2.

So, you know, I can already see things are kind of missing - people are missing things and deciding not to get involved in other issues. That said, if we can pull this off or pull off some part of this, you know, I certainly agree with the first bullet point I think is well within what we need to do to make the switch from member to designator.

On the last bullet, my major concern is that any contact between ICANN and any government official could be much broader. I would just want then as intended so I would like this to be limited to, you know, lobbying government engagements and the like in a, you know, artificially narrow to allow ICANN to have wiggle room to say that certain people are not really lobbyists but are still engaging in kind of the government game so to speak.

But I don't want to, you know, bring in for instance every contact that they might have say with the FBI or with the FCC or between any government official who happens to be in contact with ICANN, for instance, the entire GAC.

Any time the GAC speaks to anybody that could well be brought in to this depending upon who they talk to. So I just think there needs to be some bounding of scope here. But, you know, if we can pull these things off and if we can limit them appropriately I have objection to them, just hope we don't die trying. Thanks.

Leon Sanchez: Thank you very much, Greg. George Sadowsky was next after Greg. He had to go out of the AC room and then back so I will now go to George. And I have closed the queue after George but if, Brett, you have something really quick to say then we can go to you. But next in the queue is George. George, might you be on mute? Okay so we'll go to Brett. Brett.

Brett Schaefer: Well first of all I want to thank the commenters so far. I really appreciate the pressure they've been under and I think that the flexibility (unintelligible) because - I'm sorry, I'm getting a little bit of an echo. Let me just go ahead and say that - okay, I'm going to go ahead and just (unintelligible) because I can't figure out this echo. Okay.

George Sadowsky: Okay. Leon, can you hear me now?

Leon Sanchez: Yeah, we can hear you, George.

George Sadowsky: Okay, thanks. I wanted to address the issue of seeking more information. I'd like to get a sense of what you - we believe the community thinks they need access to, what they intend to do with it and especially if it's only be provided to a small number of people, a small group of people. What is it that's needed beyond what is currently reported say in the quarterly financial reports? Thank you.

Leon Sanchez: Thanks, George. Becky, you want to comment on that?

Becky Burr: Well I think that if we could have Brett and Rick and other people articulate the points I think, you know, I think that that probably would be better than me trying to articulate the points. I mean, I think that the right of inspection, the first bullet point is straightforward, that is a translation of what the, you know, was committed under California law for membership.

I think the second point is that there is a recognition and there has been for a long time, that the DIDP policy as currently implemented results in denials much of the time in ways that people think are inappropriate and so this is a compromise suggestion that would say somebody who is materially harmed by a DIDP can bring an independent review and that there would be a review

down the road so that looks to me like a, you know, attempt to get some teeth into the process while the, you know, Work Stream 2 work is going on. And I think that reflects the concerns that people on the list have expressed about, you know, sort of, you know, Work Stream 2 being a reality here.

And then the third bullet is a newer idea but I think can be explained as consistent with concerns about ensuring that ICANN, you know, that ICANN continues to meet the NTIA criteria regarding, you know, not being captured by a governmental solution.

Leon Sanchez: Thanks, Becky. And there's a follow up by George, a granularity on Point 1. "He's asking what is the granularity of the request that would be permitted?"

Becky Burr: I'm sorry, that is with respect to Bullet Point Number 1?

Leon Sanchez: With respect to Bullet Point Number 1.

Becky Burr: I think that it is whatever - I don't know if any of the lawyers are in here but this is the specific reference to the California code requirements. I thought that I saw Rosemary or Holly on and perhaps they can tell us what the California corporation's code specifically permits.

Leon Sanchez: Thanks, Becky. So we are needing an amendment here to change what's in the - in Bullet Point Number 1 to say "6333" instead of what it says now. It's being requested by Rosemary Fei. And we will amend as suggested. Finally I have Rick Lane. Rick. Rick, might you be on mute? We can't hear you, Rick.

Rick Lane: Yeah, I'm sorry, I got cut off. The beauties of cell phone technology. And so I missed the - there was any conversation after Becky spoke so I apologize for that. You know, the question of why do we - what, you know, there's

information already filed or that we get from the budget and others and other data from ICANN why is this necessary to have done now.

And the reason is we don't get a full picture of the interactions of ICANN and government officials in any documents that are currently on file, you know, either on the ICANN Website or filed with any of the governments. You know, the only information that we do get is information - some information of the interaction between ICANN and the US government because of the lobbying disclosure filings or on the itemized part of the tax return where it says because 501c3 in the United States are not allowed to lobby over a certain percentage of their expenditures. So those numbers are put in.

But they don't provide you any detail of the conversations or what policies were talked about. In addition, it tells you nothing about any interaction that ICANN or its representatives have with foreign governments.

And so the purpose of Bullet 4 is that you would have documentation that would be put out to the community in a quarterly report on the ICANN Website so we could see those types of policy discussions that are taking place potentially behind closed doors.

And, you know, and that would help us better understand maybe some of the decisions that ICANN is making in the future as well as have a better understanding of what governments are trying to get out of ICANN. So that's why, you know, it's different than anything that's out there currently. And provides the community with an opportunity to get a 360 degree view of ICANN and its interaction with governments to ensure against government capture.

Leon Sanchez: Thank you very much for this, Rick.

Rick Lane: But again - oh I was just going to say one final point and that's why it has to be in Work Stream 1 because it's actually core to everything that we've been focused on which was, again, is to ensure against government capture. And if we move it to Work Stream 2 as some have suggested, the problem is it could die, we don't know.

There's no guarantee that it won't go forward either way. But what we do know is that there will be a tremendous amount of pushback potentially in Work Stream 2 against such a proposal that would create such great transparency.

Leon Sanchez: Thank you very much, Rick. The queue was already closed and I see that Cherine and Brett have raised their hands. We need to move on on this. My feeling is that we are speaking about having Bullet Point Number 1 and Number 2 as a matter of Work Stream 1.

And we would be leaving Bullet Points 3 and 4 for Work Stream 2. Is that correct? Okay I see no objections. I do see Cherine's and Brett's hands up. So if you could please do a comment very quickly so we can move to our next agenda item. Cherine.

Cherine Chalaby: Can you hear me, Leon?

Leon Sanchez: Yes we do hear you.

Cherine Chalaby: Thank you. I've been listening very carefully to all the requests on changing to the mission on additional transparency and so on. And it's very understandable that everyone needs clarity for those. But I think the concern I have is we are not talking at all about Work Stream 2. And the reason I think

we should, we should find a way to create a promise to honor and find a credible way that WS 2 will happen.

I am concerned that all of these changes could - because of a timing issue could actually derail the transition per se. And therefore I would suggest that at some time CCWG and everybody focus on how do we ensure that Work Stream 2 is going to be honored and is going to happen in a credible way. And that will take a lot of the pressure off getting everything done and so many things done at the last minute right there. Thank you.

Leon Sanchez: Thank you very much, Cherine. Next I have Brett.

((Crosstalk))

Roelof Meijer: Leon, this is Roelof. Can I say something?

Leon Sanchez: Yes, Roelof, just let me go to Brett and then...

Roelof Meijer: Yeah, I'm sorry, I cannot raise my hand or find any other way to support or not support something. I'm completely with Cherine on this. I think...
...it's a not a Work Stream 1 issue, it's slowing us down. And we should make sure that we have the Work Stream 2 that people believe in, that we have trust and then deal with these kind of things in Work Stream 2. Thank you.

Leon Sanchez: Thank you very much, Roelof. And I see that Brett is experiencing some problems on communication. Tijani, I have closed the queue. I would call for your understanding. We need to move on. And there seems to be agreement and consensus at this point that Bullet Points 1 and 2 would be the ones that we would be having as reference as we already have for Work Stream 1. And Bullet Point Number 3 and 4 would be dealt with in Work Stream 2.

So with this I would now - I see that Brett is signaling that 1, 2 and 4 are Work Stream 1 but I don't seem to be seeing a lot of traction into adding Bullet Point Number 4. So we would stick to Bullet Points 1 and 2 as Work Stream 1 issues. And we would leave to Work Stream 2 Bullet Points Number 3 and Number 4.

So with this are there any other issues on mission, core values, Becky? Or can we move to the next agenda item?

Becky Burr: That is the - those are the issues from my perspective.

Leon Sanchez: Thank you very much, Becky. So having this just let me see if it's correct in the notes that we would be having Bullet Points 1 and 2 as Work Stream 1 and Bullet Points 3 and 4 as Work Stream 2. Yes, they are in the notes already. So thank you very much and now I will turn back to Mathieu for the next agenda item.

Mathieu Weill: Thank you very much, Leon. And we are coming to the agenda item on decision making mechanisms. There's been tremendous work by Work Party 1. It was supposed to be a subgroup and then it turned into a Work Party 1 full group decision making, or at least decisions and discussions.

And it's really important that we keep in mind that we need to come out of this group - of this call with a clear view of our next steps on this item because it's one of the last moving part that is actually delaying our ability to move forward because it's obviously a key part of the community power discussions.

So based on the Work Party 1 preparations we really need to make - have a clear way forward out of this call. And in order to do that I will turn to Jordan for an overview of the sub-discussions that took place in Work Party 1 so that our group - the full group is informed and then we'll try to get to an operational conclusion so that we can proceed in this discussion, which I know is a difficult one to make. But it's certainly something we need to move on with after this call. So, Jordan, would you like to please give us an overview of the discussions in Work Party 1 please?

Jordan Carter: Yes, Mathieu. I'd be happy to do that. Can you hear me?

Mathieu Weill: Yes I can.

Jordan Carter: Okay great. Hi everyone. It's Jordan Carter here from dotNZ, rapporteur for Work Party 1 on Community Empowerment. Look, we had two Work Party 1 calls on Friday and on Monday to work through the Dublin reforms to the decision making. And the overall pitch is that it's moving from a voting base system to a consensus driven system. And the key difference there is that objections matter.

So in a voting system we get up to a threshold and then you're fine. In a consensus system you also have to take into account (unintelligible) objection and if they are above a certain amount then they - the power can't be used even if you get enough positive support. So that's what we're talking about.

We went through a briefing paper that set out what was discussed in Dublin, a kind of summary of it that I wrote and that was circulated to you today. I - we also went through a kind of write up of the breakout group that was done in Dublin by Steve DeIBianco. That includes the decisional table which we may

need to refer to ICANN staff, that was one of the attachments. Sorry, I forgot to mention it.

But that - those numbers in that haven't changed since the breakout in Dublin. So (unintelligible) the place we took a few room temperatures on these points and we came to some conclusions this morning. You know, I think it's worth noting here for the record that the change that's being proposed here is one that goes against in some ways the tenor of the public comments and can be seen as a reasonably substantial change to the model that we're putting up to the community in the third draft of our proposal.

People were a bit uncomfortable with voting the decision making. But some of the initiatives here are not ones that were flagged in the public comments, they're ones that came from the kind of dynamic discussion in Dublin as has happened at other face to face meetings.

So I don't think that's a problem. I don't think it invalidates this proposal but I do think we need to note that it is a change in direction and that it is a change that wasn't entirely supported by the public comments. And so we need to have a good rationale for why we're making that change.

And within the general support for that change in model there are four specifics I want to draw your attention to. We had long discussions on the question of whether each SO or AC would express a view about - by its consensus process about supporting the use of a community power or objecting to its use.

And Work Party 1 does recommend to the CCWG that each SO or AC should only make one decision, should add its voice one way or the other and that split decisions aren't part of this new framework.

For this - and I can go into more detail but I'll just (unintelligible) to see what the actual advise is. For B and C we didn't have a clear recommendation to make. We discussed what's in front of you as recommendation but it wasn't quite as clear cut. So for both of these we did take the temperature of the room and there were 13 people in favor and four against.

But in terms of which SOs and ACs should be participating it's the same five that were allocated five votes each in our initial model so GNSO, ccNSO, ASO, ALAC and GAC. We've had a clear view from the SSAC that it doesn't want to participate in this and we're waiting to hear from RSAC.

This would never be forever, you know, that the implication of this recommendation is if the CCWG agrees it, is that the initial bylaws changes would write up the decisions being, you know, made. You know, the consent or agreement or opposition of each of the five SOs and ACs I just mentioned would be counted up for the total - for a decision about whether to use a community power. SSAC and RSAC would have full rights of advice through the community forum and through the - all the processes around that but their objection or support wouldn't count in that totaling exercise.

That's not forever because they would be able to be added at a later point and a new SO or AC would be able to be added at a later point. But that would require changes to bylaws and these will be fundamental bylaws. So the fact that one of these people is named here doesn't oblige them to participate in every decision. They can make their decision, they can decide not to participate, that's fine.

The third point, again, C on the influence - distribution of influence between the SOs and ACs, would those five participating the view by a majority of

those in the temperature check was that each of the five SOs and ACs named should have an equality of voice or influence. There are a few voices very strongly opposed to that who wish for more support for SOs and less for ACs. I'd just point out the practical difficulty in a consensus based system of deciding that one voice is worth more or less than the other.

And Point D on decision thresholds is a recommendation is given the above that keep the decision numbers as in the table. And, Mathieu, I leave it to you as to whether you'd like us to work through that table. And there's one significant issue that was discussed and that needs to be tabled here so that might be something to do now. And then to finish the briefing with that and then to discuss these point by point.

Mathieu Weill: That's a good suggestion, Jordan. Can we discuss the table now for Jordan to update us on the significant change he's mentioning?

Jordan Carter: I can start to précis the issue, Mathieu, if you like, and while that's being loaded into the Adobe room.

Mathieu Weill: Yes please.

Jordan Carter: There you go. There's the table. So in this table, you know, when this was developed in Dublin there was a possibility of seven SOs and ACs participating but it was felt more likely that five would participate. So the numbers here aren't necessarily wrong. So I would draw your attention to the fact that the GAC has not said either way whether it wishes to participate fully. And if it wasn't choosing to participate that for some of these powers, Power 1, Power 2, Power 6 I think, you would need - sorry Power 5 and Power 7 - you would need all of the other SOs and ACs to support that power.

So it's something to keep in mind. We don't think it's necessarily fatally flawed and we thought it was too hard to, you know, there'd be other downsides from changing it. But the particular point I want to draw to your attention here and it's asked just in the little line at the bottom of the table, is that for the recall of the entire board of directors saying that you need the support of four of the SOs and ACs added to the consensus and no more than one objection.

Some people argued that any objections by an SO or AC should invalidate that call, that in other words the power could only be exercised if none of the SOs and ACs registered an objection. You'll recall that we've discussed this question quite a few times ever since Frankfurt I think actually. And the CCWG has had a long established principle that no single SO or AC should be able to veto or block the use of any of these powers. And so that's why the numbers have been put there.

And the final point is that on this table we should ignore the column to the right and the reason that votes are mentioned there, and I just want to point out Seun's comment in the chat is wrong. The reason that votes are mentioned there as that as part of the working up process for these recommendations WP 1 did consider the question of whether there should be the kind of five voices per SO and AC were each able to choose. That isn't the recommendation we're making. And we hope that the CCWG won't go down that track.

You know, the point is to give effects to the consensus that was arrived at in Dublin in my view and not to turn around and reverse it again. So that's kind of the briefing on the numbers, Mathieu. And I hand it back to you.

Mathieu Weill: Thank you very much, Jordan. Can we get back to the recommendation slide please? I'd like to get reactions on this summary recommendations to assess

whether there are any objections. And I mean objection by this is something I would die in a ditch for at this point starting with the first one which is the recommendation that each SO or AC should come to a decisions by means of its own processes. And split decisions or delegating decisions to subunit will not be available. And as Jordan said, it has been a topic of intense discussions in the Work Party 1.

Are there any strong objections to that approach which was the part of the Dublin approach and is (inclined) to be asserted in Dublin. I'm seeing none. So I'm moving to the next one. I'm a bit cautious when I'm hearing no feedback.

But regarding the participation SOs and ACs the assumption is to have - oh, Sebastien has got a red cross so I guess that's a - yeah, we've heard you, Sebastien, on this point so we'll take note of your view which you have stated already in past meetings on this item. Thank you.

Sebastien, would you like to expand?

Sebastien Bachollet: No, I don't want to expand, Mathieu. But just if you ask for this kind of feedback giving to you you need to go up to the end of the list because I have to raise my hand to be on top of the list even if I post a red cross. Just a matter of process. But I don't need to expand, you already know my point of view. Thank you.

Mathieu Weill: Rest assured on the top of the list I have seen your red cross. But that's what I was absolutely looking for. Second item is the participating SOs and ACs so we have had feedback from SSAC that they want to be able to advise but not provide their formal support or objections.

We are working, although we don't have formal feedback from RSAC, we are working on the assumption that they would be on a similar position and so that leaves us with decision rights be granted to GNSO, ccNSO, ASO, ALAC and GAC with each SO and AC having the right to participate or not participate in any decision with their choice not affecting the threshold established for the exercise of community powers. Any strong disagreement with that?

No, I'm seeing none. Okay, moving on. Distribution of influence, that was a strong principle from the start in our process which was that each of the five SOs and ACs with decision rights have an equality of votes and influence in the decisions. That's also an item where if there are any strong objections might be recorded right now. Does someone want - oh that's just an echo. Can you please mute your line when not speaking?

Okay. Still agreement, impressive. And decision thresholds - I have George - would you like to provide a comment? George?

George Sadowsky: Yeah, thank you - thank you, Mathieu. You can hear me I assume, right?

Mathieu Weill: Correct.

George Sadowsky: You can hear me? Thank you. Well I'm one of the people who was in the asterisk group with respect to the one objection rule with respect to the spilling of the board. But I don't want to reiterate that, we've done that in the work party discussions. What I want to talk about is why I feel so concerned about it. And I think it's a more general issue that I'd like to raise.

The IETF does a lot of work in determining consensus and what rough consensus means. And Pete Resnick in particular has written I believe it's an

RFC on the meaning of rough consensus which I'd really recommend that everybody read. It's a very deep and thoughtful analysis of what consensus means.

One of the things that that paper points out is that when consensus - rough consensus is achieved but there are still objections that the people who believe they've achieved consensus look carefully into the objections and make sure that those objections are not so meaningful that they wish to think - rethink their own position. In other words, it's a balance of the substance of the objection versus the substance of the people who believe that they've achieved consensus.

And the problem is that in the way that this has been set up that - those substantive considerations, those considerations of quality and depth and thoughtfulness of objections are simply not taken into account. It's four versus one or at most - at least and at most one. And it's the - the quality of the depth - the substantive issues involved in the objection as well as the consensus are somehow washed out.

And I don't know how to deal with that. I'm not suggesting that you change anything that I haven't suggested before. But I think it's a dimension that really has not - really needs to be considered in some way and I don't know how to do it. Thank you.

Mathieu Weill: Thank you, George. And I think the point you're raising has been considered. George, I suspect it's your line is echoing right now if you can mute it? Okay. So I - my view is that this part about taking into consideration very seriously all viewpoints including and especially objections, is part of the system we are building into the escalation mechanism at the community forum level.

And that is certainly a very key point of our process right now that is taking - that is being taken very seriously about how we can make sure that every - actually every subgroup also has a voice in this community forum so that no one can ignore and not take into account these inputs at the - when we go to the decision threshold.

I think we'll have to make sure that really happens. But I think it's a concern that has been taken on board and voiced by many so you're certainly not isolated in this concern.

And you were actually mentioning this fourth point about the decision threshold and how we reach the conclusion. And I would like now to get any strong objections on the decision thresholds that were described by Jordan and on the table taking the right column out obviously.

So it's the 234s and the 223s and of course, Cherine, yes, it needs - we need to take into account the substance of the objection and that's what the community forum is for discuss substance before people make an informed decisions. Any strong objection to that to moving forward with that model? Not seeing any right now.

Yes, Brett. Brett?

Brett Schaefer: Hello?

Mathieu Weill: You might be on mute. Yes, I can hear you now.

Brett Schaefer: Hi. Sorry I was struggling to get into the phone line. Hopefully I can avoid the echo this time. The - I'm a little bit concerned, echoing I guess one of George's points that by including GAC among the five SOs and ACs that are

participating in this unit we might be throwing off the numbers that we're basing this off of. We don't know whether GAC is going to participate or not. We don't know when they're going to make a decision on that. We don't know if they're going to make a decision on that or what particular event might trigger that.

But we're proceeding under the assumption that they will in terms of the numbers needed for proceeding with the exercise of the community powers, with the blocking of community powers and with the final step also of exercising significant community powers like spilling the board which require four SOs and ACs out of five. But if the GAC does not participate then essentially you're requiring unanimity.

And I think this is an issue that needs to be significantly explored before we proceed down a, you know, putting all this down in stone. I had made the point previously that I think that SOs and ACs should be defaulted to advisory status until they make a decision whether or not they're going to participate in this at which point they can - their votes can be weighed in in terms of how a decision is going to be made.

So I do think that this is a serious matter. I think it does need to be resolved. And I think you need to proceed with two scenarios here, one with four SOs ACs and one with five presuming that RSAC is not going to be involved in this. So I want to lodge that concern again and I think I'll just leave it there.

Mathieu Weill: Thank you, Brett. And I think that was - I will turn to Jordan but my understanding is that that was the point that was intensely discussed in Work Party 1, Jordan?

Jordan Carter: It's Jordan here. I hope you can hear me.

Mathieu Weill: Yes.

Jordan Carter: Actually the reduction to four wasn't too intensely discussed. None of the points really in terms of the participation, in my view, was hugely intensely discussed. But if we do say that we take it down to four then we can't have a requirement (unintelligible) for deploying any of the powers. So we would need to redo the table with lower numbers.

And that is a - that's an exercise that we could do but my personal view is that I would rather that we stick with the five as recommended or as - was the temperature check in the WP just because if we're saying, you know, we've had some consensus advice from the GAC that they'd rather be able to opt into making decisions. We haven't had any, you know, a groundswell of opinion that says under no circumstances must the GAC have that ability. We've had some pointed comments along those ways, that's for sure.

But if we think there's a kind of open question about that to me it's a less disruptive thing to include them at this point than it is to try and re-include them at a later point. That's kind of my principle view.

Mathieu Weill: Thank you, Jordan.

((Crosstalk))

Brett Schaefer: ...suggest at having two different options available, one with five and one with four in the event that GAC does eventually decide to participate in this community mechanism. If they don't I think we - wouldn't you rather have the working assumption of four so that this process can work immediately

until either GAC decides one way or another or just chooses to delay indefinitely.

Mathieu Weill: Thanks, Brett. I don't think we should leave any - I mean, or any options open right now otherwise it's going to get confusion and prevent any ability for SOs and ACs to say whether they would be in a position to approve our report or not so that I would really avoid any options.

And based on what I'm hearing at this point I'm - I think there's more consistency and traction into leaving the GAC in as they would choose to participate on a case by case basis which is consistent with the consensus GAC advice we had received in the public comment Number 2. But certainly your point is well taken.

Brett Schaefer: Yeah, you would have to have that even if the GAC chose to participate on an ad hoc basis because in one instance it would be five and in one instance it would be four.

Mathieu Weill: But everyone needs - gets to participate on an ad hoc basis in this system. If the ASO does not want to participate in a particular decision it's the same.

Brett Schaefer: Abstention and non-participation is two different things I thought?

Mathieu Weill: Well, if I read the recommendation from - on the screen right now is on B, each SO or AC has the right to participate or not participate in any decision. And so that's to me is very consistent with...

((Crosstalk))

Brett Schaefer: ...number of seven then because every, you know, even SSAC and RSAC...

Mathieu Weill: No, it's five. It's five under the Number B there are five eligible members or at least organizations with powers being granted.

Jordan Carter: Mathieu, it's Jordan here.

Mathieu Weill: Yes, Jordan.

Jordan Carter: May I just add something? It's...

Mathieu Weill: Yes.

Jordan Carter: ...to repeat two points. Well it's to repeat one point and make one point I forgot. The repeat point is that Steve did assure that this table was drawn up with five in mind. So it works - it's a bit simpler with seven in mind. But when we started to disentangle, you know, if we think GAC probably won't participate, should we lower the numbers for each of the powers to two and then three to maintain the relativity, we got the point where two SOs or ACs could trigger the use of one of the community powers and that seemed a bit ridiculous. So that's one point.

The point I didn't make maybe effectively before is that while SOs or ACs will make their own declarations about whether they're participating or not participating or abstaining and the reasons for those things, the effect of either of those is the same. The only difference that we're talking about here was whether they would have the right to make a decisional voice in favor or against the exercise of the power. And that's the only non-optional bit.

People would still have the absolute option whether to abstain, whether to say nothing, whether to be unable to decide to say nothing. You know, in any of

the permutations that's here there's no sort of problem created by including at the initial point.

The only thing that would break this model is if we had no signal that two of the five SOs and ACs had no intention of participating. And then after the bylaws changes were made they said, we're not interested in participating. The reason that would be a problem is that we require four of them to agree to change the fundamental bylaws. So if they weren't going to do that we wouldn't be able to fix the problem.

So if we get indications that only four or three SOs or ACs want to participate then we will really have to do another bit of the number which is why I would appeal to everyone involved with all of the SOs and ACs to try and get some indication about likelihood or otherwise of participation because we have to know that fact. Thanks.

Mathieu Weill: Thank you, Jordan. I'm turning now to Tijani.

Tijani Ben Jemaa: Thank you, Mathieu. Tijani speaking. I am part of Work Party 1 and I agree and I strongly agree with all the recommendations presented here. But now I am thinking about the power of replacing the whole board and since it is something that no one hope or wish that it happens we all want it not to happen at all.

And since it is (unintelligible) for the organization it is an (unintelligible) for ICANN, it is a very big, very strong failure of the multistakeholder model, it may affect the stability of Internet, I am thinking that perhaps we may - we may use the - we may require four support for this decision but no objection.

This is not unanimity since it is not the support of all the SO and ACs. And I apologize for my colleagues in the Work Party 1 but I didn't raise it before. I just thought about it now. Thank you.

Mathieu Weill: Thank you, Tijani. I suspect that the reason why this is not the case right now is that we have set a strong requirement which we had discussed a few times that no particular SO or AC should be enabled to block by itself the exercise of a particular power even the spilling of the board because of basically a risk that if, I mean, any one of them was somehow captured or somehow involved in the particular problem that we would be facing there would be an issue. But I think your point is made. Greg.

Greg Shatan: Thanks, it's Greg Shatan. And I, you know, reiterating the point that I had made in the chat, you know, remain concerned about how this will work with four rather than five since that seems to be a really a fairly likely scenario. In looking at Steve DelBianco's homework assignment I see that putting aside removal of the individual board directors by a particular AC or SO of the remaining powers four of them require four AC SOs to support. Blocking a proposed strat plan, budget, operating plan, approving changes to the fundamental bylaws, recalling the board and the IANA function review.

So in that case we'd be requiring unanimity among the remaining AC SOs. So that seems to be, you know, a fairly high bar. I guess that may be what we're stuck with but consider that now in this case we're not talking about rough consensus, we're talking about essentially full consensus if we're down to four on all of those powers. And that - I think we just need to contemplate whether that's really what we intend to have happen since it seemed to me that that was not really what was intended and that's kind of an accident that we're at that point. Thank you.

Mathieu Weill: Thank you very much, Greg. And I'm conscious of time but also that I'm not seeing any further hands in the chat - in the AC room. So based on what the report we receiving from Work Party 1 as well as the comments we have discussed right now and taking into account that this is basically our second full discussion on that after the Dublin discussion, the initial discussion we had, I think we can safely consider these recommendations in the table as the basis for our third report.

I think we've had some comments obviously but it's still sufficient support for moving forward with that at the third report. And so we will use this as the basis for our drafting going further. I'd like to thank everyone who contributed in a very open minded and collaborative manner to this item in the Work Party 1 calls as well as now. And I'm turning now back to Leon for the human rights discussion.

Leon Sanchez: Thank you very much, Mathieu. So the party is about to begin. We're going for the human rights track. And I would like to have the last document that was set up by the working party. And I would like to publicly acknowledge and thank all those who have collaborated in the human rights working party. This has been a very discussed topic and we have held many calls with very fruitful discussions.

And I would also like to especially thank Greg, Tatiana, Niels, David, Matthew who have committed a lot of their time on setting up this document that we have on our screen. And I will not go through the whole document because it fairly described what we did in the working party but rather I would like to go to Page 6 if we could display Page 6 of the document, and go directly to the summary and recommendations.

So as we discussed in Dublin, we had the first point as the one that had more traction. And it read something along the lines of within its mission and its operations ICANN will respect internationally recognized human rights. That is where it stopped when we went to Dublin.

So the agreement in Dublin was to actually go back to the working party and refine this language so we could have a proposal to be included in the bylaws. So after coming back from Dublin and discussing in three calls that we held in the working party we came to of course having a refined language to be proposed to be inserted into the bylaws as part of Work Stream 1.

We are also suggesting that we add another bylaw but this would be a transitional bylaw to make sure that the work that needs to be carried out in Work Stream 2 actually takes place. And we are recommending seven points to be undertaken as part of Work Stream 2.

So the suggested text would read, "Within its mission and in its operations ICANN will respect internationally recognized human rights. This commitment does not, in any way, create an obligation for ICANN or any entity having a relationship with ICANN, to protect or enforce human rights. In particular, this does not create any obligation for ICANN to respond or consider any complaint, request or demand seeking the enforcement of human rights by ICANN."

So this would be the actual text that we would be suggesting to be included in the bylaws. This of course needs to run through our lawyers to make sure that this actually looks at a bylaw. And but this is a - this would be the guideline for the lawyers to actually set up a legal language that could be translated into a bylaw.

Then we have also that in order to ensure that the task allocated to Work Stream 2 take place a transitional bylaw must be adopted as part of Work Stream 1 which would convey the following.

And this is the suggested text for the transitional bylaw which reads, “Bylaw XX,” and XX is of course the number of bylaw that would refer to the actual bylaw that would be including as part of Work Stream 1, “will be implemented in accordance with the framework of interpretation to be developed as part of Work Stream 2 by the CCWG Accountability or any other cross community working group chartered for such a purpose by one or more supporting organizations or advisory committees. This group must be established promptly in order to develop an appropriate framework of interpretation as promptly as possible but in no event later than one year after bylaw XX is adopted.”

This of course gives us a timeframe to actually develop this framework of interpretation so it doesn't go into infinity and beyond. And then we would have of course some recommendations for Work Stream 2 by this working party. And these recommendations are to develop a framework of interpretation for the bylaw then to consider which specific human right conventions or other instruments should be used by ICANN in interpreting and implementing the bylaw.

Third, consider the polices and frameworks, if any, that ICANN needs to develop in order to fulfill its commitment to respect human rights. Then, fourth, consistent with ICANN's processes and protocols...

((Crosstalk))

Leon Sanchez: Could you please - could you please mute your lines if you're not speaking?
Thank you.

So Point Number 4 would be consistent with ICANN's processes and protocols consider how should these frameworks should be discussed and drafted to ensure probable stakeholder involvement in the process. Fifth, consider what effect, if any, this bylaw will have on ICANN's consideration of GAC advice.

Sixth, consider how, if at all, this bylaw will affect how ICANN's operations are carried out. And, finally, Number 7, how the interpretation and implementation of this bylaw will interact with existing and future ICANN policies and procedures.

So this would be the suggested text that we would be including or that we suggest including in our next proposal. And of course the points that would be needed to be worked on - as part of Work Stream 2. And I would now like to see if we have any objections on moving forward with these proposed - with this proposed language.

And I see George Sadowsky has his hand up. George. George, might you be on mute?

George Sadowsky: Thank you. Thank you, can you hear me now? Can you hear me? You can. Thank you. It takes a while to unmute and that's unfortunate. I don't have any objections to this text. I think the - I've only been able to read and look at the first paragraph and I think that's a good introduction to the subject. The problem is that there's a lot of material there that I have not been able to see before and for various reasons and others probably haven't seen before.

I would alert you to the following concern that Larry Strickling and NTIA have said that the more you leave to the future the less confidence that we have. I'm interpreting his thoughts. The less confidence we have that what we're getting as a package is what we're approving as opposed to what we're getting as a package is just a wedge which will allow you to do much more in the future and that's - including things that we don't know about and you may not even know about now.

So I would be concerned about leaving too much to Work Stream 2 and, by the way, having to document what you do leave to Work Stream 2 as a way of countering NTIA's concerns regarding this point. Thank you.

Leon Sanchez: Thank you very much, George. And we would be really - too many things on Work Stream 2 - if you could please mute your mics, we're getting echo. Thanks. And we are of course limiting Work Stream 2 to the suggested items that are already in (unintelligible) the document so I fail to see how this would bring uncertainty to our document. But of course we take note of your concern. And we will analyze this when - while incorporating this to our next proposal.

Next on the queue I have Greg Shatan.

Greg Shatan: Thanks, Leon. Greg Shatan. And to respond to George, I think we did actually take that concept into account in preparing this document. I realize it only appeared, you know, a couple of hours ago and that, you know, folks may not have had a chance to digest it. But the, you know, elaborating on the first document very short section that we had in our second draft report this is considerably more detailed without, you know, going over the top.

And I would, as you look at it, point towards Pages 3, 4 and really particularly Pages 3 and 4 which I think add, you know, enough meat on the bones to give a sense of where things can go in Work Stream 2 which I think we did not have in the first time around.

And this has been a concern that I have voiced strongly that we can't just have a bylaw and then say we'll tell you later, you know, what it might - how it might work and what it might mean. So I think we put some, you know, a succinct framework that gives a sense of that on Pages 3 and 4.

And then that will be fully fleshed out in Work Stream 2. So I do think in terms of the Strickling test we were aware of it. And I think that we have provided enough meat on the bones to satisfy the Strickling test in that regard.

So I think we're obviously kind of walking a tightrope to a certain extent because if we try to write everything we might possibly write now we would not make our deadline. But if we wrote nothing we would not, you know, provide enough detail to give people a sense of the rationale and framework with which the bylaw should be viewed. And humbly think that the entire group, which I was a cog in the machine, I think we've accomplished it and I hope you do too once you've had a chance to read this. Thanks.

Mathieu Weill: Leon has lost audio so I will - while he recovers - this is Mathieu Weill speaking and I'm turning to David.

David McAuley: Mathieu, thank you very much. This is David McAuley speaking. And I was just going to - I know we're short of time, I was just going to make the point that I would thank Leon for making this point. This language should be run by our lawyers because in the bylaw, not the transitional bylaw but the first bylaw that's mentioned the second sentence talks about the commitment not

being - this not being a commitment for enforcement on ICANN's part or a party in relationship with ICANN. But by leaving that reference to a party in relationship with ICANN out of the third sentence it could create problems since this is formal bylaw language.

And I would strongly recommend that that language be consistent in both sentences. And the point we made in the working party was this is a high level statement of respect and is not meant to open the door to enforcement. If there are any views towards getting enforcement they would be taken up in Work Stream 2 but would be hard pressed to make a case to that in any event because ICANN and the parties related to it are ill equipped to handle such claims. Thank you, Mathieu.

Mathieu Weill: Thank you very much, David. This is a useful suggestion. While Leon is being called back my understanding in listening to the conversation is that the progress made by Work Party 4 and the contributors that Leon mentioned is extremely encouraging. We probably have a wording that is a good reference at this point. That we'll run past our lawyers in the next few days but can be considered as the basis for our third report pending legal check.

If anyone has a strong objection with this conclusion please make yourself heard. And if not I will now move to the any other business. So just making sure that the notes capture the conclusion correctly that this is our reference model pending legal check now. And in terms of any other business just a quick update on the writing.

As you know, ICANN has secured writers. I think last week we mentioned a first writer, (Susanna). And I'm also delighted to report that (Sam Dickinson), that some of you may know has agreed to be our second writer. She's obviously well versed into our topics. And they have started work. You can

expect initial first documents to be delivered I think around November 8 so next week we should have some things to review.

And what's worth mentioning is that with the progress we've made today, in all the items we had on our agenda the path is now much more clear for the writers and to make progress. And this is a very significant step forward that we've achieved today and I want to thank everyone for putting the success of the group and the consensus building ahead of particular views. But we are also cautious of taking note of the objections on the substance as was mentioned earlier.

If there are any other business to mention. Greg, I assume this is your old hand from the previous item? Yes, so no - with no further hand up I would like to recommend that everyone start reaching out to their SO and ACs at this point to set the stage for informed analysis, educate about the progress our group is making so that we get timely feedback down the road.

And with that I'd like to thank everyone for a very productive call. Extremely productive. And I'm sure we'll be talking to each other soon either on the list or in the next calls. And we'll take on that Work Stream 2 clarifications right away. Thank you very much, everyone and have a good day or night or whatever time it is for you. Thank you.

Leon Sanchez: Thanks, everyone.

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