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OPERATOR: This meeting is now being recorded.

LORI SCHULMAN: Hello, welcome to this extraordinary Monday meeting for the Guidelines on Good Faith Conduct and Participating in Work Removal discussions. I'm going to ask you to take attendance, and if you have any updates to the SLIs, please let her know.

We only have two items on the agenda today, but they're big ones. I did issue draft support for the group to review last week, and I also had asked the group online, and in that I reminded if I submitted the guidelines to ICANN Legal for a temperature check, and I did get one response from Neil, who didn't mind.

But I would like to hear from people on this call. If anybody has any objections to sending this just for a temperature check, could you let me know now because I would like to send it if there are no concerning objections or concerns. Okay, I'm hearing no objections. I'm going to send this to ICANN Legal, just informally, for a temperature check.

And then the rest of the meeting, I really would like to just focus on the draft. I can tell you what my own assessment of it is. It's brief, but I think that's okay. I mean why put words in we don't need if we don't need them? I do think the executive summary and the first paragraph describing the problems could definitely use some improvement, and I'm open to whatever of those people would like to make.

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

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I think the actual recommendations, requirements and rationale were— I think they're fine. But again, this is all subject to review. I would like actually to think about whether or not we want to answer what I consider two big open questions that are in the document as well. Yeah.

So, I would like to start by just going through each section of the report and then maybe going back to a discussion of the two open questions that I highlighted. So, in terms of the executive summary, does anybody have suggestions for improvements, additions, subtractions? Unless you think I hit it out of the park and we can end the call, which I'm okay with that too.

So... Yeah, thank you Julf. I like reaching the point as well. I don't see the point of belaboring this.

If nobody has comments on section one, do you have any comments on section two, the description of the issue?

Okay. Are people reading it now? That's fine. I don't mind to wait if people are reading it now. I'd prefer honesty about that. If you haven't read it before.

Okay. In section three. What did autocorrect do? Oh, yeah. Thank you, Cheryl. Autocorrect mistyped his name. Julf is now known as July on the internet.

For the proposed guidelines, I just simply reproduced what we've already discussed, although I did add something. I added—for number two, I added E, I believe. That was the one I added. I added something that we had discussed and I had inadvertently left out before.

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So, A through E in section two of the proposed guidelines are what I believe we've discussed and more or less agreed to to-date. Does anybody have suggestions for either section one or section two for proposed guidelines?

Oh, Alan, I see your hand. Thank you.

ALAN GREENBERG: Thank you. And I am reading it again because I haven't read it in a long time.

LORI SCHULMAN: That's okay.

ALAN GREENBERG: In section 1-4, I think it should be, if applicable, instead of if available.

LORI SCHULMAN: Okay. That's a good note. Yes. So, I can take the notes, or one of the ICANN staff can take the notes as well, and we can collaborate to make sure I get everything. Alan, I'll change that before I send to ICANN Legal.

ALAN GREENBERG: Lori, again in section 2-A, sorry, the heading for 2, I think instead of shall develop is shall have.

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LORI SCHULMAN:                   Okay.

ALAN GREENBERG:                Because in some of these cases, part of it is just standard rules and procedure. Other parts may be specifically applicable. But the real issue is you need to have procedures, not develop them and throw them away.

LORI SCHULMAN:                   Yeah, okay.

ALAN GREENBERG:                Sorry, I'm always looking for an out.

LORI SCHULMAN:                   And so, that's noted too that there is a slight difference in meaning between available and applicable. We wanted to say if applicable and available? Maybe give an and here?

ALAN GREENBERG:                An and or a slash, I think, is fine.

LORI SCHULMAN:                   Okay.

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ALAN GREENBERG: Slash really means and/or, which is less wordy.

LORI SCHULMAN: Okay. Yeah, I think we—considering where we started in October to where we are now, we’ve gotten a lot of feedback. I heard in Hyderabad, I think was more on traffic that the community was thinking generally. So, I’m feeling good about that, that we were inadvertently creating cause where there should be no cause.

ALAN GREENBERG: Lori, in section 2D and E, those are really things that are not associated with a particular AC/SO but really saying that the AC/SOs can collaborate, I think. The E, I’m not sure about. D, certainly. I’m not sure it’s within the purview of a single AC/SO.

LORI SCHULMAN: As opposed to having a unique procedure. That’s a good question.

ALAN GREENBERG: Yeah, which we should but don’t. It’s true for all of the pilots, not unique to this one.

LORI SCHULMAN: So, maybe we want to turn that into a recommendation rather than a guideline? Let’s propose that here’s a recommendation. Here are proposed guidelines. Take D out and say, and here’s another

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recommendation. We need a procedure to do this. Is that how you see that?

ALAN GREENBERG: Yeah. I think it's really there needs to be procedures, at least frameworks, by which all of the community powers can be exercised, and ones that require collaboration between the ACs and SOs. We've never really talked about that in the CCWG. We've just presumed magic will happen, and there will be discussion.

LORI SCHULMAN: Okay. I think that's a great point. Actually, we have a primary [INAUDIBLE] call. I'm going to raise this issue on the call if you don't mind.

ALAN GREENBERG: Nope.

LORI SCHULMAN: I think this is an issue to raise to the primary. And I think what I will do is, as I just suggested, and some of the different ideas, to pull D out and make that a separate recommendation. So, one recommendation is the guidelines themselves, and then a second part of the recommendation, it's headed as that but it goes beyond a particular SO/AC, when an SO/AC has to communicate with each other. That's what I think I'm hearing you say.

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ALAN GREENBERG: Yes. It's Alan again. Right now, we're in the midst of trying to— completely unrelated to our work, we're in the midst of trying to set up the review teams for Security, Stability and Resiliency, and RDS. And again, it's up to the chairs of the ACs and SOs to do various things, but there's no one really leading that process.

So, things tend to be falling through the cracks and getting unreasonably delayed because no one's in charge, and effectively, no one's allowed to be in charge because it is a collegial process. But it's not working very well. So, I think that's just an example that is characterized here as well. If we don't do something, it won't.

LORI SCHULMAN: That's kind of the web with the multi-stakeholder model, right? Where a bottom-up or consensus, it's collegial. But at some point, there needs to be somebody taking the reins. Otherwise, it doesn't work.

ALAN GREENBERG: Or at least calling the meeting.

LORI SCHULMAN: Yeah, calling the meeting. What I was going to ask maybe is this question about D really also the open question that I've highlighted underneath, that D and that concept are really related. Should a standard form be used to raise the issue of board removal to the

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respective body, whether a specific SO/AC appointed the member by the decision of participants?

Maybe we say we need forms and procedures. The recommendation is we recommend forms and procedures. Instead of should a standard form, maybe this is the recommendation. We need to have a form in place. And so, that would take care of—D becomes part of the question, the first question, the open question. It becomes a recommendation rather than an open question.

ALAN GREENBERG:

I think so.

LORI SCHULMAN:

Okay. That's how I can word it. I will pull D out and make the open question a recommendation. And then if people say "No," that's not what they want, then that's not what they want. It doesn't have to be a question. Okay, I get that. I can see where we can change the draft on that a bit.

So, in terms of the second question, should the guidelines apply to all these questions and not just related to circumstances around director removal, that's about the good faith. I could argue against it. I could argue against it, very simply saying that well, we have these guidelines because we want to make sure that there's an indemnity triggered.

These guidelines are being developed in order to trigger an indemnity, and if the indemnity doesn't apply to other actions or discussions, then there's really no point. That's an argument against it. As an imperative,



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if it's an indemnity or not, this is a good practice and we want to promote good practice. That's how I see that question breaking down.

So, I would throw it out to the group, do you think argument A is stronger than argument B, or do you think we recommend this because it is a good practice but understand that it was developed to trigger a specific indemnity? And then again, that would become a recommendation rather than an open question. In the group.

ALAN GREENBERG:

I'm, to use a colloquial phrase, I'm not going to get my knickers in a knot over it. If one is saying that the budget—we're rejecting the budget, I think all of these things apply. So, the budget can't sue us, so we don't need indemnity. But I think most of these things, although you look at the words word by word, but they're pretty much saying act in good faith.

What we're doing is flushing out the original requirement that people act in good faith. So, surely that applies to most of what we're talking about. So, if they fit here then they probably fit there as well. I'm not going to really worry about whether we do it or not, because the implications are not large if we don't formalize it. It's not a bad suggestion, I would think. At least reading it at this point, that's what I think.

LORI SCHULMAN:

Right. So, then that could become—that could become, as I said, a recommendation as a qualification. We recommend that you do it

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because we think it's a good idea, but understand that this is about the indemnity. So, it would be up to the community. And then the community can respond.

[CROSSTALK]

ALAN GREENBERG: I can't see a lot of harm, but maybe I'm missing something.

LORI SCHULMAN: Yeah, I don't either, but do we want to flat out come out and say this is what we recommend in a directive way? Because that's not cool at ICANN. I think if we qualify it, then it's a reasonable recommendation. Can I just have a show of hands?

Do you think that would be a good approach, to have these questions reworded into recommendations and where we see the qualifications, draft that? Cheryl says yes. Alan's just agreed. I think it's a good idea. I'm not hearing from Julf or Lito. Alright. Well, I mean—thank you, Julf. Okay. Alright.

ALAN GREENBERG: Are you speaking on behalf of [INAUDIBLE], by the way?

LORI SCHULMAN: Yeah, Lori Schulman on the phone and Lori Schulman on the—I am at—today I am not at my normal space of where I work. I'm actually at our New York City headquarters, and I'm in a phone room. And it's really

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weird in here, and I suspect that's part of the reason I couldn't get on right away.

I feel like I'm in a cell. It's very weird. But that's where I'm doing the call from, so just to make sure I did an outward call as well as the Adobe. But anyway, that's TMI probably. I'm not at my normal place, so I'm just trying to double up on connectivity here. Okay, Lito has his hand up. Good. [INAUDIBLE]

ALAN GREENBERG:

And Bernie has his hand up also.

LORI SCHULMAN:

Oh good, I didn't see Bernie's. Good. So, that's how I think we'll do it. I can easily redraft this. It wouldn't take very long at all. I'm feeling good about that, because we're being proactive. We're not just kicking the can up to the community, which I had a little concern about.

Okay, now the requirements for recommendations section. I'm going to ask staff. Is this what I'm supposed to write? Because I didn't know what this section meant. In the template, it said requirements for recommendations, no wordsmithing required.

But when I looked at all the other material on the Wiki, and when I looked at the final Work Stream 1 report, I didn't see anything specifically labeled requirements for recommendations. So, I didn't see any words to smith. Therefore, I just made stuff up. So, I just want to make sure with staff that I haven't skipped something, or missed a

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document, where I should be reproducing specific requirements for recommendations.

BERNARD TURCOTTE: Lori?

LORI SCHULMAN: Yes?

BERNARD TURCOTTE: I think Lito has his hand up, and I have a few comments.

LORI SCHULMAN: Okay, I didn't see Lito's hand. I don't see Lito's hand. If Lito, you have your hand up, please speak, and then Bernie. Bernie, I don't see Lito's hand, so if you want to go ahead, please speak.

BERNARD TURCOTTE: Okay. Maybe he was just agreeing. Just a couple of notes. In the discussion of applying this because it's good practice beyond, is slightly beyond the remit of what the group did receive in the scope here. I still think it's a good idea that you mention it, but maybe just separate it.

I think the understanding of the plenary of this subgroup's work versus the mandate, they like to see a box and how you handled what you were supposed to do. And it's fine to have another box beside it that says "While we were at it, we also thought these would be good ideas."

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So, just a suggestion. And the second thing, on the recommendations, I think it was more a question of understanding if it required some additional changes to the bylaws or anything else, or is it standalone and how does it affect the other moving parts? I hope that helps.

LORI SCHULMAN: Oh, yes. Thank you. Because I was thinking this is a standalone, for sure. So, I could actually—do you think it would be helpful, Bernie, for the drafting perspective, to say in section B “We’ve approached this as a standalone. We don’t anticipate any requirements to amend a bylaw or any other procedure.” Should we actually say that?

BERNARD TURCOTTE: That would not hurt.

LORI SCHULMAN: Okay. I can do that. Sorry, I’m getting my notes here. Bernie, I have a question, too, just procedurally. So, I guess I’ll redraft it and get it out to the group again, probably—definitely before the end of the week. But do you think on the 18<sup>th</sup>, is that the due date for the plenary, correct? Not like any publication due date. I just want to understand what that 18<sup>th</sup> deadline is.

BERNARD TURCOTTE: That 18<sup>th</sup> deadline is from the master working group schedule, to try and get that out so it can be approved in Copenhagen. So, if you’ll

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remember well, we were working on a one-year schedule, and the first track was to get the project—a set of projects approved in Copenhagen.

And the second track was to get a set of projects or subgroup's recommendations approved in Johannesburg. So, to be able to publish this generally and have the plenary fully consider it before the face-to-face meeting, the date that was originally scheduled was the 18<sup>th</sup>.

Now is that die in the ditch, drop dead, especially given this is very effective and short, and I love it also, clear-cut report? Part of the dates was building in some time so that staff could clean it up and put it into a standard format.

LORI SCHULMAN:

Oh, but I—okay. I think a lot of that's been done already. So, I hope the format works. I tried to follow what normal reports look like, is what your template was. So, hopefully you don't have that much cleanup.

BERNARD TURCOTTE:

Agreed.

LORI SCHULMAN:

Alright. Okay. So, it sounds like we're actually in pretty damn good shape, if you don't mind me using the damn word. I think we're—what I'm concerned about though, is Avri on the call? Yeah, I see Avri muted. Avri had made a point at our last call that she felt that we haven't discussed this enough.

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Now, my question is this. This is our sixth call, I think, and we do have a report now, and I am hoping that these calls are a discussion. Unless Avri is referring to now discussing this in the plenary. My question to the group is based on that comment, because I do respect Avri's opinion, has this been discussed enough?

Do you think we need to go deeper somewhere? Is there something that hasn't been fully vetted? We've relied a lot on my reporting as opposed to having a lot of back and forth on the list. And I think given what the issue is, I think short and concise works.

I think if we make this too roundabout, the whole issue of having clear-cut guidelines goes away. It becomes so muddy it becomes obliterated, and we don't want that. We want—the consensus of the group way back when was let's do something that's easy to understand, that's an umbrella for everybody else. We're not going to dictate procedure.

We're just going to let people know they have to have one. Those, I've always understood to be the marching orders, and that's how I've crafted the report. So, if there's any more discussion to be had, I really would like to have it, and I'd like to use it—

BERNARD TURCOTTE:           Lori?

LORI SCHULMAN:            Yes?

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BERNARD TURCOTTE: It's been the standard procedure in a lot of the CCWG Accountability work to allow two meetings to have reading, so that if anyone missed a meeting, and it was general consensus to accept the work they still had, if you will, a second kick of the can.

Now so, this would be the first meeting on this report, and if you want to follow that procedure, then technically you could have a second meeting and bring it forward. But if the whole group is comfortable enough you can just get this to the plenary also. I'm just stating what's standard procedure here.

LORI SCHULMAN: Okay, and I see Alan has his hand up.

ALAN GREENBERG: Yeah, thank you. I'm certainly happy to, once you make the revisions we talked about today, put it out to the list for some number of days, and unless there's some strong objection that it needs further talking, that we pass it on.

LORI SCHULMAN: Okay.

ALAN GREENBERG: And I'm happy to have a second meeting, but I think we're close enough that I'm not sure it's absolutely necessary. I can certainly go either way.



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LORI SCHULMAN: Okay. Bernard? Is that an old hand or a new hand, Bernie?

BERNARD TURCOTTE: I don't know. Sorry, new hand. There's a question of timing here. If you're going to want to present it to the plenary, which is 19:00 Wednesday UTC, you need to have documents out at least 24 hours ahead. So, that would be 19:00 tomorrow, which would really limit the time this group has to have.

I'm not dictating either way. I'm just noting the reality of these things. And if not, then our next plenary, if we looked at this, is the 25<sup>th</sup> of January, which is a little late versus our deadline of what we're trying to make sure this thing gets less than done in Copenhagen. So, a bit of a scrunch here, which I just want everyone to be aware of the timing reality.

LORI SCHULMAN: Okay. I'm going to add to that, then I'll call on Alan. So, my own feeling is I am tied up in meetings right now, including [INAUDIBLE] meetings. I'm basically at a week-long internal conference. To try to see something that's decent by 19:00 tomorrow is just super—that's just—I'd rather wait until the 25<sup>th</sup> unless there is that specific urgency. And then if it is, then I will just jam something out and get it to the list. So, Alan, go ahead.

ALAN GREENBERG: Thank you. I thought you started off the meeting saying we're going to send it to the plenary for their information, not as a formal first reading.

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LORI SCHULMAN: That was to Legal, ICANN Legal, to be clear. I wanted ICANN Legal, as a courtesy, because we had asked the question of them way back when of is this something you're going to be reviewing? Is this something you should be reviewing? Because you represent the board to a certain degree.

They came back with "No, we don't think there's a conflict of interest, and yes, if you get this by us, we wouldn't mind seeing it before it becomes a final document, just to take the temperature," which I think is fair and I would welcome. Because I would rather get a legal concern now than a month from now.

ALAN GREENBERG: I think—sorry, I misinterpreted. But nevertheless, I think we can do that in parallel with showing it to the plenary so they know where we're going. And if people there have any real red flags raised [INAUDIBLE]. So, that would allow us to get something out to the plenary for Wednesday, because the current version, I think, suffices for that. And it's not a first reading. It's not—we're just giving a head up and giving people an opportunity to see it. So, I wouldn't mind that.

LORI SCHULMAN: Yeah. And we did post it on the Wiki already because I didn't see the harm in it. And then we got some feedback. So, even without the revisions we discussed, yeah, I don't have a problem showing it to the

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plenary, with the understanding it's going to get revised, which I can discuss on the plenary call.

Let me see what I can do tonight. I do have a little bit of time tonight. I can work on this for probably about an hour or so and get something, like okay. Then the list wouldn't have seen it. You're going to have to just trust that I've made the changes the way we've discussed. [INAUDIBLE]. Alan again?

ALAN GREENBERG: No, my hand's down, but as I said, I'm happy to have the current version go to them. If you have time, fine. I think Cheryl's hand is up.

LORI SCHULMAN: Okay, Cheryl.

ALAN GREENBERG: My hand is still up, it's because I haven't put it down. Sorry about that.

LORI SCHULMAN: Okay. That's okay. Cheryl?

CHERYL LANGDON-ORR: Thank you much. Cheryl, for the record. Yeah look, if you can do the additional tweaks in your enormous amount of spare time this evening, then yeah, that version can go both to Legal and to CCWG for their opportunity for initial—I wouldn't have even limited it as a head up. I

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would have suggested that they should be doing an initial readthrough with the view of we want to introduce this degree of drafting to the upcoming plenary.

The likelihood of the CCWG saying nothing is about likely as me winning a lottery ticket, because I don't buy them. Therefore, I think we will find a few modifications or at least suggestions and discussions to be had before modifications anyway.

So, I'd be keen if you'd give this up for this upcoming plenary, then I would to probably make very little change, noting that we will undoubtedly have additional input to then deliberate, discuss and work with. And when it does then go through two readings, and I see no reason why one reading can't be [INAUDIBLE] the luxury of time allows.

I'd also be mentioning, on the plenary of course, that we would like to see this as a substantive document for discussion at Copenhagen, and that can mean, I would like to think in a perfect world, allow us to have our second and final reading at Copenhagen with the full CCWG.

So, that could be one of those second and final reading, thinking, support and endorsement, at that point. Now again, that's not the end of it. It just means it goes into CCWG documentation at that point, as a wrapped-up deal rather than as still a work in progress, until feedback from public comment comes in.

So, no downside for me if it goes as-is, and no downside and a bit of admiration, in your massive amount of spare time this evening, you can reformulate those questions as recommendations, and we box that one out as Bernie suggested. Thanks.

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LORI SCHULMAN: Thank you, Cheryl. Bernie? I see your hand. Is that an old hand?

BERNARD TURCOTTE: Yeah, no. Thank you. So, just to run the schedule, because this is the key point, and I guess one of the reasons I'm here. So, if we can get a document out by 19:00 tomorrow, that is this time, then the plenary will have had it for 24 hours. It will not be a first reading, and you can explain this on the leadership prep call. Are you planning to join tomorrow, 19:00, Lori?

LORI SCHULMAN: Yes, I am, unless I'm called away, and I'll give you some notice.

BERNARD TURCOTTE: Okay.

LORI SCHULMAN: I have that call scheduled. So, it should be fine.

BERNARD TURCOTTE: If there's a problem, given I've been on this call, I can talk to this a bit if asked, and I think Cheryl will be there also. So, if you can get—

LORI SCHULMAN: Yeah, so far, I don't have a conflict.

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BERNARD TURCOTTE: Okay, great. So, then we can have—the plenary can put in some initial comments on its meeting on Wednesday, January 11<sup>th</sup>. We’ll have the notes fairly quickly for that. And your next guidelines call is for Wednesday the 18<sup>th</sup>, 19:00, which would allow you to consider those and hopefully finalize that document and allow for this to be ready for the plenary on the 25<sup>th</sup>, for an official first reading.

LORI SCHULMAN: Okay. That—

BERNARD TURCOTTE: That’s [INAUDIBLE].

LORI SCHULMAN: Okay.

BERNARD TURCOTTE: Alright.

LORI SCHULMAN: Alright, so why don’t we do that? I will see if I have time tonight. I have a business dinner that I cannot cancel. But I do think I could maybe, at the end of the evening, find some time. If I don’t for whatever reason, I just don’t get it done, I will put a note out to the group tomorrow saying “Please submit what you’ve got. Let’s hear the one-two of it.”

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So, we will submit something tomorrow, no matter what. Because that is the consensus of the group, I feel, that we need—they'll just get what we've got here. And I could, even if I don't have time to do the drafting, maybe just even do a comment, make those little wordsmithing things that Alan had suggested, the open questions, actually make it what we want to say, this will be revised to recommendations.

I understand that it might go a little bit beyond agreement, but this is some issue that's raised and we want to call it to people's attention, something like that. So, something will get to the group, and I'll just let you know before 19:00 tomorrow what it is.

Are people comfortable with that? I'm not hearing any objections. So, let's do that. It gives me a little bit of leeway, but if I can get it done I'll do it. But if not, I'll get you the list copy, or just one more level of things done, the wordsmithing from Alan. I think that's probably the way to go. Okay.

Does anybody have any other questions or comments about the document, the work we're doing? Anything at this point? Okay. What I might do is give myself 20 minutes to work on this now, if people don't have anything else they want to raise, and give you guys back 20 minutes.

That might actually work pretty well. Make sense? Okay then, hearing no objections, I'm going to end the call, and I want to thank everybody for their participation, and thank you for taking the time today to kind of get into the weeds on some of this. I do appreciate it.

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And see you in a day or two. Avri's typing. Yeah, she said goodbye. Okay. So, have a good rest of the day. Enjoy your extra 20 minutes, and I will communicate with the group tomorrow before the anointed hour. Bye.

CHERYL LANGDON-ORR: Thanks, Lori. Bye, everybody.

LORI SCHULMAN: Bye.

**[END OF TRANSCRIPTION]**