

# WP1 Meeting #12 (11 June)

## Attendees:

**Sub-Group Members:** Avri Doria, Fiona Asonga, Greg Shatan, Jonathan Zuck, Jordan Carter, Keith Drazek, Kavouss Arasteh, Malcolm Huty, Matthew Shears, Robin Gross, Roelof Meijer, Steve DelBianco, Thomas Rickert (13)

**Legal Counsel:** Edward McNicholas, Holly Gregory, Josh Hofheimer, Miles Fuller, Rosemary Fei, Stephanie Petit, Tyler Hilton (7)

**Staff:** Alice Jansen, Berry Cobb, Kim Carlson

**Apologies:** Alice Munyua

*\*\*Please let Brenda know if your name has been left off the list (attendees or apologies). \*\**

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## Transcript

[Transcript WP1 #12 11 June.doc](#)

[Transcript WP1 #12 11 June.pdf](#)

## Recording

The Adobe Connect recording is available here: <https://icann.adobeconnect.com/p7ow90u8y1j/>

The audio recording is available here: <http://audio.icann.org/gnso/gnso-wp1-11jun15-en.mp3>

## Proposed Agenda

1. Review agenda
2. Work through comments made so far by drafters in the following blocks:
  - a) Avri's material (p. 42 on)
  - b) Jordan's material (p. 2 on)
3. Agreement of next areas of focus for the next meeting.
4. Solicitation of volunteers to help with the work
5. Any Other Business

## Notes

### NOTES & ACTION ITEMS:

These high-level notes are designed to help you navigate through content of the call and do not substitute in any way the transcript.

Working methods – analyses PC – summary and impression test, analysis of content, action steps and what might be published

Recap on wp2 approach. Looking for themes that wasn't thought of.

Once we had done granular analysis, we need to produce a summary, similar to what WP2 is creating. Example will be circulated. Do a thematic summary. Further work on summary.

Overall summary box will be added to the gdoc – New edits will be made on shared Google doc.

Jurisdiction is recurring theme – whether or not new issue.

Proportionality must be discussed

WP1 – using: *agreement, concerns, confusion, divergence* – for each comment –

Avri briefed group approach wp2 is taking. Looking for trends, teams assigned to each trending topics...trends that were already known like 8b, jurisdiction, have teams looking at these already. Then will go comment to comment.

Suggested to use the same approach as WP2 to make understanding more concise.

Be concise in allocating, be specific – so not to be accused of being biased, also why more than one person is used to evaluate.

Encouraged to look at document to add precision, accuracy and neutralize any comments that you feel are not fair – so we have the most accurate record

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Summaries will be addressed during next couple calls, but by working through some of the specifics give us a sense of how it's working and if we want to make any changes.

Avri will discuss comments she has already started

373 – marked as “confusion” “divergence” disagrees with idn being incorporated in us, did come up in the aoc – comingles issues, like 8b (trending), jurisdiction and incorporation, wants inclusion of 8b in bylaws, Jurisdiction and incorporation – will be taking up in WS2, add to fundamental bylaws, actions – covering its trending.

What is the “Theme” whether ICANN should not be US, or issue of location of idn in bylaws or fundamental bylaws? Is it a concern by mostly govts? Etc.

8b isn't even on the table, not addressed. Article 18 of bylaws states company shall have headquarters in California. Question is fundamental or non-fundamental. New idea, not WS1. Merit not addressed at this time.

374 375 are similar and have been given similar answer.

374 – Govts given appropriate representation in an ATRT. AoC does not get into the proportion of representation. Moving proportionality into Bylaws of these Review Teams. Our view is that all SOs and ACs should be represented in the AOC reviews as set out in para 305 of our Public Comment report. The CCWG will consider how to incorporate this matter more specifically in the next version of the proposal.

Is there any other area of government concern? This will be determined after review and summaries will be posted.

Perhaps this needs to be specified in the bylaws as it was in setting up ICANN implementation of the reviews

All reviews will be conducted by a volunteer community review team comprised of representatives of the relevant Advisory Committees, Supporting Organizations, Stakeholder Groups, and the chair of the ICANN Board. The group must be as diverse as possible.

Proportionality has not been completely addressed? Be specific on numbers?

375. Response – thank you

376 - WS2 to review as a longer term process. Doing so now seems less so, but folding them into the bylaws does seem important, especially if we want to dissolve the AOC.

377 – Agreement – response thank you

378 – Agreement – response thank you

379 – (Govt of Spain) more detail, a plan needs to be put into place, looking for detailed time scale on termination of aoc. Trend: govt saying headquarters is an issue) AoC states ICANN should be HQd in US, do not believe this should be incorporated into a fundamental bylaw of ICANN subj to Cal law is not fundamental to the global internet community, - question of how much detail to include in bylaw.

Suggested that - Not really a trending issue. Spain is just answering our question about Article 18 as a Fundamental Bylaw. They prefer it not be. Just record the answer. Opposing view whether it's a fundamental or not. Need more attention than to just answer the question; cover carefully.

WP1 went through assessments of comments and suggested actions and did live editing.

Splitting larger comments will occur at a later time.

Working method, and how to categorized – read details, so when summaries are complete, people with different takes, perspectives have all worked through and feel the summary is fair.

380 - Agrees with enshrining accountability. Concern of inconsistencies, Agrees with putting in ATRT, Flexibility of reviews. WHOIS work stream 1 or 2? Was RySG agreeing with ability to sunset including WHOIS? Accountability and Transparency Reviews must be incorporated. - We recommended that the ATRT team could recommend sunset of reviews like WHOIS.

Keith to confirm whether it's the ability to call for sunset vs an explicit call for sun setting.

381 Unreasonable to incorporate all principles of AOC into Bylaws (US incorporation).

Issue of implement ability is important. IRP either confirms or mitigates decision. Put some appropriate principles of AOC into ICANN Bylaws would enhance ICANN's accountability. Calls for re write.

Consider vs forcing. Can use IRP. Strongly explain rationale without being dismissive. Coupled with powerful mechanisms to challenge.

- 382 support for it to become fundamental bylaw, believes article 18 should be designated a fundamental bylaw, so it would require 75% community voting approval for change; hopes to rely upon statutory powers to recall the Board and other actions, as necessary, to ensure that the ICANN Board and staff remain accountable to the community.

383 – Agreement – thanks – although believes, the processes are slow, greedy on volunteers' time and cumbersome

-384 supports inclusion fund bylaws, however the words “if appropriate” could be viewed as divergence. Para 269: The proposed text for insertion in the bylaws is “where feasible, and appropriate, depending on market mechanisms.....” We feel that there is a large range of opinions on the role of the market. The AoC, however, is stronger in its support of the marketplace, so we would suggest deleting the words “and appropriate” – does not recommend deleting any words, look further at marketplace demands. Disagree with recommended edits.

-385 – Support, response thank you

- 386 Binding AoC into Bylaws. It's not appropriate to refer to AoC into Bylaws (Bilateral agreement) Instead of writing that ICANN will be committed to them. Instead of writing what is in the AoC in the Bylaws and producing duplicate description in two different documents, they suggest referencing relevant section of the aoc in the bylaws and bind reference sections by the bylaws.

Proposing several enhancements to the AOC. Because OAC is a bilateral agreement, it is not appropriate for it to be referred to in the bylaws after the transition. Allows the affirmation to sunset.

Something to be considered in next version of proposal.

387 – We understand the incorporation of a review system defined in AOC, and ability to start a new one. Response – yes

388 Explain our rationale rather change. This is incomplete, just first couple bullets completed. 8b trending issue, representation issue – ask to consider so /ac but to consider constituencies and by reference stakeholder groups. Representation issue at the bylaws level, up to each of the so /ac to house their internal apportionment.

Clarification on 338

Batched round – guidebook is prepared, solicitation, non-batched round open, continuous round, but constant application.

In the proposal on page 59, 338 The Board shall cause a review of ICANN's execution of this commitment after any batched round of new gTLDs have been in operation for one year. Used batched rounds on purpose.

Requirement after at least every 5 years or after a batched round.

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223 – Membership model is suitable, but that individual membership was suitable in a Swiss jurisdiction ideally. Mostly in agreement. Prefers individual membership (as in members of SO's and AC's) are the members of ICANN; Swiss jurisdiction; membership preferred to designator No action required.

Pull out memo language to address this. Ensure link is included. Legal analysis on the Swiss framework indicates there are no significant advantages to such a model.

ACTION ITEMS – Ensure Legal link is available for comment 223

ACTION ITEMS - Call notes to be circulated to Counsel in addition to CCWG

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224 – Correlating the community with ICANN structure, ability to change preserved, the issue of how mechanism participants are held accountable to their appointing circles and how to avoid insider capture. (Insider capture – theme)

-relevant name

- More work on accountability for mechanism participants

- Insider capture – comes up in a number of places, work as group.

ST12 will be expanded to address insider capture and new stress test will be created to address rogue voting SO/AC representative.

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There needs to be a second phase of work to draw out comment themes and summarize at each top of section. Call for volunteers.

Second phase, pattern recognition, draw out themes and summarize at top of section.

AOC in bylaws have been given to ST.

Community mechanism - Q7 and two related questions (13 pages): Jordan Carter, Matthew Shears, Robin Gross & Roelof Meijer

Veto budget - Q8 (2.5 pages): Robin Gross

Changes to bylaws - Q9 (~1 page): Keith Drazek

Approve fundamental bylaws changes - Q10 (1 page): Keith Drazek

Removing individual directors - Q11 (2 pages): Fiona Asonga

Recalling the entire Board - Q12 (2 pages): Fiona Asonga

Incorporating AOC in bylaws - Q13 and 14 (4 pages): Steve del Bianco & Avri Doria

Work Approach: Go through summary materials to identify themes and determine how we will discuss these themes in BA

Keep looking through document and add edits, proposed thoughts to make responses/summaries as fair-minded as possible.

On the next calls, go through summary materials.

Next call: Saturday, 13 June 2015 from 05:00– 07:00 (AM) UTC - custom is to have 12 hours to review material.

Document freeze at 1700 UTC on the 12<sup>th</sup>. Jordan will circulate pdf, but edits can still be made on Gdocs.

WP2 You can go into original comments - make it more possible - work issue by issue. Read comments in a structured fashion

## Action Items

[ACTION ITEMS – Ensure Legal link is available for comment 223](#)

[ACTION ITEMS - Call notes to be circulated to Counsel in addition to CCWG](#)

## Chat Transcript

Kimberly Carlson: (6/11/2015 08:08) Welcome to WP1 Meeting #12 on 11 June. Please note that chat sessions are being archived and follow the ICANN Expected Standards of Behavior: <http://www.icann.org/en/news/in-focus/accountability/expected-standards>

Rosemary Fei: (11:55) Hi, folks.

Jordan Carter: (11:56) morning all

Matthew Shears: (11:56) hello

Jordan Carter: (11:56) Staff, can I have a dial out please to the usual mobile?

Greg Shatan: (11:57) Hello all.

Keith Drazek: (11:58) Hi everyone

Jordan Carter: (11:58) We will kick off in four minutes or so

Josh Hofheimer (Sidley): (12:00) Hello all

Robin Gross [GNSO - NCSG]: (12:00) Greetings

Stephanie Petit: (12:01) Greetings.

Roelof Meijer (SIDN, ccNSO): (12:01) Good day, all! No audio?

Roelof Meijer (SIDN, ccNSO): (12:02) o yes, audio is there

Thomas Rickert: (12:04) Hi all

Josh Hofheimer (Sidley): (12:04) Could we share the doc Jordan is referring to, or please distribute?

Jordan Carter: (12:05) [https://docs.google.com/document/d/1ViLPAuc\\_80PEgSqJ2sFJhwyM1gJ7HSIN115kT0YjUHM/edit?usp=sharing](https://docs.google.com/document/d/1ViLPAuc_80PEgSqJ2sFJhwyM1gJ7HSIN115kT0YjUHM/edit?usp=sharing)

Josh Hofheimer (Sidley): (12:05) Sorry, I don't think we are on that mailing list, so thanks!

arasteh: (12:07) Dear All,

arasteh: (12:07) I am waiting to be called up

Kimberly Carlson: (12:07) Yes, we'll dial you

Roelof Meijer (SIDN, ccNSO): (12:08) I am trying to raise my hand, but it gets slapped down every time...

Steve DelBianco [GNSO - CSG]: (12:09) Those 4 categories were circulated by co-chairs, so WP2 is using them

Thomas Rickert: (12:09) that was our idea

arasteh: (12:09) Dear Alice,

Thomas Rickert: (12:09) but it is not cast in concrete if you have better ideas

arasteh: (12:09) May you kindly advise to dial me up

Alice Jansen: (12:10) Kavouss, Kim is organizing a dial-out for you with the operator.

Jonathan Zuck (IPC): (12:10) pattern matching

Jonathan Zuck (IPC): (12:11) topic by topic with details from each comment so not really comment by comment as an organizational structure

arasteh: (12:11) Alice tks

Holly Gregory: (12:14) Greetings all -- having a bit of trouble with adobe

Holly Gregory: (12:14) but seems to be fixed

Avri Doria: (12:14) also some of the trending topics are common (or might be) between wp(1,2)

Robin Gross [GNSO - NCSG]: (12:15) audio keeps going out on Adobe Connect

Avri Doria: (12:15) i have long since given up on AC for audio. except for when i am in a place where telephone doesn't work.

Avri Doria: (12:16) for the last week or more it has been going in and out.

Berry Cobb: (12:16) We're trying to get the doc loaded in AC room

Berry Cobb: (12:17) I will share my screen

Avri Doria: (12:17) could one of them share their desktop and use the drive doc?

Berry Cobb: (12:17) Issue with conversion in the PDF

Jordan Carter: (12:17) that's what I thought they were doing, Avri

Matthew Shears: (12:17) Jordan I am playing catch-up but very happy for you to tell me where I can assist / fill in

Josh Hofheimer (Sidley): (12:17) Google and Adobe cooperating? Not likely. Perhaps just load a word or PDF version.

Avri Doria: (12:17) ah, never mind

Avri Doria: (12:18) mine? it is not in proper format yet.

Avri Doria: (12:19) 'mine' starts on 42

Steve DelBianco [GNSO - CSG]: (12:22) Article 18 of current ICANN Bylaws already says ICANN shall have its principal place of business in Los Angeles. We did not rely on AoC 8b

Steve DelBianco [GNSO - CSG]: (12:23) It's in the bylaws already. Only question is whether to make it Fundamental Bylaw

Matthew Shears: (12:24) part of the problem is that we haven't really defined what aspect of jurisdiction is in WS2

Keith Drazek: (12:27) +1 Steve

Jonathan Zuck (IPC): (12:28) and part of the optics problem is a misunderstanding of what "fundamental bylaws" are. we should always achieve factual clarity to reduce the debate

Holly Gregory: (12:28) need to be careful about not counting up the number of persons who disagree with a particular point because many who see no issue may not have commented

Alice Jansen: (12:28) Please mute your line if not speaking please.

arasteh: (12:29) the COMMENT has a fundamental impact on the entire process.

Jordan Carter: (12:29) Could the noisy typer PLEASE mute their audio line

Keith Drazek: (12:29) please mute phones/computers

arasteh: (12:30) We are discussing their jurisdiction and applicable law to the process. If it is to be outside many basic assumptions will be affected

Steve DelBianco [GNSO - CSG]: (12:31) I guess that was my point, Jordan. I don't agree with how Avri described the two issues. AoC 8b is ALREADY in the bylaws.

Steve DelBianco [GNSO - CSG]: (12:31) Are you wanting me to just edit the Google Doc?

Jordan Carter: (12:32) yes - lodge as comments in the google doc

Keith Drazek: (12:33) Kavouss is correct. US/California jurisdiction HAS been our assumption. We're not proposing a change to that.

Matthew Shears: (12:33) i think part of the discussion had been that we wanted to avoid further disruption and change and therefore decided to move much of that discussion to WS2

Steve DelBianco [GNSO - CSG]: (12:34) I will edit the doc after the call -- since it is just too slow when I am using Adobe Connect on the same computer

Matthew Shears: (12:37) btw - i think the four ways of categorizing and colors is very good

Steve DelBianco [GNSO - CSG]: (12:39) 305 All reviews will be conducted by a volunteer community review team comprised of representatives of the relevant Advisory Committees, Supporting Organizations, Stakeholder Groups, and the chair of the ICANN Board. The group must be as diverse as possible.

Steve DelBianco [GNSO - CSG]: (12:41) I believe EQUAL is ADEQUATE.

FIONA ASONGA (ASO): (12:41) I agree with Avri in being specific on the numbers

Jordan Carter: (12:43) I have deliberately not learned the acronyms to help me deal with all comments only on their merits

Steve DelBianco [GNSO - CSG]: (12:46) blue patch covering the adobe window. Can that be removed?

Steve DelBianco [GNSO - CSG]: (12:48) Not really a trending issue. Spain is just answering our question about Article 18 as a Fundamental Bylaw. They prefer it not be. Just record the answer.

Rosemary Fei: (12:49) Where a single comment, such as 379, covers many comments in different categories and requiring different responses from CCWG, might it make sense to break the comment into a,b,c, etc., so each subcomment can be dealt with separately?

Jonathan Zuck (IPC): (12:52) +1 steve

Rosemary Fei: (12:52) That would avoid having both "agreement" and "divergence" on a single comment, which then requires figuring out which part gets which classification.

Stephanie Petit: (12:52) Blue patch again, cannot see.

Matthew Shears: (12:52) same blue patch for me as well

Rosemary Fei: (12:54) Yes, splitting up large comments could occur later

Thomas Rickert: (12:57) I need to leave at the top of the hour! Thanks and bye!

Greg Shatan: (12:59) I must leave audio as well, though I will continue to peek at the AC room.

Matthew Shears: (12:59) same for me unfortunately

Jordan Carter: (13:00) Sorry to be losing you, team!

Steve DelBianco [GNSO - CSG]: (13:01) we recommended that the ATRT team could recommend sunset of reviews like WHOIS.

Steve DelBianco [GNSO - CSG]: (13:03) Excellent. We can record this as a point of agreement. Thanks, Keith

Keith Drazek: (13:03) Thanks for posing the question, Steve.

Berry Cobb: (13:04) JH = Jiah He

Jordan Carter: (13:04) blue box again Berry

Jonathan Zuck (IPC): (13:06) yes!

Steve DelBianco [GNSO - CSG]: (13:07) Agree, Avri

Steve DelBianco [GNSO - CSG]: (13:10) This is just a YES to or question on Art 18 as Fundamental.

Steve DelBianco [GNSO - CSG]: (13:11) As BC policy chair, I can clarify the BC supports the Member mechanism because legal counsel say that is the only way to make community powers enforceable

Steve DelBianco [GNSO - CSG]: (13:12) can staff please magnify the adobe window one step higher?

Jordan Carter: (13:13) or - Full Screen your browser, Berry, and zoom the content to 125%?

Steve DelBianco [GNSO - CSG]: (13:13) Agree with Avri (again)

Alice Jansen: (13:14) you can also push the 4 arrows button on your adobe connect to go into full screen

Steve DelBianco [GNSO - CSG]: (13:14) full screen hides the chat so not a good option

Robin Gross [GNSO - NCSG]: (13:14) sounds right to me

Steve DelBianco [GNSO - CSG]: (13:16) we proposed many enhancements to the AoC reviews. Don't want to lose them!

Jonathan Zuck (IPC): (13:17) agree. AoC goes away

Jonathan Zuck (IPC): (13:20) make it explicit that it goes away, yes

Steve DelBianco [GNSO - CSG]: (13:22) page 51 of our proposal suggests terminating the AoC once the bylaws reflect the commitments and reviews.

Steve DelBianco [GNSO - CSG]: (13:24) Jonathan -- can you clarify that issue?

Steve DelBianco [GNSO - CSG]: (13:24) or Greg?

Jonathan Zuck (IPC): (13:26) it does

Avri Doria: (13:30) no other guinea pigs. bummer.

Steve DelBianco [GNSO - CSG]: (13:30) Sure

Avri Doria: (13:30) i would liek to see how it is done right.

Avri Doria: (13:33) apologies for the eating peanuts noise. i am muted now

Keith Drazek: (13:34) +1 Steve

Jordan Carter: (13:36) [https://docs.google.com/document/d/1ViLPAuc\\_80PEgSqJ2sFJhwyM1gJ7HSIN115kT0YjUHM/edit#](https://docs.google.com/document/d/1ViLPAuc_80PEgSqJ2sFJhwyM1gJ7HSIN115kT0YjUHM/edit#)

Avri Doria: (13:36) [https://docs.google.com/document/d/1ViLPAuc\\_80PEgSqJ2sFJhwyM1gJ7HSIN115kT0YjUHM/edit?usp=sharing](https://docs.google.com/document/d/1ViLPAuc_80PEgSqJ2sFJhwyM1gJ7HSIN115kT0YjUHM/edit?usp=sharing)

Avri Doria: (13:36) The link Jordan put in for those with editing rights, but it will still work.

Avri Doria: (13:37) the link i put is the one that allows anyone with making comments and suggested edits.

Josh Hofheimer (Sidley): (13:38) sorry, hand would not go down!

Avri Doria: (13:40) sure thanks for going through a few. appreciate it.

Avri Doria: (13:41) makes me feel less out there alone.

Avri Doria: (13:41) if everybody comments and suggests in the drive doc, things can really move along.

arasteh: (13:41) Is the issue of multistakeholder assembly which practically would be open to every body is not a simple process

FIONA ASONGA (ASO): (13:42) @Jordan I am still assisting

Rosemary Fei: (13:42) I know counsel aren't doing the comments, but I thought the process you've just gone through with Avri guinea pig should be very helpful for those who volunteer, to get consistent and useful comments. Well worth the time, even if not realistic to continue for all the other comments.

Jordan Carter: (13:42) > Community mechanism - Q7 and two related questions (13 pages):>> Veto budget - Q8 (2.5 pages):>> Changes to bylaws - Q9 (~1 page): Jordan>> Approve fundamental bylaws changes - Q10 (~1 page):>> Removing individual directors - Q11 (2 pages):>> Recalling the entire Board - Q12 (2 pages):>> Incorporating AOC in bylaws - Q13 and 14 (4 pages):>> Bylaws suggested stresstests - Q15 (2 pages):

Avri Doria: (13:42) and for those who don't want to do blank sheet answers, comments on the work that others do is critically important to. i feel much more comfortable just writing something if i know others are going to come along and correct me and change it.

Steve DelBianco [GNSO - CSG]: (13:43) I will take a pass at AOC in bylaws and bylaws suggested by Stress Tests

FIONA ASONGA (ASO): (13:43) I will work on removing directors

FIONA ASONGA (ASO): (13:44) both individual and entire board

Steve DelBianco [GNSO - CSG]: (13:44) True!

Robin Gross [GNSO - NCSG]: (13:44) give me a task, Jordan, for a chunk

arasteh: (13:44) We have tackled the issue of Fundamental Bylaws but there is no clear criteria by which we decide what should be in that FB?

Keith Drazek: (13:44) Jordan, I will volunteer for a section or a topic, but don't have a preference. Assign me whatever you please.

Keith Drazek: (13:45) Sounds good, thanks.

Matthew Shears: (13:46) sure thanks

Robin Gross [GNSO - NCSG]: (13:47) I can be added to the community mechanism chunk

Keith Drazek: (13:49) Sounds good. Can staff circulate an assignment table?

Malcolm Hutty: (13:49) Summaries are good, but should be used to ensure comments are fully considered. Avoid risk of eliding out dissenting comments

Avri Doria: (13:50) oh, there is reputation involved. opps.

Avri Doria: (13:51) i mean oooops.

Alice Jansen: (13:52) Saturday, 13 June 2015 from 05:00–07:00 (AM) UTC

Rosemary Fei: (13:55) That would require breaking up original comments by issue, though.

Steve DelBianco [GNSO - CSG]: (13:57) Malcolm -- great work on your analysis for WP2. Any chance you have a few hours to start drafting the saem approach for Community Mechanism?

Steve DelBianco [GNSO - CSG]: (13:59) Understand, Malcolm. Just had to ask!

Malcolm Hutty: (14:00) I don't know how much progress has been made today with IRP while I was doing Mission and Fund. Bylaws; if they've nearly finished I'll try to get back to you

FIONA ASONGA (ASO): (14:00) Saturday is fine

Steve DelBianco [GNSO - CSG]: (14:01) Scroll to bottom of Malcolm's doc to see the mapping

Steve DelBianco [GNSO - CSG]: (14:01) Doc would be better so that we can copy the format!

Josh Hofheimer (Sidley): (14:01) and to counsel for the distribution please, thanks

Avri Doria: (14:02) bye

Jordan Carter: (14:02) thanks all

Robin Gross [GNSO - NCSG]: (14:02) bye all

Rosemary Fei: (14:02) Thanks, all.

FIONA ASONGA (ASO): (14:02) ok bye