

# WP1 Meeting #20 (22 July)

## Attendees:

**Sub-Group Members:** Alan Greenberg, Edward Morris, Finn Petersen, Greg Shatan, Holly Gregory, Izumi Okutani, James Gannon, Jonathan Zuck, Jordan Carter, Matthew Shears, Par Brumark, Robin Gross, Samantha Eisner, Steve DelBianco, Steven Chiodini, Tijani Ben Jemaa, Vrikson Acosta (17)

**Staff:** Bernard Turcotte, Berry Cobb, Brenda Brewer, Grace Abuhamad, Kim Carlson

**Apologies:** Avri Doria

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

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## Transcript

- [Transcript WP1 Meeting #20 - 22 July 2015.doc](#)
- [Transcript WP1 Meeting #20 - 22 July 2015.pdf](#)

## Recording

- Adobe Connect recording is available here: <https://icann.adobeconnect.com/p2wz7Intouz/>
- MP3 recording is available here: <http://audio.icann.org/gnso/gnso-wp1-22jul15-en.mp3>

## Proposed Agenda

1. Community Model
2. Fundamental Bylaws
3. Standard Bylaws
4. AOC Reviews into the ICANN Bylaws
5. Removal of Individual
6. Recall of the entire ICANN Board
7. ICANN Budget
8. Identification of any other bits of work we need to do to wrap this up
9. Agree Agenda outline for meeting #21.

## Notes

### 1. Community Model

- Edit Page 2: "It provides greater legal enforceability than the Empowered So/AC model"
- Edit Page 2: change "given" to "given that"
- Whenever referring to a decision maker, we need to refer to the right one
- IGNORE text on "influence in the community mechanism" --  
> was not intended for distribution and needed further information on how the voting weights work.

**Action:** produce text on voting weights and influence for the mechanism before Friday

### 2. Fundamental Bylaws

- merged sections 3.2. and 5.4
- CWG dependencies included on page 2

**Action:** Grace and Steve to work on incorporating text on page 3 as it relates to stress test

### 3. Standard Bylaws

- Community should be able to provide feedback in comment period as well as review period. Is a review period of 2 weeks enough?

**Action:** include petitioning period in Bylaws

### 4. AOC Reviews into the ICANN Bylaws

- NDA text needs to be developed
- Edit: change review team to "review teams or a subset thereof" to be aware of the fact that some review teams do not want to be fully involved in these disclosures.
- Suggested text from **James Gannon**: "A confidential disclosure framework shall be published by ICANN. The confidential disclosure framework shall describe the process by which a review team may request access to and the process for classification of documentation. The CDA will provide a mechanism of escalation for release of documentation to duly authorized review teams"

**Action:** Steve to propose an updated draft (will write up a 2-step disclosure process)

#### **5. Removal of Individual Directors**

- Poll on page 1: ticks to delete the bracketed text
- Ticks: 12; Crosses: 0; (Total participants: 21 (6 of whom were staff/counsel who were not eligible for vote))

**Action:** remove bracketed text on page 1

**Action:** drafting to be clear that any standards would be advisory only

**Action:** CCWG to discuss paragraph 11

#### **6. Recall of the entire ICANN Board**

- Lawyers provided a redline review of this document -- possible that there is too much detail
- Question: is everyone ok with this document or do you need more time?
- Ticks: 4 = ok with doc
- Crosses: 5 = need more time

**Action** (Jordan): clean up document and recirculate for discussion next week.

#### **7. ICANN Budget**

**Action:** include header either here or in community powers sections

**Action:** Jordan to have discussion with Steve, Chairs, and staff to get a clear statement as soon as possible to the full CCWG list

#### **8. Identification of any other bits of work we need to do to wrap this up**

**Action:** please send your suggestions ASAP on any additional work to do

#### **9. Agree Agenda outline for meeting #21.**

**Action:** Jordan to circulate draft agenda

### **Action Items**

**Action:** produce text on voting weights and influence for the mechanism before Friday

**Action:** Grace and Steve to work on incorporating text on page 3 as it relates to stress test

**Action:** include petitioning period in Bylaws

**Action:** Steve to propose an updated draft (will write up a 2-step disclosure process)

**Action:** remove bracketed text on page 1

**Action:** drafting to be clear that any standards would be advisory only

**Action:** CCWG to discuss paragraph 11

**Action** (Jordan): clean up document and recirculate for discussion next week.

**Action:** include header either here or in community powers sections

**Action:** Jordan to have discussion with Steve, Chairs, and staff to get a clear statement as soon as possible to the full CCWG list

**Action:** please send your suggestions ASAP on any additional work to do

**Action:** Jordan to circulate draft agenda

## Chat transcript

Kimberly Carlson: (7/22/2015 12:34) Welcome to the WP1 Meeting #20 on 22 July! 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>

Holly Gregory (Sidley): (12:45) Greetings everyone!

Jonathan Zuck (IPC): (12:57) It's a party...a work party...!

Jordan Carter (.nz, rapporteur): (12:57) hi everyone

Holly Gregory (Sidley): (12:58) I am wearing my party hat.

Grace Abuhamad: (12:58) Hi Steve -- I was not able to update the Section 6 document in time for this call

Greg Shatan: (12:58) It's my work party and I'll cry if I want to.

Holly Gregory (Sidley): (12:58) You would cry too if it happened to you!

Greg Shatan: (12:59) :-)

Greg Shatan: (13:00) AC operationg disconnected me instead of connecting me. Now I'm crying.

Greg Shatan: (13:00) operationg = operator

Jordan Carter (.nz, rapporteur): (13:01) one minute call

Greg Shatan: (13:03) I'm in.

James Gannon: (13:06) Have we passed this by counsel to ensure that we are mathcing their model of the CMSM?

James Gannon: (13:06) (Not saying it is or inst)

Jordan Carter (.nz, rapporteur): (13:06) all the content goes to legal thsi weekend

James Gannon: (13:06) ok

Greg Shatan: (13:07) Sounds like a fun weekend.

Grace Abuhamad: (13:09) Page 2

James Gannon: (13:09) Suggested edit to the first comment "It provides greather legal enforceability than the Empowered So/AC model"

Bernard Turcotte Staff Support: (13:09) agree

Robin Gross [GNSO - NCSG]: (13:09) I agree with Alan. As written, it seems a bit misleading.

Bernard Turcotte Staff Support: (13:10) will cxlean up

Grace Abuhamad: (13:10) Noted change in notes

Grace Abuhamad: (13:10) we're cool with edits

Bernard Turcotte Staff Support: (13:11) will confirm

Holly Gregory (Sidley): (13:12) We would be happy to mark up to try and clarify the legal points if you would like

Holly Gregory (Sidley): (13:12) Pease confirm that we are not trying to draft bylaws at thi point in time

Grace Abuhamad: (13:13) Thanks Holly -- Sidley review is 24-27th July

Jordan Carter (.nz, rapporteur): (13:13) and no we aren't trying to draft bylaws right now

Grace Abuhamad: (13:13) And yes, we are not trying to draft bylaws

Holly Gregory (Sidley): (13:13) Understood Grace, but I thought if folks were struggling with the drafting to clarify the legal points we are happy to wigh in earlier

Holly Gregory (Sidley): (13:14) wigh = weigh

Steve DelBianco [GNSO - CSG]: (13:14) Note that in the Stress Tests on capture, we assume that community power cannot be blocked by any one AC or SO.

Samantha Eisner: (13:14) Part of the Bylaws revision process will require normalizing the text across the Bylaws, so the wording can be refined then, so long as there is appropriate direction as to what the threshold should be

Bernard Turcotte Staff Support: (13:14) Holly - we just want to know if you were thinking that the bylaws related to the member needed to identify the specific SoACs or not

Holly Gregory (Sidley): (13:16) Robin, that is correct : as we discussed in Paris the idea was that the SOs and ACs would vote and that collectively would be the vote of the Sole Member--

Robin Gross [GNSO - NCSG]: (13:17) Thanks for the clarification, Holly.

Steve DelBianco [GNSO - CSG]: (13:17) Alan - it would be GNSO, not GNSO Council that exercises community voting

Holly Gregory (Sidley): (13:18) Bernard, my questions was related to when the bylaw drafting takes place. I take it that we are not including draft bylaws at this point in time

Bernard Turcotte Staff Support: (13:18) Holly thnak you but it still does not answer my question

Steve DelBianco [GNSO - CSG]: (13:18) If we in the GNSO want our Council to hanlde the voting, we can make that decision later. But the community authority lies with the GNSO

Steve DelBianco [GNSO - CSG]: (13:19) +1 James

Holly Gregory (Sidley): (13:19) We haven't yet started to figure out the bylaw drafting, Bernard.

Bernard Turcotte Staff Support: (13:19) ok - thanks

Matthew Shears: (13:20) agree with james

Robin Gross [GNSO - NCSG]: (13:20) as do I.

Jonathan Zuck (IPC): (13:20) Yup

James Gannon: (13:21) I also agree with myself =)

Holly Gregory (Sidley): (13:24) does fractional vote mean that 1 vote can be divided or that the 5 votes may be divided? if the latter the use of fractional is a bit confusing

James Gannon: (13:25) OK good cause I saw problems =)

Bernard Turcotte Staff Support: (13:26) 5 votes can be cast individually

Robin Gross [GNSO - NCSG]: (13:26) It has to be fractional also, because if the GNSO is given 5 votes, it has to be divided 1.25 as the voting weight is currently 1/4 to each SG.

Holly Gregory (Sidley): (13:27) got it Robin. Thanks. That will need to be clarified in the draft.

James Gannon: (13:28) Bernie has aquired a very female sounding voice

Steve DelBianco [GNSO - CSG]: (13:28) +1, Robin, on fractional voting

Alan Greenberg: (13:28) I had to step away for a moment. Hope I was not called upon...

Bernard Turcotte Staff Support: (13:28) my nighttime voice

Bernard Turcotte Staff Support: (13:29) ;-)

Grace Abuhamad: (13:33) Yes, I incorporated those comments on page 2

Grace Abuhamad: (13:34) Steve, I'm not clear what page you are referring to

Steve DelBianco [GNSO - CSG]: (13:34) Sure

Grace Abuhamad: (13:35) got it!

Izumi Okutani (ASO): (13:36) I'm at the call

Greg Shatan: (13:42) IPC gets 5/12ths of a vote. I feel so empowered.

Greg Shatan: (13:42) Better go on a diet, so I can fit.

Robin Gross [GNSO - NCSG]: (13:43) I may have missed the conversation on relative voting weights. I think the GNSO and ALAC should not be equal. GNSO has two board members and ALAC has only one. We are supposed to keep with the current framework and not change relative power among SOs/ACs.

Robin Gross [GNSO - NCSG]: (13:44) Plus I don't think Congress will accept GAC getting equal votes also. So I don't think ACs should have equal votes.

Greg Shatan: (13:45) I think we need to re-open the discussion on voting composition. That will be one of our tough issues regardless.

Jordan Carter (.nz, rapporteur): (13:45) Robin, we're not discussing voting weights on thi call - the text was not ready

Izumi Okutani (ASO): (13:45) OK good I wanted to understand how it works - so makes sense to define in the single membership model

Edward Morris: (13:45) I agree Robin. The accountability effort should not and can not be a vehicle for redistributing power within ICANN yet it appears that is what is being done here.

Robin Gross [GNSO - NCSG]: (13:45) Ok - I just thought I may have missed the discussion on that topic.

Edward Morris: (13:45) @Jordan. When do you think we will be discussing that?

Samantha Eisner: (13:46) If we consider that SOs are in the position that they are because they form policy development roles, I think that the question bears asking - is there something specific about the policy development role of the SOs that require them to have higher votes than ACs in (potentially) non-policy related areas?

Holly Gregory (Sidley): (13:46) correct Tijani

Edward Morris: (13:47) Thanks Jordan.

Matthew Shears: (13:48) I agree that we need to have a discussion on voting weighting

Matthew Shears: (13:48) at some point in time

Izumi Okutani (ASO): (13:48) So how do we fix the window either 15/30 days?

Izumi Okutani (ASO): (13:48) That works for me - what Jordan has proposed about petitioning period

Jordan Carter (.nz, rapporteur): (13:49) Izumi, I think that we will have three windows: fifteen days to petition to use the power, fifteen days for a discussion in the forum once a petition happens, then fifteen days to decide after the forum discussion

Alan Greenberg: (13:50) Perhaps it is fitting, given much of ICANN's tradition, that the ALAC, the group responsible for certain aspects of ensuring the public interest, be given second rate status.

Samantha Eisner: (13:51) Jordan, if the 15 days to petition ends without a petition, could the bylaws be effective at that point, or would ICANN have to wait the full 45 days?

Jordan Carter (.nz, rapporteur): (13:51) Sam, yes - because the rest of the timeline wouldn't run

Samantha Eisner: (13:51) Could we include something that if at any point there is determination that no petition is forthcoming, the Bylaws could go into effect?

Izumi Okutani (ASO): (13:51) Noted Jordan about the period

Jordan Carter (.nz, rapporteur): (13:51) yes, I am sure that we could

Holly Gregory (Sidley): (13:52) we can assist with non disclosure agreements -- write them all the time

Jordan Carter (.nz, rapporteur): (13:52) the question is how we describe it in the bylaws

Samantha Eisner: (13:53) we also have experience in ICANN in drafting NDAs

Jordan Carter (.nz, rapporteur): (13:53) particularly about the decision about what is confidential not being solely at ICANN's discretion

Holly Gregory (Sidley): (13:53) but not sure that you need the details now for this purpose of the proposal -- can leave details for later?

Samantha Eisner: (13:54) As I see the discussion of NDAs proceeding, I just want to flag that we are then making participation on review teams conditional on accepting individual liability for inappropriate disclosure

Holly Gregory (Sidley): (13:54) Yes Sam.

Jordan Carter (.nz, rapporteur): (13:56) no Sam, we aren't

Jordan Carter (.nz, rapporteur): (13:56) people would simply need to remove themselves if NDA-required material was being tabled/discussed.

Greg Shatan: (13:56) Even that may not be necessary depending on how this is all set up.

Jordan Carter (.nz, rapporteur): (13:57) (and they had refused to agree to an NDA)

Robin Gross [GNSO - NCSG]: (13:57) we need to be sure information is overly redacted

Jordan Carter (.nz, rapporteur): (13:57) isn't

Robin Gross [GNSO - NCSG]: (13:57) there should be clear rules in advance

Greg Shatan: (13:58) Clear criteria for confidentiality, with an underlying aim of facilitating transparency and openness.

Robin Gross [GNSO - NCSG]: (13:59) Yes, Jordan.

Robin Gross [GNSO - NCSG]: (13:59) Agree, Greg.

Holly Gregory (Sidley): (14:00) If the team agrees to a strict NDA then there shouldn't be much at all that ICANN could not share with team

Edward Morris: (14:00) Thanks Holly. Completely agree.

James Gannon: (14:04) I would be happy with an escalation to the board as they have full inspection rights

Jordan Carter (.nz, rapporteur): (14:04) I'll close the speaking list here for this item

Samantha Eisner: (14:06) It seems that a lot of this is about changes to the DIDP, which currently provides a framework for confidentiality as well as recourse to the Board (though I understand this is not satisfactory to the community)

James Gannon: (14:06) "A confidential disclosure framework shall be published by ICANN. The confidential disclosure framework shall describe the process by which a review team may request access to and the process for classification of documentation. The CDA will provide a mechanism of escalation for release of documentation to duly authorised review teams"

Steve DelBianco [GNSO - CSG]: (14:06) James -- pls email that text to me

Samantha Eisner: (14:07) There are two types of documents: 1. review team wants and wants to make public; 2. review team wants and may not wish to make public.

Holly Gregory (Sidley): (14:07) careful about expecting major legal analysis/solutions over the weekend. We are expecting to review draft but may need more time and better understanding of what you are seeking

Jordan Carter (.nz, rapporteur): (14:07) DIDP generally is a Work Stream 2 issue

Jordan Carter (.nz, rapporteur): (14:07) Holly, I'm not expecting major. I don't know anyone else is either.

Holly Gregory (Sidley): (14:08) Great Jordan. Just want to make sure we are all on the same page. If there is a question we should be working on now would appreciate to know.

Edward Morris: (14:08) That is my understanding Jordan.

James Gannon: (14:10) Sam: That distinction should be made in a CDA not in the bylaws

Samantha Eisner: (14:12) @James, I agree. I was suggesting this as a way of taking the conversation forward with a little more clarity

Holly Gregory (Sidley): (14:13) would like clarity around these draft bylaws -- these are meant as general direction of potential bylaws and not the actual bylaws, correct?

James Gannon: (14:13) Yes holly

Samantha Eisner: (14:13) +1 to Alan

Holly Gregory (Sidley): (14:14) Thanks -- we will need to include the same disclosure that counsel has not reviewed the draft bylaws in any significant respect

Jordan Carter (.nz, rapporteur): (14:14) Steve -- would be good to get your view.

Alan Greenberg: (14:14) Its like all the things in WP3 that carefully ignored and then say its too late.

Jordan Carter (.nz, rapporteur): (14:14) All of this material, whether framed as draft bylaws or not, goes into a proper bylaw drafting process

Holly Gregory (Sidley): (14:15) Thanks Jordan. We should have clarifying language to that point in the proposal.

Jonathan Zuck (IPC): (14:16) We had a VERY specific charter for WS1 which was to sufficiently empower the community to accomplish further reform. EVERYTHING else is a distraction

Jonathan Zuck (IPC): (14:16) we were and SHOULD have been avoiding everything else

Steve DelBianco [GNSO - CSG]: (14:21) Agree with Alan -- we should not articulate a limited list of reasons to remove a board.

Steve DelBianco [GNSO - CSG]: (14:21) this paragraph 11 is about "expectations" but not quite limiting.

Jordan Carter (.nz, rapporteur): (14:22) so you

Greg Shatan: (14:23) "We're just not that into you" should be valid grounds for removing a director.

Robin Gross [GNSO - NCSG]: (14:23) I agree with Alan and James.

Jordan Carter (.nz, rapporteur): (14:23) and it would be and continue to be

Izumi Okutani (ASO): (14:23) + Alan James

Edward Morris: (14:23) +1 Greg

Jordan Carter (.nz, rapporteur): (14:24) I support the appointing body being the removing bdy for SOs ACs and don't support their judgement being replaced by the community as a whole

Steve DelBianco [GNSO - CSG]: (14:25) +1 Jordan. But you are getting off the subject of standards

Izumi Okutani (ASO): (14:25) Indeed Greg

Matthew Shears: (14:25) I do not agree with the bracketed proposal in 04 - we should remove

Matthew Shears: (14:25) so agree with Jordan

Izumi Okutani (ASO): (14:26) It wouldn't be in the interest to remove Board of directors which represents them easily

Robin Gross [GNSO - NCSG]: (14:26) I completely agree with Greg on this point.

Jordan Carter (.nz, rapporteur): (14:26) Steve- on standards, I am happy with the wording in the paper (but then, I did draft it, so I would be...)

Greg Shatan: (14:26) Kumbaya

Holly Gregory (Sidley): (14:26) Agree with James, Jodan and Greg; and from a legal perspective my concern is that right to select lacks meaning if others can remove

Izumi Okutani (ASO): (14:26) So likely to have good reasons if a particular SO/Ac wishes to remove its Board of director

James Gannon: (14:26) Agreed Holly

Steve DelBianco [GNSO - CSG]: (14:27) Yeah, but nobody loves you forever, Tijani

Izumi Okutani (ASO): (14:27) Indeed Holly

Jordan Carter (.nz, rapporteur): (14:27) the expectations we note in para 11, Tijani

Steve DelBianco [GNSO - CSG]: (14:28) @Jordan -- several on this call are uncomfortable with a list of expectations, since that implies they may limit the reasons for recall

Greg Shatan: (14:29) If we do have that discussion, we should decouple it from the right to remove.

James Gannon: (14:29) Can we just remove the reference to breach leading to a petition in 11

Greg Shatan: (14:29) I don't think a "right of reply" from the jilted Board member is a good idea.

Robin Gross [GNSO - NCSG]: (14:30) We seem to be over-engineering this process.

Holly Gregory (Sidley): (14:31) Generally, directors have no "right" to their position and there are no due process requirements for removing them ;

Greg Shatan: (14:32) The jilted board member can say what s/he wants but they shouldn't be able to plead for their position after the decision is made.

Jonathan Zuck (IPC): (14:32) +1 Greg

Matthew Shears: (14:32) I support elimination of brackets in 04

Alan Greenberg: (14:32) @Holly, but my fear is that as part of the "community" they also have the right to be treated "fairly" and that is VERY subjective.

Matthew Shears: (14:32) bracket text

James Gannon: (14:32) So that's a tick mark

Greg Shatan: (14:33) Click agree if you disagree with the text. Click cross out if you want to leave it in.

Matthew Shears: (14:33) yep

Greg Shatan: (14:33) I have summarized it for you Jordan.

Steve DelBianco [GNSO - CSG]: (14:34) No this isn't about the expectations. It's about whether the Community must approve

Alan Greenberg: (14:34) There were no crosses

Steve DelBianco [GNSO - CSG]: (14:35) @Tijani -- that vote was about whether the Community could prevent an SO from removing its own directors. Wasn't about the standards/expectations

Matthew Shears: (14:37) could the staff remove the first bullet in notes point 5 with the reference to selecting a wife - it's not really appropriate

Robin Gross [GNSO - NCSG]: (14:37) I'd like to delete para 11, for what it's worth.

Greg Shatan: (14:38) spouse?

Greg Shatan: (14:38) significant other?

Greg Shatan: (14:38) paragraph 11?

Grace Abuhamad: (14:38) ready for you to pay attention :p

Matthew Shears: (14:39) :)

Greg Shatan: (14:39) Time for TOTAL RECALL!

Jordan Carter (.nz, rapporteur): (14:42) TOTAL RECALL (Except The President)

James Gannon: (14:44) OK gotta run sorry guys speak again tomorrow =)

Steve DelBianco [GNSO - CSG]: (14:45) just another day, please

Matthew Shears: (14:45) agree Steve

Steve DelBianco [GNSO - CSG]: (14:45) would be better to see it in a CLEAN doc

Matthew Shears: (14:46) yes

Greg Shatan: (14:46) Generally pleased wit this. Language is pefectly digestable to me!

Greg Shatan: (14:46) wit = with

Holly Gregory (Sidley): (14:46) so what will be included in the draft for this weekend that we will be reviewing? weekend that

Holly Gregory (Sidley): (14:46) isnt Tuesday too late?

Jordan Carter (.nz, rapporteur): (14:47) holly, a tidied up version of this document, which our group will discuss Tuesday with the benefit of your comments added

Holly Gregory (Sidley): (14:47) Im sorry Jordan, I thought the proposal was coming to us for review this weekend

Grace Abuhamad: (14:48) Holly, it will be as much as can be provided

Jordan Carter (.nz, rapporteur): (14:48) it is, but the nature of the work is that we will be backfilling and still discussing some issues. I'm sorry, but that's the way it is.

Steve DelBianco [GNSO - CSG]: (14:49) para 3 is more a requirement than a Whereas

Holly Gregory (Sidley): (14:50) thanks all. Not quite as described to us in the CCWg call yesterday and limits our ability to give a fulsome thorough read but we will try to do our best

Steve DelBianco [GNSO - CSG]: (14:50) 15 days okay for budget

Jordan Carter (.nz, rapporteur): (14:50) it doesn't limit that, Holly. It just means that in parallel, there is ongoing consideration that might lead to some subsequent changes. I'm sorry if it wasn't clearly represepnted that some of this will be going on in parallel

Jordan Carter (.nz, rapporteur): (14:51) it would be preferable for you guys to review the penultimate final text, but the work plan makes that impossible. Regrettable but not impossible to manage.

Grace Abuhamad: (14:53) Holly -- community drafting process is never crystal clear. Suggest you clarify with the Chairs if there is still confusion. They are managing a very decentralized drafting process.

Holly Gregory (Sidley): (14:54) Grace, we are flexible and will do whatever you all want. Just noting that it is somewhat different than what we understood from yesterday's call. It is hard for us to give a solid legal review to t docuent that is in flux. Just disclosing the risk that we may miss something.

Grace Abuhamad: (14:55) disclosure noted :). thanks.

Bernard Turcotte Staff Support: (15:01) by eall

Matthew Shears: (15:01) thanks!

Holly Gregory (Sidley): (15:01) Thanks all.

Edward Morris: (15:01) Thanks Jirdan

Robin Gross [GNSO - NCSG]: (15:01) thanks -bye

Jordan Carter (.nz, rapporteur): (15:01) Thanks everyone

Jordan Carter (.nz, rapporteur): (15:01) good work