
BUENOS AIRES - CCWG-Accountability Working Session 1

Friday, June 19, 2015 – 08:00 to 18:00

ICANN – Buenos Aires, Argentina

THOMAS RICKERT:

Good afternoon, good evening, everyone. My name is Thomas Rickert and I'm one of the co-chairs of the Cross Community on Enhancing ICANN's Accountability. Welcome to this first session of the CCWG in the ICANN 53 meeting in Buenos Aires. First of all, I would like to do a roll call. The suggestion is that we conduct the roll call as we usually do by taking the list from the Adobe room. I think we should give it another three or four minutes for people to join the Adobe. That's the way we are going about with that. Can those who are just on the audio line participating remotely please make themselves heard, so we can add them to the list?

For those who are not making their way into the Adobe, please send us an e-mail or raise their hand sometime later and then we will manually add you to the list.

Second thing for me to do in terms of housekeeping is ask whether there are any updates of statements of interest.

ALAN GREENBERG:

That was my statement of interest also. I would really like to see [inaudible] the address.

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.

THOMAS RICKERT:

Yeah. So we're going to capture roll call in a few minutes to give everybody the opportunity to get into the Adobe. But any updates to statements of interest? There don't seem to be any.

Then I think we can continue discussing a little bit how we're going to go about with this very morning. As you will recall, we have recently closed the first public comment period of our work, and since then, the sub-teams in particular have done a tremendous job in analyzing public comment and writing up a report detailing responses or suggested responses that we as the whole CCWG could publish.

I guess that's an important reminder for us in terms of process. We have started the analysis of public comment by putting all the comments into what we call the public comment review tool. The comments that we received have been sliced and added to the respective parts of our report. Therefore, we have all the comments relating to a specific question in one place.

The group has gone through this report and taken a look at it. We had a three-hour session remotely to discuss public comment we received and then we deferred the actual work to sub-teams to prepare a written response and today we're going to hear reports from the reporters on what their findings were when analyzing public comment.

It is our intent to agree with this group if possible on the way to proceed with analyzing the public comment. So you should – after having heard from the reporters, you should make yourself heard if you have any objections or concerns with the outcome of the analysis.

But then the detail of how we're going to finalize our report will again be done by the sub-team.

We think that it would not be the best use of our time going through all the cells of the spreadsheet, going through all the written reports in detail line by line as a group. But we will just agree on how we will proceed, agree on the general principles that we have derived from the analysis of the public comment and then dive into a substantive discussion on the major questions that we took away after having consulted with the community.

I would like to pause a moment. Even though it's very early in the morning, can we just give a round of applause to the hardworking reports and the individuals on the working party?

I'm trying to find out if and when we can have the Adobe room maybe displayed up here, and maybe staff could bring up the mind map from the Frankfurt meeting. Obviously what I think is a true statement to make is that we got quite some support from the community with what we are doing. Sure, there's a lot of work to be done, but I guess before we go into the detailed responses prepared by the reporters, we should take pride in what we've done so far.

We couldn't take for granted that what we have previously agreed on would get such positive feedback and I think we should convey that throughout the week. Certainly there are questions. We received a lot of questions from the Board and from others and those questions need our attention and we need to explain what we're doing because we are in the subject so deep as we count anybody else in the

community to be. Let's not only focus on what we still have to do, but let's focused on what we've achieved so far.

I know that Jonathan was quite eager to make a little statement with respect to this very mind map. Jonathan, I'm more than happy to give you the floor for that.

JONATHAN ZUCK:

Yes, good morning, everyone. Jonathan Zuck, ACT, for the record. I guess I have to say that, as difficult as the process has been, I've been very excited by this whole process. I think that it has afforded us an opportunity to really take ICANN to the next step in a way, and the whole announcement by NTIA, whatever its motivation was, the politics behind it, I think it's really inconsequential to the opportunity that it has presented us with.

I think that's something about which I've been most excited. I think sometimes when we're frustrated with the Board, for example, we fail to look at our own responsibility in delivering the wrong kinds of work to the Board. By failing to reach consensus ourselves, we end up turning the Board into an arbiter, and then we end up lobbying the Board instead of continuing to negotiate with each other and finding consensus, and thereby minimizing the role of the Board. We need to take some responsibility.

One of the most exciting things about this entire process was the level of consensus that we brought to the table when this transition was announced that we needed to do this accountability process and we

were all speaking with one voice and that gave me chills because we spend so much time fighting about things in the normal course of operations, but on this we came together and spoke with one voice and that was so powerful.

When we were going through this process early on of trying to figure out what would be the ideal expression of the kind of employment we wanted for the community, what would that mean in reality, what kind of powers? Where does the community have interest versus things that the Board ought to be doing on its own for its fiduciary responsibility. Again, there was this consensus around it and that was exciting.

No one is shaking their wondering: why are we going through this process? There's a universal recognition that there's another stage to which the organization needs to get. I think that's reflected in the public comments as well, when they were looking at the bylaws changes, when they were looking at the notion of fundamental bylaws, when they were looking at changes to the mechanisms for redress and reconsideration, and when they were looking at the fundamental powers that we wanted to imbue the community with.

There was almost complete consensus. There's little bits of [fussing] here and there about details, etc. But if you look at the comments as a whole, the community as a whole agree with us about what it is we wanted to accomplish.

This is a very American kind of reference and I apologize, but when President Kennedy said we're going to put a man on the moon, it was

this very aspirational thing and no one had any idea how to go about doing it. But it began with a universal aspiration and then a bunch of really smart people were tasked with trying to ability bring that about. I feel that we have similar aspirations here, which is to turn this into a more mature and therefore more hardened organization against capture and all the other things that we fear. That maturation is so essential to ICANN's next phase and its next [16] years of life.

So I'm very excited that we're engaged in this process, very excited that down the line in terms of what we aspire to do, there's almost complete consensus in the community. I think that's what's most exciting.

Let's figure out the details. Let's figure out how to actually put a man on the moon. But I think it's so incredibly exciting that we all agree that that's what we're setting out to do.

[applause]

THOMAS RICKERT:

Thanks, Jonathan. I think that nicely sets the tone for our discussion. This is going to be a long week. We're going to have a lot of interesting and engaged conversations I guess both inside this group as well as with the wider community, just because I think everybody is interested in that.

We will have discussions how we're going to prep for the community engagement. That will take place later this afternoon. As you will have seen, there's a session on Sunday as well as there is a lot more

community engagement. There has been a blog post published by Larry Strickling, so we're going to discuss that because we think that we need to sort of have answers as a group that we can convey because certainly Larry's blog post has gotten a lot of attention.

With respect to the session on Sunday, there have been some questions for us as co-chairs because we are participating in that session and we would like to just clarify that when the request came for us to join the session on Sunday, it was announced as a session on the history of accountability in ICANN. So at that time – and it's unfortunate that it hasn't been added to the calendar of events, which I'm sure staff will do – at the time, we were not aware of the blog posts, nor of Larry's participation in that session. So we thought we would just update the group at the outset of this week on where we are to then facilitate entry into the Town Hall discussion that we have on Monday.

It's likely that the discussion on Sunday will be characterized by the blog post and just rest assured that we will discuss with you what messages to convey in that discussion. So we're not going to do that ourselves, but we're going to work on that this afternoon.

Also, this morning what we're going to do is we're going to hear from the reporters, but specifically on how we analyze the public comments, and hopefully we will get agreement on the next steps that need to be taken by the sub-teams again so that we can then take stock and say what the major questions are that we as a group should be discussing in the sessions throughout the week.

After having done that, we think that it's very likely that we will need to have an in-depth discussion of the various proposals and the various models on the table just to be sure our report specifies the reference model, but the reference model, but the reference model wasn't a done deal.

We've made very clear that this is the current status of our deliberations. Since we received public comment and since all of us have put some more thought into this, since we've all engaged with our peers and our groups that we're representing, we are now in a much better position to reopen that conversation.

And as you will remember in our last phone call, we have suggested that individuals that are in favor of a specific model should take the opportunity here to present what their ideal vision of a model for implementation of the community powers would be.

I would like to encourage those that want to speak to just raise their hand. It's going to be a five-minute sales pitch more or less for the model. Don't talk about concerns that you have. Don't talk about negative aspects with other models that you see. Present the model that you would like to see implemented in ICANN in the best possible fashion to convince the whole group that your model is the way to do it.

We're going to have five-minute interventions from all those that want to speak. We're going to have no questions, except for the questions for understanding if something was unclear, maybe. But we're going to hear all the presentations one by one, so that they stand for

themselves, that they're not mitigated by concerns or difficult questions. And after we've heard all the implementation models, we're going to discuss them.

This discussion is likely going to take place in the afternoon, so by the time we break for the lunch, we would just like to conclude the two items mentioned i.e. analysis of the public comments. Number two, listening to all the presentations/sales pitches, five-minute elevator pitches for the different models.

So can I please get a show of hands of those that want to take the opportunity to present their idea implementation of the new accountability infrastructure? Alan is number one. Sebastien, you had already volunteered in the call. Becky, Avri. So we're going to hear you in the order that we're just noting. We're not going to rearrange that. There's no priority in the order of speakers. Jordan. Don't be afraid of maybe duplicating – Greg. Duplicating with variations of what others have said. Sam. We want to get [inaudible] ideas/visions of where to go because I think we need to get all – we need to understand the best of [our words] and then this afternoon go and discuss the model, flesh out all the pros and cons and try to take stock of what common ground is to then get into a creative phase of designing something that everybody can live with.

But it is our impression as co-chairs that in cause and with written communication, we might not be able to fully grasp the idea and the benefits of the different models that are suggested.

So should one or the other of you decide to chime in, please don't be shy. Approach us. But for the time being, I think we have six or seven speakers that we're going to hear.

UNIDENTIFIED MALE:

Here's the list I have because I think I missed Jordan. I don't know where he is. So, Alan, Sebastien, [inaudible], Avri, Sam, Jordan. I don't know at what point you appeared in this list. After Sam? After Avri? Anyone else I forgot? Greg. Greg was somehow on the list at the end.

It's going to be [inaudible] the timing. We're thinking three minutes, five minutes maximum and we'll be holding the clock, just so you can prepare.

THOMAS RICKERT:

Okay, there's a queue forming. We're going to hit the queue, but maybe I can ask Becky to join us here to be the first one to present the outcome of the report. Sebastien, please.

SEBASTIEN BACHOLLET:

[On the] last topic, may I suggest that you organize a [draw] and not [inaudible] like that. May I suggest – and you can disagree, but why I don't think – I am the first one. I was already [inaudible] since one week. Either I am somewhere else. But it's not the way you are doing it. My suggestion is to [do a draw].

The second point, and I would like to ask my colleague members of this group, if I heard well the list of people, I would like very much a

new voice came [inaudible] proposal and their concern. It's too much. I'm sorry for the one who will talk too much. I answered with the same people going for the same place. We need diversity and diversity must come from the participants. I hope that it's not because somebody told you that you need to do it. Sales pitch that you can't talk and because it will be in English, it will be a barrier in answering this discussion.

My second point is that you are – it seems to be that everything is going well, then maybe we can finish the meeting now because everything is good. I am not sure that this is the case. We have a lot of talk and discussion to have and find [inaudible]. It's not because people will say again and again we have done our best and that's where we are today. We have not [inaudible] document. We have a document and a discussion. We need to be going around the discussion.

My last point, during the previous meeting I asked for a call for confirming or asking for new chair or how you call leaders of the working groups and I was hoping that you will be at the same time reopening the Membership of those groups. It is [inaudible]. It's difficult when you answer a new [phrase] that the possibility of [inaudible] is not to get [again] and [grant it] for everybody.

THOMAS RICKERT:

Thank you, Sebastien. With respect to the last point, Membership certainly is open for sub-teams or for the group as such, so this is not a closed club.

With respect to the leadership team, certainly we are always eager to hear volunteers that want to take a more active role, but it is my understanding that the current group of co-chairs and reporters is willing to stay on and continue with the challenge ahead.

That is also to say that certainly cognizant that there is a lot of work to be done, and certainly we're not yet there, but we shouldn't forget where we came from. Had you asked me whether we would get this far six months ago, I think I would have been optimistic in public and crying at home.

I think we are – we will see when we get the reports from the reporters that there are certainly issues and very fundamental issues that we still have to resolve, but if you look at where we came from and what we've done and the level of support for the general ideas, for the general architecture, that we've suggested I think that's more or less overwhelming and I wouldn't have expected that level of backing from the community so far.

With respect to new voices that we would like to hear, I think there is full consensus on that. Again, let me extend the invitation to those that are not yet on the list to make themselves heard and speak up, present their models, and you're certainly more than welcome. [inaudible] only go for the ones that are present in this room, but certainly also for the remote participants.

There was another hand up from Wolfgang.

WOLFGANG KLEINWACHTER: Yes, but just got moved in a different direction. I wanted just to make a brief comment to Jonathan and to one point. Can I do it? Okay. Yes, Jonathan, I think the same very positive development and I make the statement as a member of the community and as an individual member of the Board, and I compare this with the big reform process we had after 201, and 202, and 203.

If you compare this, this reform process was much less transparent, much less open. This was really a top-down process. The community was more or less excluded when a small number of mainly Board members created the GNSO and the CNSO and abolished the [inaudible]. All this was more or less behind closed doors and you have to see these differences and you have to see how far we have gone with this ICANN.

It's not yet perfect, and we have to move forward, but I think we have to realize that we are on the right track. We are moving forward. We have still a long way to go.

But you know one final point we want to make, because you said we are lobbying the Board and the Board is this and that. The Board is part of the community. I was a chair of the Nomination Committee. The Nomination Committee is composed by members of the community. So the community itself selects its leaders and sends them to the Board. It's a difference. I myself made the experiences. If you are a member of the GNSO and you're fighting for special contingency or if you have fair responsibility for ICANN as a whole.

And so far, the role of a Board member is certainly different from other members of the community. But I think one thing should be really clear. The Board is part of the community and the individual member of the Board are also part of the community. It would be not good to have the community here and the Board there. So we are sitting in the same boat. Thank you.

THOMAS RICKERT: Thanks, Wolfgang. Alan?

ALAN GREENBERG: Thank you. With regard to speaking order, if Sebastien had his hand up a week ago, then he should be before me and I don't see any real need to do anything as far as a draw. Flipping that order fixes that.

I'm a little confused as to when these things are happening. The agenda we have for the meeting is many sections of drafting response to the public. I don't know when these sales pitches – by the way, I find that term offensive – are going to happen, nor the reports from the reporters. Can we have a little clarity about what we're doing today, or at least what order those items are going in? Thank you.

SEBASTIEN BACHOLLET: Yes, Alan. To [point it with] on the agenda just before lunch break is the one where we're going to have these presentations of different models and perspectives. Okay, does that clarify?

ALAN GREENBERG: It doesn't quite sound like a debate to me, but yes, thank you.

UNIDENTIFIED MALE: It's not meant to be a debate.

THOMAS RICKERT: Okay. Unless there are more questions on how we're going to proceed this morning, I think we can now dive into substance of the response to the public comment report. Becky, you are the first.

BECKY BARR: Thank you very much. I want to thank all of the people in Work Party 2 who worked so hard to put these documents together. It was an enormous amount of work. We started from the premise that we didn't want to get directly to summarizing. We really wanted to go through the comments one by one and identify the major issues that came out of them, including any new issues that came out of it.

So you will see in the WP 2 Work Stream, the format is a little bit different than the tool and it is designed specifically to get the themes out on the table, the themes that were identified.

As a beginning point, I think that there was general support for clarifying the mission, having articulating commitments and core values in a clear way and creating fundamental bylaws.

A couple of topics emerged where we're going to have to do some thinking and refining. One was the concept of defined powers, ICANN's

powers being defined and those that are not enumerated or listed are not ICANN's powers. There were some questions from a number of commenters about human rights issues, so we have a sub-group working on specifically analyzing the comments and coming up with some proposals on the general notion that ICANN's commitments and core values should include preservation of variety of human rights. There were some issues with some suggestions that Contract Compliance should be part of the defined powers.

There were quite a lot of comments on the balancing core values test that is proposed in the language and I think that is something that will need further work. That's an open issue for us. I think that was a substantive issue that we're going to need to address. This is just the change from the test that is in the current bylaws about balancing core values with each other with the proposed new language. I would identify that as one substantive work stream along with the understanding of the human rights proposal that are there.

We got quite a few comments on the language that is included and has been included in the bylaws since day one, which is the private-sector led and some I think people suggesting clarification that this term has always meant non-government as opposed to commercial or anything like that. That is something I think that is clearly intended, but we need to see if we need that.

A lot of agreement on the general commitments and core values, except that there was a significant amount of discussion in the comments about the way a consumer choice and competition core

values are phrased and that's another area where I think we need to sharpen our pencils.

Strong support for the language regarding multi-stakeholderism that's in there. Request that we think more clearly about public good and public interest concepts that are in there. You will maybe recall that we're basically in a couple of days try to, in one place, suggest that multi-stakeholderism is a critical piece of identifying what the global public interest is and there were some requests for clarification on that.

We got a couple of comments on things that we're missing and a couple of comments on other ideas that included and will have those summarized.

But as I said, I think that the critical issues from the mission and core values discussion is making sure that we get the balancing right, talking about whether the defined powers are sufficiently inclusive when it comes to human rights issues. And then in particular, the competition issue. Now, obviously, that's [not] completely comprehensive. Just meant to be a high level summary of that.

In terms of the notion of having fundamental bylaws, there are a couple of major themes appeared in the discussion. There was strong support for having fundamental bylaws. There was pretty strong support for the bylaws that we have identified, proposed to identify, as fundamental. Although there was clearly some suggestions about thinking about other bylaws in that category.

Request for clarification on who can change the fundamental bylaws and how they might be changed, and I think that that's something that we necessarily will be getting into.

Obviously, there was some question about is the wording in the language sufficiently flexible to meet ICANN's needs. Questions about whether we included properly accounted for the IANA reviews provision coming out of the CWG.

Then, finally, there was quite a bit of discussion about what ICANN's place of incorporation and headquarters should be. On both sides of that issue, there were opinions as to whether it should or should not be a fundamental bylaw and what the position we should be taking, given that it's in Work Stream 2 as opposed to Work Stream 1 on this.

Again, I don't think that there are any irreconcilable differences in the comments that we received there, but of course an overarching topic of interest for this group is the headquarters issue.

The independent review, we got quite a lot of comments on this. General support for the concept that the outcomes of this should be binding. General support for the concept that the community should have the ability to bring, in appropriately balanced situations, bring independent review. Appropriate support for the kinds of funding proposals that we suggested to make this more accessible. Support for the concept of a standing panel, although there were comments about whether the size that we proposed is correct or whether it is adequate for the number of independent reviews that are going on.

Some important questions were raised by governments with respect to independent review, and I think we will have to address those. I had sort of forgotten, but I am pretty sure it's the case that governments have trouble agreeing to be bound by binding arbitration. The government of France raised that. I think that is a completely legitimate point that we have to deal with. As I recall from my days in the US government, the US government also couldn't agree to be bound by binding arbitration.

There are a couple of disruptive proposals in terms of really thinking more closely about focusing down tighter on the mission as the focus of what can be in the independent review. Let me just go through it.

Also, I think that there were quite a few comments on the diversity issue and a desire to strengthen the commitment with respect to how we ensure that the panel is diverse. You looked confused, Suzanne. Are you confused?

The only other question I want to focus on is something I think that we need to explain to the community better is how a panel that is a standing panel that is compensated by ICANN can be independent, and I think that part of that is just a discussion. But there obviously were people who thought that having this standing panel and having it compensated by ICANN would compromise the independence, so we have to make sure that we have thought through carefully through the independent safeguards that are in there.

Because on the one hand, there was strong support for the standing communicate. On the other hand, there was concern about

independence. So those two things interplay and I think that will be someplace we want to work to selection. Yes? Yeah, there were quite a few comments on the different selection proposals that are out there.

Okay, going on to reconsideration, several themes emerged. One was what's the role of the ombudsman in the reconsideration process, how you deal with the Board reviewing its own actions and whether there were conflict of interest issues, whether there should be some rules that said that Board members who had participated in one decision shouldn't be on the panel reviewing. I think that discussion, my own personal opinion, is a byproduct of the nature of the New gTLD Policy Committee and reconsideration going to that and whether there was some mechanism outside of that. I think the ombudsman has issued a report recently on that.

There were a number of suggestions about the standard of review and standing suggestions to both expand the filing deadline, to decrease the decision timeline. Then there were quite a number of comments on transparency in the reconsideration process, whether the document release policy is adequate and the need for more documentation with respect to dismissal by the [inaudible]. In this case, it was by the Board Governance Committee in the reconsideration comments.

Other general comments about avoiding frivolous [indexation], reconsideration requests, and dealing with as we will I think have to deal with in both the independent review and the reconsideration, blocking [inaudible] filings and abuse of process.

Again, I think there's some more work to be done on the reconsideration issue. There's also question of understanding what the reconsideration is and what the limits are. It is the Board reconsidering its own actions. Some people have suggested that there's a need for an intermediate process that is not the Board reconsidering its own actions, although I think that's something that we will be talking about in the independent review in terms of reform of the constructive engagement or whatever it's called process. That's my report.

THOMAS RICKERT:

Are there any questions for Becky? Obviously, Becky, you've done a sterling job in summarizing and responding to the public comments. I guess the question for this group is what we do as a next step. It is our impression that the reports we got on IRP and reconsideration are such that speak to details of the implementation of the two.

So we are inclined to actually take this to the next level. You will remember that we've discussed the idea of an iterative consensus finding. So we think that this is one of the areas, IRP and reconsideration, where we could do a consensus call of what we have and establish a sub-team on working on an implementation.

Let me just throw this out there and hear your views on this. We really need to make sure that we document progress on the basis of what we've got, but we've found the level of support from the community very encouraging. Certainly there needs to be details to be fleshed out more, but I think we should try to take stock of what we have and take

it to the next level. The next level would actually be taking this to the implementation stage.

UNIDENTIFIED MALE:

Just a quick addition. The intent is not to make any [consensus] for right now. It's just throwing the idea around that we think the maturity of the community feedback we're getting would enable to go one step further and that's something we will have to consider in our further deliberations this week, and of course we're [inaudible] initial comments on that assessment. It's pretty good to be seeing that the list of open issues, which are still to be dealt with within our group, which we'll need to build some consensus on are a handful of [inaudible] on very substantial proposals. It's a very good thing.

THOMAS RICKERT:

We have a queue forming. Kavouss is first, and then Paul. Please go ahead.

KAVOUSS ARATESH:

Buenos dias todos los amigos. Good morning, everybody. I think even though we need this not to make big changes, we need to see whether there are some [inaudible] fundamental question, which could be at least [inaudible] and if there is any problems, perhaps the possibility to resolve the problems. As I have read, to the extent that I was able to read, still there are some issues about binding nature. Still there are issues about number of the panel. There are issues about the way they are selected in the short list or the entities select them in a short list

i.e. ICANN. And the issue of divergence from the geographical location point of view.

In that category, the binding nature is the first one. The second in number. The third one is the way they are selected and geographical distributions. And there was one comment about the reason why international arbitrators [are there]. [inaudible] comments to see whether we can reply, whether we can [inaudible], or whether we can remove that.

But that is one of the main issues, not only for the CCWG, but it has direct impact on CWG and it has indirect impact on the activities of ICG that we discussed yesterday [inaudible]. So I don't go further than that one and I'll just leave it to you to see to what extent these views are shared. Thank you.

THOMAS RICKERT:

Thanks very much, Kavouss. That's well noted. Let's hear Paul now.

[PAUL WILSON]:

Thanks for that. I'd like to congratulate everybody who's been involved in the working party, particularly for [inaudible]. I've got one general observation for today's discussions and it has a subset relationship to the independent review panel. And because you're talking about moving to implementation discussions, I feel I should raise it now because I wonder whether it's the right time for implementation.

It really comes around to the feedback you receive, Becky, about diversity of the members of the IRP. And if I can just make my general observation, if I may, in our consideration around ICANN accountability. One of the challenges I think all of the international multi-stakeholder bodies have is that they inherently come from a regional technical community background and then reflect the certain values that emerged out of that and the people who are participating in it. And also, for that matter, the cultural comfort of debating in English in a pretty robust sort of way.

The consequence of that, if you look at it in terms of Board participation and all the multi-stakeholder bodies, etc., is that we have a big predominance of North Americans. Well, frankly, a big predominance of Anglo-Saxtons and Northern Europeans. And if we look around the room today, with one or two exceptions, we have that same combination.

When one starts to look at the accountability of ICANN and some of the models we're talking about, when you talk about basically nominees from community members being to the ultimate power, again I worry about what it looks like. I'm going to use a term just to be a bit provocative. The same cabal of an activist group from North America and Europe.

Now, I make that point probably because I spend a lot of time in China at the moment, and if you look at this from the perspective of the country with the largest number of Internet users in the world, this thing doesn't look international.

Now, I've got lots of criticisms of Chinese participation in trying to get engaged more Chinese people to participate. We can talk about that as well.

My real question, I'm raising one issue for us to consider generally in terms of the model of accountability around the Board, which we'll come to later today. But the first part of my question to Becky is this issue of looking sufficiently international, particularly for communities of people who are not naturally going to participate in these sorts of models, but have to be more invited to participate. How do you see that issue in terms of the feedback, and have we thought about that sufficiently to be ready to go forward for planning implementation?

BECKY BURR:

You are quite correct that the diversity of the panel was a major substantive issue. I hope I noted that going in, but that is clearly something that people have strong feelings about. There were some comments to the effect that it's hard to achieve and there needs to be flexibility. I think there were more comments to the effect that we had to ensure ultimately that we did have the kind of diversity that would make people feel comfortable actually using the tool on the notion that there were arbitrators available to participate on the panel that would understand where they were coming from both culturally and from a business perspective and all of those things.

I think on balance the thrust of the comments was to go to a more mandated diversity than aspirational diversity. I totally agree that that is not something that we'll get necessarily by issuing a request for

expressions of interests, that we will have to affirmatively go out and seek out these people.

Now, there is no doubt in my mind that there are people with the skill set we need in every part of the world, but it will be a critical task to go out and affirmatively go out and engage those people and bring them into the people and ensure that they're available.

Just on this point, I think that the diversity actually goes to the legitimacy of the process and we can't miss that. If the people who need to use this tool don't feel that their perspectives are going to be understood by the panel, it's not going to be legitimate. I guess I think that is implementation in terms of the how you go out and actually identify those people and bring them in. And I think that the balance of the comments are very strongly in favor of doing everything we can to ensure that there is the diversity.

From a consensus perspective, I would say that that is something that emerged. The focus on diversity has to be very real and very concrete and very outcome-oriented.

[PAUL WILSON]:

Mr. Chairman, just to say that if that was then included in implementation, if that proactive approach was included in implementation, I would be [inaudible] proposition of moving forward with IRP for implementation planning.

THOMAS RICKERT:

Thanks, Paul. I guess that's an excellent suggestion. I think there is huge agreement on the need for diversity. The devil is in the detail on how you achieve it, but I think we all – I've seen nobody disputing the fact that we need to make for diversity more robust. But if we make that part of the plan for the implementation, I think we would be good to go.

So it needs to be there as a feature as well as the points that Kavouss thankfully raised, so all these remaining questions are not being swept under the carpet, but they're on the plate once we refine and flesh out for operationalizing this.

Again, we're not going to make a discussion today. We have two more speakers in the queue. After those speakers, I'd like to end the queue and move on to the next subject. First is Greg, please.

GREG SHATAN:

Thanks. First, I'd like to note that's the first time in my life I've been referred to as an Anglo-Saxton. My [inaudible] would be so proud. Secondly, I think that we shouldn't get too hung up on the term implementation as an active member of the Policy and Implementation Working Group. I encourage us not to.

I think what's important in talking about consensus is trying to gather where we are up to a point and come to consensus. We're at that point and then work on things that are beyond that point and not go back again over the things that we've agreed to. Essentially I look at it as putting a stake in the ground that says we've gotten to this point and

that work we'll do from this point on is based on what's taken place before. Whether we call that next level of work implementation or not I think is beside the point, but we know that in this community the word implementation can cause an entire group of people to get together weekly for 14 months, though let's not have that happen.

Lastly, if we are listing things that need to be dealt with on the IRP point, I'll just briefly mention that the issue of – I hate to use another word that will cause us to toggle – enforceability, is whether an IRP is enforceable in court and whether there perhaps are some IRPs that are and some that aren't. That was a subject of a discussion between Malcom, [Fadi], and myself and some others which has not yet been certified to our council for discussion in our council. I know outside council are being very judicious in making sure that they don't jump the gun on questions no matter how interesting they may be. Thanks.

THOMAS RICKERT: Steve?

[STEVE]: Thank you. Becky, with respect to the questions about IRP and reconsideration, I too felt like we were on the right track. But the comment that came in, the questions, the impact testing that came in from the Board last night contains and additional 23 questions on the IRP, nine additional questions on the reconsideration request, and most of the questions are loaded with presumptions of significant concern about potentially bad things that could happen, costs that

could be incurred, compromising the Board's fiduciary duties and they're loaded with careful legal analysis that we've seen before from ICANN legal.

Undoubtedly a lot of work went into that and a lot of preparation. It's unfortunate that it arrived just after we had done the work of going through this because we're going to need to practically start over on IRP and reconsideration, as an example, to cover those 30 questions.

I really would encourage ICANN legal who composed the questions to share with us what their view would be, because I have a feeling that of those questions ICANN legal probably has an answer in mind for not only what they believe we should do.

UNIDENTIFIED FEMALE: We can't guess what it is?

UNIDENTIFIED MALE: Yeah, we can guess. They're very thoughtful questions. I'm not being critical of what the questions are, but I believe that introducing them as we have after we've analyzed public comments puts us at significant risk of prolonging the date by which we're going to get our second round-out. Playing ping-pong or tennis with ICANN legal is not going to be a game any of us are going to enjoy. It's far better for us to ask them to put those cards on the table, tell us what answers they have in mind or what solution they would want to do. Does the Board have a few as to what it thinks the IRP should look like? Is there a

parallel process where the Board already knows what it thinks the improvements are?

Let's not play this game back and forth. Let's hear that now and have an explanation that we can then shape into our second draft for public comment. I appreciate all the work that went into that, but I'm absolutely positive there's more than meets the eye in those questions. Show us the rest of it.

THOMAS RICKERT:

Thanks, Steve. I'd like to make two points before moving to Chris who has raised his hand. One on policy and implementation that Greg mentioned. So this is sort of an advertisement for the GNSO council session because we have the report from the Policy and Implementation group, so if you're interested in that subject.

And I'd like to point out that when the policy/implementation work in the GNSO Council or in the working group started, it was [inaudible] policy versus implementation. Now we think policy and implementation. These go hand in hand.

As we've previously said, even when we start operationalizing our recommendations – not to use the word implementation – we still need oversight from our group to ensure that the operationalization is done in the spirit of our recommendation.

So I think this can be taken for granted, but at the same time, we need to make a determination as a group at what point in time we hand the task over for a different resource to be fleshing out all the details to

make it work. That's why we are asking the group to consider capturing what we have as consensus to them, put it in the hands of experts or other team to be working on to operationalize.

When it comes to the questions from the Board, and it's a little bit unfortunate that Bruce Tonkin who is our Board liaison is not with us today, but I have very vivid memory of what Wolfgang just said, the Board being part of the community.

So if the Board takes the liberty of sending us a long list of questions after the close of the public comment period, that begs the question of why the Board, if it feared so much as being part of the community, requests or demands this special treatment.

I think I'd like to have answer. Maybe Chris can enlighten us on why we – I'm just speaking my personal capacity now. We have discussed the process. We have discussed stages to be further advanced for the Dublin meetings. A lot of questions coming in late. We actually need to revisit a lot of things we thought we could close during this meeting. I find this unfortunate, to say the least. Chris?

[CHRIS DISSPAIN]:

Well, thank you for setting that up so nicely, so that I can respond. I'm frankly amazed. We said in our public comment that we would be sending a list of questions that would go to an impact analysis that we thought would be being done by the CCWG. I can also tell you categorically that there is no hidden document here. The Board doesn't have answers to the questions. The Board only saw the

questions itself a couple of days ago, so that we could check through them and make sure that we were comfortable asking them in the first place.

I apologize if you think that us sending them is some sort of breach of process, but actually, we're trying to be – I'm speaking as a Board member, as opposed to personally – trying to be helpful and provide a list of questions that we think are important.

And if you're seriously suggesting that had we provided those questions two weeks ago as part of the public comment, that is a point that you want to raise and [not] out in this group. We said in our public comment we think you should do an impact analysis of the recommendations that they end. And by the way, we're working on some questions. In fact, on the list, a couple of people posted saying we note that the Board has said that we're going to be sending some questions. Hope they'll come soon. Which is exactly what we've done.

So if you want to ignore them, go ahead. Ignore them. But frankly, they're intended to be helpful. And I resent the characterization, which I may have misunderstood. It sounded pretty much to me like a characterization that there is some hidden agenda here and that of course we've already got the answers and we know what shape we'd like the IRP to be in. Frankly, that is, to use a quaint English term, bollocks.

We have absolutely no clue. We are part of this process as a Board. I'm more than happy to formally apologize on behalf of the Board if you genuinely believe that by not sending these questions as part of the

public comment period that that's in some way offensive or intended to derail the process. It is not.

And quite frankly, the sooner we all of us stop drawing a dividing line between the Board as this strange ogre that sits in a closed room and is out to get us all as a community and acknowledge that the Board is just as much a part of this community as the rest of us are, I'm put onto this Board as a representative of the ccNSO and I spend most of my time working with my colleagues in the ccTLD community to ensure that their interests are looked after on the Board, despite the fact that everybody seems to think that I'm not allowed to do that because I'm supposed to look after the corporation.

So I'm sorry if I'm going on too long, but I'm actually personally offended that you would imagine that I, amongst my – and the rest of my Board colleagues – would have got some kind of weird hidden agenda going on here to try and force an outcome that we think is the right outcome. That is not correct and we're trying to be as helpful as we can as a Board [inaudible] as I'm not sure. Thank you.

THOMAS RICKERT:

Thanks, Chris. Maybe a minor point of clarification. I was not asking for an apology, but for clarification. You were saying [inaudible], so I think you will not have heard from me any allegation or suspicion of conspiracy, but you might wish to check the—

[CHRIS DISSPAIN]:

I was talking to the room, Thomas, not to you.

THOMAS RICKERT: I would suggest that we do discuss how we best go about with this in the session that we're going to have with the Board. I think that's the right place for us to have the discussion. And certainly it is not our intention and I guess not the intention of the CCWG as such to ignore the questions that you raised, but for them to work on them. [inaudible], you wanted to add to that?

MATHIEU WEILL: No, just to [inaudible] what you said. It is no intention to ignore any set of input from anyone in the community, nor give any [inaudible] to any of the contributions from the community. However, I think part of the reaction is based on the sheer number of questions. There are 88 questions in a 10-page document. All are open questions, why we were asking for feedback regarding our proposals. So that puts us in a very difficult situation in terms of timing of how we plan to address this. So I would very much [work on] and we'll have this discussion further to discuss with the group how we interact with the Board about how we – I mean, the kind of interactions we can have in a productive manner and in a manner that does not create any further delay, or undue burden. These [inaudible].

Imagine if we forwarded these questions to the legal advisors. I can tell you we're [thinking about] millions. That's the kind of concern I think we have and we need to clarify this with the Board in the [inaudible] session probably on [Sunday].

CHRIS DISSPAIN:

Thank you, Mathieu, can I try just to help you? Can I just say this? I don't think that these are intended to be a series of questions from the Board that the Board says, "Answer these questions to our satisfaction." The intention here is for us to simply say to you, "Have you asked these questions? Do you think you should consider these?" If you decide not to or you think that some of them are irrelevant or whatever, that's fine, but all it was, was a sincere attempt to say, "Have you looked at it from this point of view and what do you think the responses are?"

So it's not about getting legal advice, it's not about et cetera. It's an attempt to say, "Have you looked at it in these particular ways?" I'm [inaudible] send you more about it and I'll happily discuss it when the Board and the CCWG makes, but if there's anything I can do – and I'm sure I speak for my fellow Board members – to help in any way to clarify what we said and why we said it, happy to do it.

THOMAS RICKERT:

Thanks, Chris. There are a couple of hands raised that I assume are from individuals that want to speak to this very question. You will remember that I had closed the queue. I think that for this agenda item, we're trying to discuss the outcome of the public comment period. Can I ask for your permission to have this discussion when we meet the Board? Is that okay? I would really like us not to be sidetracked now with this Board CCWG interaction, but focus on the response to the public comments. Not happy with that approach,

Steve? Then I'm afraid we have to go through the queue. [inaudible] lowered your hands. Alan and Kavouss had raised his hand and Steve. And if I could ask you to keep it brief, please.

ALAN GREENBERG: My comment is very brief. Just a clarification. What I heard was not that people think the Board had answers to these questions, but the words were I believe that they believe ICANN legal may already have some suggested answers, and if so, they should be shared.

THOMAS RICKERT: Thanks, Alan. Kavouss?

KAVOUSS ARASTEH: Can you clarify you're deciding to raise these questions to the Board to get answers from them? What is the issue of the Board [inaudible] answers from Board or from the legal part of the Board, and the participation of the Board and public comment. You are raising several questions that are [inaudible]. What is your next action proposing with respect to this summary document of comments in regard to the Board?

THOMAS RICKERT: With respect to the Board, we should have a discussion with the Board. We have a session scheduled and we will bring their list of questions up when we meet with them, but I would suggest that this group continues discussing the achievement of the sub-teams and

analyzing public comment and we are not going to focus on the Board questions now, but we will do that in the discussions with the Board and separately as the CCWG or sub-teams Steve?

STEVE DELBIANCO:

Thank you. Just a quick follow-up. Chris, there was never any implication of hidden agenda, but there is certainly in these questions further concerns when ICANN legal asks, “Have you considered, etc., etc.” More than likely, ICANN legal has considered it and I would love to learn what the rest of their considerations are, and there are going to be several questions where I would turn to ICANN legal who wrote the document and say, “What do you think is the right path?”

What you said earlier, Chris, is that you just saw the questions. So it’s abundantly clear the Board didn’t write these questions. ICANN legal did. These are employees of the corporation and the Board has a fiduciary duty to the corporation as well as duties to the community.

But in this case, the Board has stamped ICANN legal’s questions and called them the Board’s questions. That’s your prerogative to do that. I understand and perhaps the Board added a little something to it, but it does create something we’ve talked about over and over again as the difference between – Wolfgang talked about the Board is the community. Well, in this case, I don’t really think it is. In this case, the Board stamped the corporation’s legal department’s questions and said they’re the Boards process.

UNIDENTIFIED MALE: And what's the problem?

STEVE DELBIANCO: So I don't know why we would then probe. It's not a problem. It's just that it wouldn't be productive to have that dialogue with the Board over these questions. The Board didn't write these questions. ICANN legal did. They're in the room. They're here all week. We could have some rather productive sit-down sessions with ICANN legal and the individuals who wrote it, and I believe we'll learn a lot more than we will in asking the Board. The Board is in between the community and the corporation and has split duties, but it's ICANN legal whose questions are in front of us now. Thank you.

THOMAS RICKERT: Thanks, Steve. I saw that more of you have raised hands. We really have to draw a line here. Let's discuss this when we meet the Board. I think that's an important discussion to have with them on process as well as on substance.

I would like to invite Jordan to the table. The next part of the session is going to be chaired by Leon.

LEON SANCHEZ: Thank you very much, Thomas. Jordan, could you join us, please? And thank you very much, Becky, for this update and the great work that the work party that you're leading has done. Next, Jordan will provide

us a walkthrough what their working party has done with regards to public comment. Jordan, could you please?

JORDAN CARTER:

Hopefully a little bit quicker than a walk. Maybe a skip. On the screen, could we have the summary document that we did from Working Party 1? The first thing I'd like to do is publicly thank all the volunteers in Work Party 1 who did the actual analysis. I hope I don't miss anyone out, but Fiona and Mathieu and Roleoff and Steve – did you do some? And Avri. There are probably more volunteers. Thank you all for doing the analysis.

The second thing is that the overall – at the very highest level, the community feedback was positive on the questions that we're going to work through. The third thing, digging into a little bit more detail, is that the responses on the community mechanism were confusing or complicated to draw out because of our failure to actually have all the questions on the webpage until right at the end of the public consultation. So I'm going to come back to the community mechanism saying we did a more analytic take on the comments. That was a little bit more like what Becky and the Work Party 2 team did.

So if I come back to question seven, and if we just quickly jaunt through questions eight onwards, all I'm going to do is talk at the headline and re-raise the main issue or issues that came up in the public feedback.

So under the heading for question eight – is that what’s in front of us. Can we scroll down to that one? Which was on the budget – rejection of the budget or strategic and operating plans. The main theme that came through, if you like, was that this power if it was going to be implemented needed to be done in a way that didn’t impact negatively on ICANN’s operational effectiveness, and that people wanted to see amendments to the planning and budgeting process that meant that feedback was taken on Board before these plans were finalized, so that it was less likely that there would be vetoes.

Now, there are already extensive community input systems for the planning process. There are working parties, there are public comment periods, and so on. We’ve identified I think as a Work Stream 2 issue further improvements to those. So some of that feedback has already been taken into account and I think that there was reasonably favorable commentary here and the concerns were not against the power. It was making it workable. So our responsibility if you like is to make sure that in the next draft of our proposal [we] adjust those effectiveness concerns.

If you scroll down to the power to reject changes to the standard bylaws, which is in front of you on the screen, which is good, the main issues or concerns that came up was the desire on some for some more time for the community review process, so quite a few comments along those lines. Once again, the impact on operational effectiveness. If the bylaws change was implemented and then reversed by the community.

On the time thing, I think when we do our next version of a report, it will be helpful to set out the whole flow of bylaws changes because bylaws changes don't suddenly magically appear and then the community would only have two weeks as per this model to say no. They come at the end of quite an involved process and a 40-day public comment period.

So if we set out the full picture of the process, it may be that people will see that they've already had weeks and weeks and weeks of consideration for any bylaws change, and that the chance at the end of the process to say it isn't supported can require less time. It was a pretty solid view. So that analysis I'm [inaudible] might be wrong. It may be that we need to draw out the process. Some were suggesting 60 days. Some were suggesting until the next ICANN meeting. It's a topic for further discussion.

If we can scroll down for the summary for question ten, the fundamental bylaws. People were again in favor of this, and the similar queries were on the impact of ICANN's operational effectiveness.

It's a little bit hard to judge given that we don't have fundamental bylaws at the moment, but of the 22 comments, 21 were in favor broadly and four [inaudible] concern. So those are set out for you to read.

If we flick down to removing individual ICANN directors, once again these are pretty favorable. The summary presented said that the main

issues or concerns are dealing with the NomCom and we know we need to deal with the NomCom [inaudible] process.

The other theme that came through was that there needs to be some equality of the process or treatment between the various SOs and ACs to make sure that some Board members are not uniquely exposed to removal I guess through lower thresholds.

If we flick down to the next one on recalling the entire Board, there was once again pretty high – so all of these powers have very high levels of support. High levels of support there. There was a suggestion of a higher threshold of Board removal. That stands on its own as a comment.

In terms of the AOC incorporation to the bylaws, once again there was broad agreement to this. The main issues or concerns that came through here was the issue of the location of incorporation and the fundamental bylaws or not. The question of what happens to the AOC. So it's a bilateral agreement between the United States and ICANN. If we do proceed as recommended and as the public comment support to incorporate these commitments into ICANN's bylaws and the reviews and so on, it may be time to go to a more concrete proposal that the AOC itself should come to an end as part of the transition.

The third theme that came through from Avri and Steve's summary of this was the composition of the various groups and how is full diversity of the community handled. I'm pretty sure that that refers to the AOC reviews that are set out.

If we can go back up to the top, to the community mechanism, this is where the broadest set of comments came through. There is pretty broad support for most ingredients of the model that the CCWG proposed. It's kind of fundamentally alternative proposals in terms of embodying the global multi-stakeholder community with this array of powers was not received. People generally support the direction.

But the comments do show the need for some clear decisions around enforceability and what this model is that we're talking about. The word Membership conjures up concerns in some parts of the community and that's clear.

We did this as a two step. We did the analysis of the comments. I don't think it actually ended up making it into the document that was circulated in the same place, but the analysis of the comments was down along the lines that Working Party 2 did. Please go and have a look at it on this. It's available. It's important to test out the analysis.

In terms of the model that was presented broadly, people seem to feel that the SOs and ACs was a reasonable representation of the community for imbedding the accountability powers.

Where people made comments about the question, Membership was preferred as an approach to Designators or to neither. That came through quite clearly in the public comments. Concerns centered mainly on the implementation details of that model and a range of concerns that we've talked about quite extensively were listed there at the bottom of the first page of the summary. More detail was a reasonably common core here.

In terms of the voting [waits] that we had proposed for the SOs and ACs, opinion was kind of split. About ten people commented in favor of it. Around eleven wanted changes. The changes, some were seeking more influence of the GNSO and sometimes that was just more influence of the GNSO. Other times it was the GNSO is broad and diverse, so we need more representation to be able to reflect that diversity.

The other set of comments was a range of comments around the role of the GAC, RSAC and SSAC where the RSAC and the SSAC do not want it to be members, according to their comments. They wish to retain their advisory role and to have influence through the quality of their analysis and advice, not through casting a vote. So exercising these powers.

And in one way, if we followed their wishes in this regard, it would mean that whatever the other array of ACs and SOs end up with votes, our proposal said they would all have the same equality of influence, which is a point to note.

If you look at the enforceability of community powers, it seems to come through in the comments that people understood that our Membership base [inaudible] enforceability. That mirrors our own discussion. People understand I think that that model gives that power.

This is where the responses and the comments were difficult to count, if you like, because there was one count with ten people explicitly saying that they have a preference for enforceable. Four people clearly

saying that they don't support them. [inaudible] remarks and I think it's there highlighted in yellow.

There are a range of other comments around this or around the implementation of this, the Membership model that we need to come back and discuss.

In terms of the actual mechanism itself, the idea of having a community mechanism, there was general support for that. One point was that it still isn't clear I think in our minds or in the community's mind whether what we're trying to do is have an assembly that casts these votes where people deliberate or whether it's simply weighted votes that the SOs and ACs do individually. I think that's something that we need to tease out further.

I just want to finally mention some overall or general themes and some of this stuff came through from our advisors that were part of this process. The importance of avoiding insider capture of ICANN or its accountability mechanisms, whether the SO/AC system is itself a broad enough linkage to the global multi-stakeholder community or whether we need to take a more fundamental look at that.

This didn't only come from state, so mostly it did. For effective government involvement in ICANN, especially on public policy matters and not compromising this through the changes that we are proposing.

The idea that as well as linear accountability, which creates our "who watches the watchers" issue, that there has to be some mutuality of

accountability. Part of accountability is holding each other to account, asking questions, answering questions in public fora and stuff, and that's where the mutual accountability forum suggestion is worth picking up, because in the end, we have to watch each other. There's no oracle outside the ICANN system who we can just say, "Please solve this problem for us." At least in my opinion.

There was a desire for courts to not be the arbiters of ICANN policy decisions. I can't imagine there's anyone in the room who disagrees with that. There were a number of comments about improving and safeguarding diversity of participation.

The last point I'll make, and I was only reflecting on this when I was cutoff from e-mail while on the plane really and not having the stuff flowing at you all the time, is that there's a need to be really – we've got to disentangle what the community's concerns are with ICANN's general work and how to improve that [inaudible] policy making processes and the substantive work of the ICANN system. And this quite narrow and specified set of accountability processes.

There's a lot of the comments that were made on those general themes, especially about the diversity stuff, are kind of supportive of ICANN improving its engagement with the Internet community broadly read and making sure that it gets all of the input that it needs to do its policy job right.

It feels to me like that's a little bit beyond our remit. That's not our problem to solve. It's helpful to just bear that in mind when you're reading some of the comments.

That's kind of the quick run-through of the summary, Leon. The material is there to read. One of the things we'll need to decide is how to go about this funding, if we're doing anything in writing.

LEON SANCHEZ: Thank you very much for this quick run-through, Jordan, and thank you for all the work that the working party has done so far. I'd like to open the floor for questions or comments with regards to what we just heard from Jordan. I see that we already have a hand up by Steve DelBianco. Steve, is that an old hand or a new hand?

STEVE DELBIANCO: Old hand.

LEON SANCHEZ: All right. Are there any questions or comments with regards to what we just heard from Jordan? Kavouss?

KAVOUSS ARASTEH: Thank you very much. Yesterday, we in ICG discussed the process which is before us and one of the elements of that process is compilations of the proposals from the three operational communities. In particular, the area of the CWG [inaudible] naming community.

In that discussion, I and [inaudible] submitted a very brief review of activities of CCWG which might have impact on ICG activities and we

refer to the five areas that CWG asked CCWG to include the community empowerment with respect to that.

When we came to various options for implementation of that – in particular, the Membership model – in the UA there was a lot of questions raised and we said that this issue is quite clear how to be implemented within each SO and AC.

Until the time that this question is not properly answered, the output of the CWG would face difficult to be considered and included in the report of the ICG to IANA – oh, NTIA, sorry. NTIA. Not to ICANN because these are reports directly to NTIA.

So received a lot of questions, unanswered questions, about the Membership model, about a designated model, about the unincorporated association and about the independent review panels, which all these connected directly to the five areas that CWG wish to be Empowered in order that the proposal that has been made with respect to the naming community functions.

We, too, were entrusted or assigned to raise this issue with you in the course of today or some of the days, possibly as soon as possible, in order to have feedback to the ICG. In fact, a volunteer could [inaudible] establish to further enforce these collections. Still [inaudible] liaison but we have a few others helping us. So for us in ICG, the issue of Membership model is not clear and the issue of Designator model is not clear, and also the new notion of volunteer model [inaudible].

So we need to have some clarification, and I saw here there were many questions about unincorporated association. Apart from that, in some particular AC, it might be difficult to take any of these approaches because of the nature of that particular AC. So the question was raised that if that AC would not wish to [be member] at all, could it continue to be a Designator and exercise its power with respect to and in conjunction with the others who will be the member and how it works? Do they need to have unincorporated associations with them?

And the last question was briefly discussed that delegation of authority that a particular AC delegate his authority to one or two or three persons within that AC. And from viewpoint of some entities in some of the ACs, it may not difficult to delegate that authority if it goes to the binding issue and it goes to the court.

These are the questions, but still the issue of the three models and unincorporated association is not clear, and in fact, if you remember [inaudible] I have asked in Tableau 4. In that Tableau 4, all seven ACs and SOs are on [inaudible] side and on [inaudible] side. We have various models and we have various powers and we want to know which of the ACs and SOs is able to exercise this power of each of these versions. Remember, being Designator, being voluntary member. And with respect to the six or seven areas, previously we have six areas, but now recently implicitly another area has been added to that, apart from the bylaw [too], apart from the budget and the strategy plan, and apart from the removal of the Board, [individual Board]. They have

another one. Review of the IANA functions. That has been another area.

So we would like have a picture of a [inaudible] form to see who and what condition and under what model is able to exercise what power. This is not clear. And until it is not clear the ICG will be in serious difficulty to include the report of the CWG into this combined or consolidated report. Send it to the NTIA and it has direct impact on our timing.

At NTIA, like CCWG, wrote a letter to ICG and asked time for implementation, and at this time, we have no idea about that. Sorry to making this, but that is a mission was given to us. [inaudible]. Thank you.

LEON SANCHEZ:

Thank you very much, Kavouss, for your comments. They are duly noted and we will of course include the discussion in the agenda items for our working sessions this week. Maybe, Jordan, would you want to add anything?

JORDAN CARTER:

Just two points. I'm aware that the co-chairs are meeting with the ICG chair at some time in the next five or six days. The other point is that all these aspects of unclarity come from the fact that we've had only one public comment and we haven't finalized our proposal yet. So all of those details have to be resolved and answered as part of the work we are doing. We will get there on it. Yes.

LEON SANCHEZ: Thank you very much. In the queue I have Paul.

[PAUL WILSON]: Thank you, chairman. I'm following on from my previous comment. First of all, Jordan, to you and all the colleagues who have worked on this, congratulations on what's been an intense piece of work. I take my hat off to all the effort that's gone on.

I have been a participant, like many [inaudible] by the number of e-mails, and at the beginning of this process of thought, what was emerging from my experience of the organization in the community was somewhat natural. This was the sort of thing that would emerge.

I have to say now, I would just pose the following questions that worry me now increasingly. They're unintended consequence questions. It strikes me with all due respect to Larry and Fiona behind me that over the last 15-20 years the community's view of accountability on some level [inaudible] United States government was a series of American companies and more advanced civil society actors thinking that if they could – I'm exaggerating to make a point. If they couldn't get what they wanted in ICANN, they could always go to the US government or to the Congress and ask for at least some public form of accountability. It wouldn't necessarily get answer, but there'd be some public way of going. [inaudible] two-part process. And some governments I think thought the same thing.

Now if we're moving now away from that and saying there isn't accountability more to the community and people feel that's being replaced.

With the GAC [inaudible] saying it won't put up nominees of some sort, with the ccsc clearly not being very clear what they want, but being uncomfortable, the question I'm worrying about now is whatever nominee model it is out of the three, does it start to look like those who are only motivated around who are clearly motivated to have certain types of outcomes and who come again from a very narrow community.

Looking from outside, when the perspective is who is ICANN accountable to and people do analysis of who's ICANN accountable to and they take all these legalistic mechanisms to the nth degree, does it end up being the same eight and ten people? Right.

So instead of us being more accountable from an outside perspective, it looks less and less accountable. It looks more and more [inaudible] dealing of a certain community.

I don't know the answer to this, but I just wanted to share it. As I've watched the process emerge, I've been getting to worry that that might be the practical outcome of other people's analysis and it could end up with a devaluing in international arena of the ICANN model, that it's not an international multi-stakeholder, etc. When you really go through the analysis, it's the same eight people [inaudible] make decisions.

I'm sorry it's not very optimistic, but I am interested to see how we can avoid that sort of analysis anyway.

LEON SANCHEZ: Thank you very much, Paul. Next in the queue, I have Mathieu.

MATHIEU WEILL: If I could just respond to Paul, it's a really important question and it kind of fundamentally has to be answered by this process. If we're creating a system that makes it worse, if you like – if we're replacing the US government link with an internally defined system of mutual and linear accountability, it's pursued broadly to make ICANN's accountability worse, then we need to do what [AUDA] said in its submission which is start again.

Now, that isn't what the community feedback that we've had suggests. I know you said didn't have an answer. I wish you did. But I think – my hope and intention certainly I think shared by many here is that the model that we do end up settling on or trying to come to consensus around is going to involve at least the ICANN set of stakeholder – not really fair to say stakeholder groups, but almost like stakeholder envelopes or stakeholder organizing. By creating more separated set of powers within the ICANN system, that by itself should help the corporation be more accountable. I can't really go any further than that, though, other than to suggest that the concern that you're raising – and if we can't come up with a convincing way of doing it, it does put the transition at risk.

LEON SANCHEZ: Thank you, Jordan. Did you want to react to that, Paul?

[PAUL WILSON]: I think it's a good answer, and I'm happy to contribute any way I can to help have a solution. And I just want to clarify, simply because I happen to sit next to Disspain, I've got no association with AUDA.

LEON SANCHEZ: Okay, okay. Next on the queue I have Mathieu.

MATHIEU WEILL: Yeah. I think it's kind of a follow-up to this discussion and a reminder when we're discussing about replacing of course the ultimate accountability mechanism that may have been perceived as the [NTIA]. The community mechanism, whatever it is, is not the only mechanism we're setting up. The IRP is the key mechanism for accountability to any stakeholder who is affected. And this is the crown jewel as we've said already. And this is the key accountability mechanism for stakeholders that are outside ICANN, and hopefully we can bring them in. That's one aspect.

Second aspect is I think we're starting to see through these concerns we're receiving how important it is that the community mechanism, however we define it, ensures diversity of representation of the SOs and ACs, but also other criteria, which we still have to work on. And of course that the SO/ACs themselves need to be applied the same

accountability principles that we've been discussing from the start for ICANN: transparency, a certain level of consultation, some independent criteria, checks and balances, and so on.

We have been building our proposals on a mutual accountability principle and we need to make sure all the sides obviously are accountable to each other and not to an external body, which is certainly the fundamental approach we are taking and that's getting a lot of support.

I'm really struck when looking at the comments on Work Party 1 and the community powers and the community mechanism how much on the powers themselves we're very close. We're very, very close. There are some details to be worked out. Just the NomCom director removal aspect, which we know we're not very mature on. But the rest is a lot about details of how we're making this work, and most of our discussion obviously needs to be on the model discussion and that's what we're about to have.

After the break, hopefully we can move to the [speech] sessions after the break. And Paul, if you ever have ideas by them, you're welcome to join the [speech] session to share your view. I think that would be extremely valuable.

LEON SANCHEZ:

Thank you, Mathieu. I have many people in the queue, but I don't know [inaudible] want to react to, what [Mathieu] just said. Yes? Okay, go ahead.

KAVOUSS ARASTEH:

I apologize to ask for the floor for the second time, but I have another point to discuss. CWG has sent its output to four chartering organizations. Expect receiving reply from these four chartering organizations by 25th of June, 2015. Yeah.

These chartering organizations, which are discussing – hopefully they have read fully what was the report – they would mention that. Yes, possibly. We understand that the procedures is good in place, but they would like to know about its implementability, not the time of implementation. It's implementability.

The reply would be yes there's implementability depends on some other things which is not clear, like Membership of or Designator model, [UA, AIB, IRB] and so on, so forth. Then it would be very difficult for that chartering organization to give a clear reply to CWG when it does not know whether whatever has been produced or suggested. Even if everything is okay, is [inaudible] is not implementable. Thank you.

LEON SANCHEZ:

Thank you very much, Kavouss. Next on here I have Matthew Shears. Matthew?

MATTHEW SHEARS:

Yes, thanks. I just wanted to just encourage everyone to go into the actual comments and the analysis that we did of those comments as

Jordan recommended. What doesn't come through in that summary is the diversity of questions and the need for greater detail. This is an obvious statement, and Kavouss has mentioned this, but we do need to really spend some time looking at how we detail out the proposals, so somebody who is outside of this group understands exactly what we're talking about, because those questions pointed to a lack of comprehension, understandably so, of these models because of their complexity and we need to be absolutely clear. Very practical delineation of what the powers are, how they're implemented, how you form a UA, how you deal with the Membership and this is just a different approach we need to take in the next round. Thanks.

LEON SANCHEZ: Thank you very much, Matthew. Jordan?

JORDAN CARTER: Can I just say I completely agree with you, Matthew, and if I've got one fear or reflection on this process, I'm something of a perfectionist myself and I'm a little bit terrified at the pace at which we're being required to work. I think that if we had taken the time to do what you say for the first version of our proposal, we would've saved ourselves a lot of time, a lot of heartache, a lot of unnecessary concern.

I can't really say more than that. We have to take the time to make sure that whatever consensus we come to on the next version of the proposal is presented in a way that is less dense and less insider

legible and outsider obscure. I think that's the test we have to set ourselves.

LEON SANCHEZ:

Thank you, Jordan. Next in the queue I have Alan Greenberg.

ALAN GREENBERG:

Thank you. Part of what I'm going to say is I guess extracted from my spiel, my sales pitch, but it's very relevant to this current discussion. We've been talking about which ACs and SOs will actually participate if we go the UA route or something like that.

We've seen a message from the SSAC saying they really want to stay an advisory committee and do not want to sign up for this kind of thing. But it's a very different analysis one makes now, and if we were in crisis mode. If the community had great difficulty with the direction of the Board and we are really in a mode where we're not sure that ICANN is viable, the SSAC is going to be really interested because the lack of viability of ICANN puts the security and stability of the DNS at great risk.

What would play out in a crisis mode situation is different from today sitting and talking about the theoretical one, and their interest in participating might be very different and the same goes for the other groups. At that time, then it is [inaudible] requiring action on their part now to become one of the owners, as it were, of the process is very different from their desire to want to intervene in the strongest possible way at a later time. It's something we have to think about.

LEON SANCHEZ: Thank you very much, Alan. Jordan?

JORDAN CARTER: Intuitively, I agree with you, Alan, but I think we can't do the thinking for people. So one hopes that the SSAC itself thought that through in making its comment. It might be a specific – we're going to be talking about them here. It might also be a specific question that's worth asking as part of our second public comment. Have you thought about how this framework would work at a time of great trial for the ICANN system, just to make sure that we've prompted people to think along those lines.

LEON SANCHEZ: Thanks, Jordan. We're closing the queue with Avri. Next I have Willie Curry, then Tijani, Sebastian, and Avri.

WILLIE CURRY: Hi, everyone. Willie Curry. Thinking about this discussion and perhaps paraphrasing Winston Churchill to the effect that community empowerment is the worst form of government, except for all those other forms that have been tried from time to time.

And I think maybe when one looks at Larry Stricking's proposal that the draft proposal [inaudible] is on a Membership model for community empowerment and asks the question, "Have other possible models been thoroughly examined, detailed, documented?"

That it may be that a useful exercise would be to take a number of these other models that one can throw into [inaudible] particular community empowerment model being proposed here.

For example, one of the other advisors, Roberto [inaudible], pointed towards the International Labor Organization. Now, that might be something that this group should analyze because it does have a kind of multi-stakeholder model of government employers and unions, so we should perhaps look at that and see what its applicability might be. Obviously, the villainous structure in terms of private international organizations is [inaudible] which is privately corporated into Switzerland, which is a possible negative example.

And it may be that there are other forms that we could look at which throw into relief the ongoing question about, well, who is the global multi-stakeholder community to which this accountability power is being transferred from the NTIA.

For example, one can imagine a situation where one says, “All right, let’s get the IGF to set up a bunch of Internet citizen panels. Let’s empower them in a particular way to review the strategic plan to have some kind of accountability function. Let’s structure them on the various UN continental regions where we have ten people randomly selected from each of the major continents and try and dig in using that kind of scenario. What would it mean to try and construct some form of global public interest and how viable is that?

Then perhaps look more closely then at the current community empowerment model as a form of epistemic community and not as

something which is going to somehow be accountable to an imaginary global citizenship, when in fact there is no such global citizenship possible at this time of history. There's no world government. There's no possibility of being a citizen of the planet.

In that sense, what I'm saying is that perhaps if one only has one proposal on the table and you don't have the other alternative, then people tend to pick into this proposal in a very negative way; whereas if we throw it into [inaudible] what are the realistic, practical other alternatives, it might not look so bad. Thanks.

LEON SANCHEZ:

Thank you, Willie. Let's just remember that the proposal in the documents is just reference proposals, but it's not the only proposal that's been discussed so far and we will continue to discuss the many models through the week. Next in the queue, I have Tijani. Tijani?

TIJANI BEN JEMAA:

Thank you, Leon. This is a reaction to what Matthew said, that we are very close to an agreement about all the powers proposed. It is not the case, especially for recalling the individual members of the Board without reason by the appointing parties.

When I objected to that, I was told that it is a requirement of the California jurisdiction. If it is, that means that it is here now. So why it is in our report? We are asked to come up with mechanisms that enhance accountability. So if it is there, it will not enhance

accountability. If it is considered that it will enhance accountability, then I don't think so.

Recalling individual members for a series reason by the whole community is something that I will strongly support, and this I consider will enhance accountability. Thank you.

LEON SANCHEZ: Thank you very much. So we're back. Next on the queue I have Sebastien Bachollet. Sebastien?

SEBASTIEN BACHOLLET: Thank you very much. We have not just one proposal on the table, even if it's one is more important than the two others. We can also of course open to discussion about become an inter-governmental association. I think it was out of the game by the proposal requests coming from the NTIA to try to get that through the multi-stakeholder community.

We are not citizen of the world, yes. But hopefully we are users of Internet and there is one Internet, one global Internet, and in fact I consider myself as citizen of Internet than citizen of one global resource of this world. Is it the same? No, maybe not.

We need to figure out how we can be better to express this voice in this discussion today. One of the problems is that we can't just put the number of comments we get to know if it's the right balance because, if not, except that they have no time, money, and so on, but I can write ten reports say I agree, I agree, I agree. Be careful with the fact that

there are just only two [inaudible], because it's sometimes a tiny voice far more important than the strong voice.

And where we are today, I would like very much that you – we, as a group – consider all the alternative as viable [inaudible] and then we discuss in depth.

Since the beginning of this morning, I heard a lot of people agreeing with the fact that we are make a huge step and we are in the right direction and we agree on, and we agree on, and we agree on. Maybe. But please, you don't need to repeat that. I really would like to go to the end of this work, and when we will be at the end of this work, we will see if we are where you hope that you are. I am not sure that we are still already there.

I hope that you will consider all the inputs were in contradiction of what the so-called majority. It's not to destroy the job. It's not to destroy the work of this group. It's not to push or to be against the IANA stewardship transition and to keep the role of the US government. It's all the reverse. We need to do that well, and to do that well, it's not because somebody came with a proposal the first day that they are right, he's right and that we need [inaudible] this discussion in depth.

I hope that the next part of the discussion will allow some more balance, a chance of idea, and try to find out what could be a good compromise. I understand the point of the other. I hope that you will understand the point of the people against with brackets and specifically my proposal when [inaudible]. Thank you.

LEON SANCHEZ: Thank you very much, Sebastian. Next in the queue I have Avri Doria.

AVRI DORIA: Thank you. I want to go back to the point that Kavouss brought up about the chartering organizations, reviewing CWG and seeing us not have a complete proposal may make it difficult for them to decide. I find that approach somewhat problematic in that, yes, we are still quibbling over a lot of the details and the shape of the model. We are not in disagreement about the improvement of the accountability, the improvement of the reconsideration, the improvement of the IPR. We've just got details that we are arguing about lots of them.

Perhaps it's because I'm not a perfectionist and I'm quite comfortable living with certain amount of insecurity in life always. I don't know; maybe it's my life. I see that we should have actually put enough on the table.

In terms of the issue of, well, perhaps the proposal could have been more complete, perhaps it could have been explained better, I think what we're engaged in is step-wise refinement. We put something on the table. We are now seeing where do we need to tune? Where do we need to answer better? Where do we need to fix?

I really don't think we should rend ourselves with doubt, because people have comments and questions, but basically see it as the menu of what's ahead of us.

At the risk of offending Sebastien, I'm not saying, "Oh, we're doing great," and I was kind of bemused when we started the day by patting ourselves on the back. But we are in a process. We are progressing towards a goal. And to go back to my first topic, when people look at the CWG, I think they have to look at the intention and the direction the CCWG proposal is taking and not have all details been decided yet. That's what I'd like to ask. Thanks.

LEON SANCHEZ:

Thank you very much, Avri. Thank you very much, Jordan, of course for taking us through this [inaudible] review of the comments. It's now time for a break. We'll have a 20-minute break and we'll reconvene at 10:30, please. Thank you.

Hello, everybody. I'm sorry to burst your bubble, but we're already running 10 minutes late, so I would kindly ask you to reconvene. Thank you very much to those who have taken their seats. Thank you to those who are trying. Thank you very much. Let's log back onto the Adobe Connect room.

Well, thank you all. We're back on our session. I see two hands up already, Sebastien and Avri. The next agenda item, I would like to hand it to my co-chair, Mathieu Weill. Mathieu?

MATHIEU WELL:

Thanks, Leon. What I do now [inaudible] listen to updates from Work Party 2, Work Party 1. [I'll now] do a very short summary of the input

we received from on the questions regarding Work Stream 2. Very quickly, basically.

The comments are supportive of the approach we are taking with the transitional article. There are some refinements on the wording being asked for, and obviously a request for a clearer timeframe of Work Stream 2, which [inaudible].

We've received a number of comments stressing the importance of addressing the jurisdiction issue, and certainly that's an area where we could do a better job explaining our position and where we stand. I think that's going to be for us to take on further in the next version of our documents. There's a need to work that further. That's a point to be taken into account.

Regarding the list of Work Stream 2 items, there were some views expressed asking for some reconsideration of some items being pushed up to Work Stream 1. That includes [DIDP], [inaudible] community information disclosures, security audits, and ombudsman review. So we'll have to check as a group whether this small number of comments are valid under merit or whether we keep them in Work Stream 2.

Based on definition, we had agreed for Work Stream 1 items for those who are strictly necessary to enforce the various requirements in the future, because future timing considerations, I think we must be careful not to overload Work Stream 1 which is already challenging.

In terms of items that we had not considered in Work Stream 2 but are being suggested, we've received some comments suggesting the conclusion of a new item, which goal would be to assess the efficiency of the Work Stream 1 proposal as part of Work Stream 2. That's a check on the whole process. That's probably a discussion we'll have to undertake in this group, whether we think that's part of our mandate or whether it's part of a future ATRT-2 mandate to assess.

We've also received some comments, I think two comments, suggesting to add a bylaw which would require ICANN to disclose government contacts in terms of transparency and that was an item that could be addressed in Work Stream 2. But we'll have to discuss about this particular suggestions as well.

In reviewing the list of Work Stream 2 items, I think it's fair to say we also will have to discuss how we plan to address the SO/AC accountability discussions we've touched upon earlier, whether it's Work Stream 1, Work Stream 2, whether there's a part of which is Work Stream 1 and a part of it which might be Work Stream 2.

I think that is all for the report on the comments on Work Stream 2. So we can definitely take questions on that, if any. I am seeing none, so I will now turn to Thomas for the summary of the general comments [inaudible] questions, which provide a nice conclusion for our review of the public comments.

THOMAS RICKERT:

Thanks very much, Mathieu. I would like to briefly speak to two chapters of our report on general remarks as well as the methodology and I hope that we'll be able to access the Adobe room shortly because the management abstract for the general comments section I think or we think is a decisive part of our communication with the community. It's just 10-12 lines and I would like to read that out to you, but I will do so once we get back into the Adobe.

It is worth noting that the vast the majority of comments that we received for the general section was supportive of what we're doing. The commenter said that the recommendations that we are working on are seen to be improving ICANN's accountability substantially. There's a lot of support there. The language that is used there is partially repetitive to what the commenters also said in the respective sections of the reports. I'm not going to dwell on that for much longer.

Noteworthy, we have two commenters that have been opposed to what we're doing as such, so [Roberto Visio], one of the advisors is asking us to take a completely different view at things, particularly stemming from the jurisdiction question. And it is our recommendation or the recommendation that I put as an action item in there that we provide a clearer rationale where we're not taking the route of completely reorganizing ICANN, but why we are doing what we're doing as can be found in the report.

Also, there's a comment criticism from .NA written by [inaudible] that challenges overall what we're doing.

But apart from that, it's more or less requesting us to continue what we're doing but also to flesh out more details that are required to make this a complete proposal.

With respect to the methodology, we got some criticism for having truncated the public comment period. Some commenters thought that this was an undue limitation of their possibility to chime in and make themselves heard. I guess our group's response, and this is what we've discussed on our call previously, is that there will be another public comment period. So other than for other projects in ICANN, this is not the only possibility for the community to chime in. Rather, this was the first opportunity for the community to let us know whether we are navigating into the right direction and then they will certainly have the opportunity during the second public comment period which will last for the full 40 days to comment.

It is also noteworthy that some commenters have asked for us to be more specific on the term of public interest. So while our group has already done substantial work on that, that's something that we need to elaborate on further.

There has been a request to be clearer than we currently are and also to be more transparent with our messaging and with the language that we're using for, particularly the non-English-speaking audience to fully absorb and understand what we're doing to be truly inclusive.

Talk about inclusiveness, the theme that we've discussed earlier this morning on how we can engage with the global Internet community has been raised. I think that's well on our radar so that there's no

specific additional action required, but we just have to be more vocal on that in our responses.

The final point that I'd like to make is the comment from the Board asking for an impact analysis. We've already acknowledged in our previous call that we will take a look into that. We've received a plethora of questions on that and we will further work on that.

So I guess that's a brief summary of where we are. As you will hopefully agree, the substantive questions are primarily being dealt with in the respective sections of the report. So there was not so much substance. These were more general comments and questions on process.

With respect to the abstract, I still haven't managed to get back into the Adobe Room, and to be quite honest, I can't read that out to you at this distance. Can you move to the general remarks section? Yeah. No, that's methodology. Move it up, please. There's another box with the management abstract here. Maybe, Adam, you can help out just by reading that for the whole group. I guess that's one of the key messages documenting the overall support and we should make sure that we're all fine with that message to be conveyed.

ADAM PEAKE:

Then I'll begin. The abstract from the general says that the majority of the comments received were supportive of the general approach taken by the CCWG whereby ICANN's accountability architecture should be based on four building blocks i.e. an Empowered

community. The Board, the bylaws, and the independent review process. Most comments regarding the suggestions that have been made as improvements. Most comments regarded the suggestions that have been made as improvements, and that's the end of the abstract.

THOMAS RICKERT:

Unless there are requests to revise or amend that, I would like to open it up for questions on this brief report on general remarks and methodology. There don't seem to be any. I can't see whether there are hands raised in the Adobe. There don't seem to be any. So with that, I think we can conclude this part of the agenda and move to the section of the agenda where we discuss the different models on the table. My superstar co-chair, Mathieu, has actually prepared ballots, so we're going to have a draw. With that I'd like to hand it over.

MATHIEU WEILL:

Thank you so much, Thomas. So the idea of this section is really to understand each other's perspective. I want to stress this very much. It's not about a debate. It's about understanding. Just a reminder of the context, we need, as the CCWG, to prepare a proposal to enhance ICANN's accountability that brings ICANN's accountability to a level that is sufficient for the NTIA transition to take place.

And we need a proposal and we need this proposal to reach consensus. That's two conditions and it's not majority. It's consensus. It can be a rough consensus, but we cannot be satisfied with any

proposal whereby a significant portion of the community would not feel comfortable with, so we need to work this out so that everyone is reasonably dissatisfied with the proposal and equally unhappy, as chair is saying. That's the basis for what we are standing for in the multi-stakeholder model is finding common ground.

Step one to this process is making sure we understand where everyone is coming from, what are the underlying assumptions that we're making and what are the requirements that we have when we state that we have a concern or are in disagreements with certain proposals.

So the session here is going to be about some pitch, whatever you call them, elevator pitch or short presentations of how some of the participants or members here view the community mechanism options, the models. I would set two rules for those presentations. One is timing. Make it short. If you think you're making short, make it shorter. Three to five minutes is very short, so please be aware of this. If we want to have this discussion, we need short discussions; otherwise it's going to [inaudible] everything. So we'll be using a timer.

Second is try as much as possible to be factual about how you see things. So avoid slogans as we were discussing last Tuesday and try and explain the concrete aspects of what you're trying to achieve or what you're trying to avoid in terms of the situation and maybe providing examples is better. Those are the two very simple rules.

Currently on the speaking list and in the ballots I have, with no particular order, Jordan, Avri, Becky, Greg, Sam, and then Sebastien. One, two, three four – correct? No, it wasn't. I randomized it using a very elaborate algorithm which I am not able to disclose for security reasons.

Does anyone else want to join the list? Roelof, excellent. [inaudible] questions. Avri is first on the – I haven't added Robin yet.

UNIDENTIFIED MALE: So we can't do the draw without having Robin.

ALAN GREENBERG: Let's spend a half-an-hour doing this.

AVRI DORIA: Only half-an-hour?

MATHIEU WEILL: What I want to make sure is we have clarity on what we're doing. I want this particular set of questions to be what are we doing about. Obviously, if anyone wants to join and make their presentation, this exercise is about giving everyone [inaudible] if they want to. Avri?

AVRI DORIA: I just wanted to ask a quick clarifying question about slogans. I find that taking phrases that people have perhaps used before and all of a

sudden branding them as slogans to be very problematic. I think that in these bits of discussion where people – I have no idea whether I’ve got a slogan or not and what’s going to come out of my mouth. If I’ve used the words before, it may be a slogan. If anybody else has repeated what I’ve said before, it’s even more likely to be a slogan.

So I think this prejudice we’re developing against things, it’s kind of like all of a sudden anything that comes out of someone’s mouth that they don’t agree with, that’s a slogan. I would really like to stay away from the slogan that people are using slogans.

MATHIEU WEILL:

Be as fast-based as possible. I know it’s not as easy as just saying this. It depends on everyone’s perspective, but I think everyone gets the idea that we need to clarify things. Roelof, you’re next.

UNIDENTIFIED MALE:

It’s difficult to have a discussion if we all have to state facts. That’s just an exchange of facts. I think we should be allowed to utter phrases that start with “I think.” For me, there’s a disclaimer that I’m not – or probably not, or maybe not – stating a fact.

MATHEIU WEILL:

Okay, let’s [inaudible]. You’ve got a point. I would argue that I think that is already a fact because it’s factual that you’re thinking, but anyway. Let’s stop this. Let’s try to be as illustrative. We need to make this understood by the audience. That’s the point. Make sure your

presentation impresses the audience and that the audience can understand what you're talking about. You can add anything you want, Thomas.

THOMAS RICKERT:

I guess Sebastien made a very good point earlier this morning when you said that in our report we have different models, but a decision is not yet made. You were concerned that too much weight is giving to what we call the reference model. This is actually to give everybody on equal footing the opportunity to explain to this whole group the benefits of their preferred option, to then have a discussion this afternoon as to what the group thinks.

I think during our last week's deliberations, we have moved too quickly from somebody making a proposal to immediately criticizing it or finding its weaknesses. This why this session is reserved to everybody having the opportunity to do the best to explain the model in the most shining manner that they can. And I think you should just take the three to five minutes to do the best possible job in order to get traction with your proposal inside this group. That's actually to give everybody a fair chance so that nobody can complain at a later stage that this group has started the discussion in a biased fashion. Over to you, Mathieu.

MATHIEU WEILL:

Yeah. And just a last point of clarification, we won't take questions after the presentations [inaudible], but only at the end we'll try to

wrap up and debate and discuss about the overall presentations we've heard.

With that, Thomas, would you?

THOMAS RICKERT: We need a drumroll. Ladies and gentlemen, Greg Shatan. Would you like to do it here? I think it's best if you come. Greg, over to you.

GREG SHATAN: I hadn't expected to speak first. In any case, I had expected to be speaking later. I think what we're looking at is really a fundamental difference among models in where we see the judgment or control or authority sitting, whether it's with the community or with the Board.

Having worked with non-profit organizations myself, both with members and without members, an organization that has members is in a sense member-centric. An organization that is without members is essentially Board-centric or management centric.

So if we're trying to put power and authority and judgment ultimately into the hands of the community, Membership is a natural tool to do it within the tools that are available to us. Anything that doesn't do that is essentially less empowering. So when I look at what tool I would want to use to accomplish what we're trying to accomplish, that's where my hand would naturally go in the tool chest and trying to use a rubber mallet where I would want to use a saw, we're just not going to get through the process as well as possible.

Also, speaking as a member of the CWG where I represent the CSG, the change in our model between our first draft and second draft puts greater reliance on the result of this organization, this working group's ability to give authority and accountability ultimately to the hands of the global multi-stakeholder community.

In our first iteration in that group, we had ContractCo, which was intended to be an external accountability mechanism. There is no more ContractCo. There is no more external accountability mechanism. Accountability in that mechanism flows through ICANN. Therefore, we have to make sure that it flows through ICANN to the community. In my view, the model that uses the right tools, that has the right legal heft to it, is the model that uses members.

I hesitate to call it the Membership model because that almost becomes a slogan in the sense that some people have said, "I would never support that." But I think that ultimately it is the tool that provides the community with a real basis in corporate organization and in governance to exercise, and more importantly, to obtain the ultimate judgment that we believe the community should have, and if we don't, then maybe the issue is we don't sufficiently trust the community and that's a whole separate issue that we may want to grapple with, but frankly, I don't think that if we don't trust the community, then I don't think any of our models ultimately will yield the result that we want.

Given that, I think we should choose a model that best yields the ultimate result that we want and then try to solve the issues and

implementation details that will come with it because every one of our models will have implementation details in any event. I haven't been timing myself, but I think I'll stop now. There. I yield the last minute and eight seconds of my time.

THOMAS RICKERT: Excellent. Thank you so much, Greg. You set up a great example of meeting the expectations for that, laying out the concerns and requirements. Next is Alan Greenberg.

ALAN GREENBERG: I love the advanced notice one gets here. Up until now, we have been working with a set of bylaws which the lawyers now tell us probably shouldn't have existed to begin with. We appoint directors by ACs and by SOs and now one AC. The NomCom appoints directors. All of those things are something that don't really follow any pattern in non-profit associations in California, but it works, and it's worked for whatever reason.

I'm proposing that we continue with essentially the same model. That is we put the powers we want in the bylaws and assume they are going to be honored. I'm not finished yet, however. The only one I believe we can't do is prior approval of the budget, but I believe we can cover that with a mechanism by which any group that has an objection the budget can formally file it and require under the bylaws certain consideration, similar to what we do with GAC advice.

It all hinges – now, that’s been described as a non-enforceable model. I do not believe that is the case. The enforceability that I’m proposing is that we have the ability to remove one or more Board directors. The process would have to follow agreed processes. And I’m not debating right now whether an AC or an SO removes their own director or the community, but we have the ability of removing some or all of the Board.

That threat is a big stick and I believe it’s an effective enough stick to make sure that the Board either works with the community and comes to closure on what the community needs and what the Board can do or the Board goes away. And I believe that’s something which will give us the accountability we want.

The only question is how do you remove the Board without individuals, members. And I believe the lawyers have given us a mechanism by which Board members sign an irrevocable letter before they take place that essentially agrees they will resign on the wish of the community. We can make that enforceable because they can agree that this is enforceable on a rule of law, perhaps by the ombudsman, perhaps by other mechanisms so that we do have a mechanism to take them to court if they refuse to step down and honor the letter they’ve signed. I think this gives us pretty much everything we want.

The threat of removal should give us everything that we need and it really comes down to that. I’ll point out that there’s two other benefits over the other models. We’ve talked a lot about in this last meeting, in

this last hour or so, about ACs, particularly ACs, but possibly even some SOs who could not participate in the Membership model or choose not to.

If you start looking at who's left, we have a very small part of the community that is now calling all the shots. I think the optics of that are going to look really, really bad.

Moreover, as I pointed out earlier, there are parts of the community that might not want to sign up and be a member, might not want an unincorporated association. But if we ever got into crisis mode, they really would want to be involved.

Doing what I'm suggesting now does not make them sign a release now saying I'm not going to participate later. As an AC or SO, they have the right to participate later.

And lastly, something that I hadn't even thought about is we've been talking a lot about jurisdiction and saying that maybe sometime in the future we need to consider the ability to move somewhere else. Tying our entire governance structure to California law I think puts us in a position where we may never be able to even consider moving. Now, some people might be encouraged by that, but I'm not sure that serves us well in the overall world market.

Lastly, I think what we're proposing here is a minimalist view, which we may actually be able to do in the very tight timeframe we have. The timeframe is tight. We probably have to have the bylaws in place by

the end of the year if we're going to make this transition. I don't see how we're going to do it on the more complex ones. Thank you.

THOMAS RICKERT: Thank you, Alan. You met the timing as well. Good job. Next is Robin.

ROBIN GROSS: I was all the way in the back, extra minute.

THOMAS RICKERT: No, no, no. It hasn't started, Robin. Thank you, Robin, that was very efficient. Well done. I want to say there's no intention whatsoever. [inaudible] behind me. You have your five minutes. Go ahead.

ROBIN GROSS: Thank you. Okay. There we go. So I'm going to do a quick pitch for the Empowered Designator model. We talked about the six powers that we want the community to have and I think we're all pretty much in agreement that these are important powers and we want the community to have them.

So the lawyers came back and said with respect to the Empowered Designator model, four of those powers you can have and two of them are going to present challenges. And those two, as you all know, are the strategic plan and the budget approval issues.

I think that those two issues are not enough to sort of cause all the upheaval and the kind of great change that we're going to have to go

through if we're going to actually switch to a Membership model. I think it is a lot more difficult. There's going to be a lot more issues that will be in conflict that will have to be resolved before we can actually get there to the Membership model. So I think that considering these are only two things that we can't get entirely the way we want under the Empowered Designator model. I don't think it's enough to push us in the other direction.

I think rather we should try to focus on ways we can beef up the Empowered Designator model. We can have strategic plans and budget that are much more heavily involved with the community in terms of their formulation and development. Perhaps they don't even go to the Board for their final approval until the community has signed off on them.

There are ways that we can require the two to work together to try to come closer to agreement before there's a final decision. I understand the Board's going to have the final say on that. However, they will also have the knowledge that they're going to be kicked out if they don't do what we want.

So I think that that provides a very strong incentive. I think the Membership model may work for many people in this room and many people in the ICANN community, but it doesn't work for those outside of the ICANN community. The problems that they have are that ICANN is – the problems that they currently have are that ICANN is a California corporation and they really don't like that.

So for us to say, well, now we're going to be a California Membership corporation, it doesn't address their problems. In fact, it further entrenches exactly what they have a problem with.

So I think the Empowered Designator model can be more open, can allow for more participation, particularly from governments and people outside of the traditional ICANN community. So I think there's just too much work to be done to switch to a Membership model and not enough time. Not enough time to do it right. So we really risk making terrible mistakes and that we're stuck with.

So I think we're better off just really working to try to beef up the Empowered Designator model and get the kinds of powers that we need that way. Thank you.

THOMAS RICKERT:

Thank you very much, Robin. The next speaker is Jordan. I have a request by Malcolm to join the queue. I'll suggest we add him in the [inaudible] so that it is not unduly benefit from the privilege of speaking last. But of course the request is honored. Jordan?

JORDAN CARTER:

Thanks. I just wanted to – I've been involved in this work, as we all have. I don't want to reiterate a particular model. I want to reflect on why we got to where we got and a fundamental understanding that that shows about the nature of human societies and human communities.

When we have something that's important in a political community, and one way of looking at ICANN is that, a very common thing that we organize is a separation of powers. We say that when you want to avoid having to rely on the goodness or badness, the trustworthiness or the untrustworthiness of a particular set of actors, you don't leave them alone with single powers. You distribute power. You share power. You divide authority. You make sure that no single point can be a point of failure.

If you look back to some of the founding political revolutions – the American revolutions or the French revolution – you see that thread that we recognize our fallibility as people. We recognize that we do not get things right all of the time and we take steps to protect ourselves in our organizations in our communities by distributing power, by making sure no one has a single point of authority, that no one has the ability to break our communities or our systems.

This is a constitutional discussion for ICANN. This is a constitutional moment and what we are proposing in our model that we've [asked] the community about is to say we will share power more broadly. We will distribute authority away from a single point of the community, the Board of directors, and we will distribute it more broadly through our SO and AC structure, our open multi-stakeholder structure. That is what the model that we're calling Membership for our horrible shorthand does. It forever changes where authority lies in the ICANN environment away from the Board of Directors and it imbeds that authority in the whole community.

That's why it's a fundamentally important shift. That's what makes ICANN as a community trustable. That's why a stewardship transition can and should happen because what the model says is we're not going to create a problem in the future that we can't fix. We're not going to tie our hands behind our backs and make sure that we are going to rely on someone always getting it right.

We're kind of acknowledging our own fallibility as a group. We're saying that we don't want to just have to trust a particular set of actors, but that we should imbed in what works quite well, the multi-stakeholder policy-making body, the authority that it needs to be able to adjust with the time as the Internet changes, as the DNS changes, and to implement its narrowly focused mission in the right way.

So that's why the fundamental basis, whether it's Membership, whether it's designated, Membership [inaudible] with that approach, it [inaudible] says to the global Internet community, the global public, we're not going to rely on a high priesthood of people sitting around the ICANN Board table. We're going to rely on all of you who choose to participate in this model and we're going to imbue you structured through your SOs and ACs. You can come along as an At-Large user. You can come along as a ccTLD manager. We're going to trust you over time to work together to make ICANN work.

That is the underpinning logic for the model that we've proposed. That's what the Membership model is for. That's what it does and that's why I support it. Thank you.

THOMAS RICKERT: Thank you very much, Jordan. Roelof is next.

ROELOF MEIJER: I noticed a fair amount of [inaudible] there. I'll be looking at the transcript and it's really good [inaudible]. Empty-handed.

UNIDENTIFIED MALE: I'm not surprised.

ROELOF MEIJER: In fact, I do come empty-handed slightly or somehow because I don't really have a model that I want to defend because I think that model is not yet there. Adam said a lot of things that I think he knows that I support. Sorry – Alan.

I think it's very clear that most of us and most of the community agree to the powers that we foresee. But making sure that we can use those powers I think in that process we're looking too much at things that already exist that we have seen working, that the lawyers can explain to us, of which we think we can predict the outcome.

What's surprises me a bit is that this industry or this sector, or the Internet, has become what it is not because of all the legal processes that we created around it, but I think very often because of the lack of all kinds of legal processes around it.

So I think we have to be careful with too quickly thinking that this situation might not happen but we need to protect ourselves and this

is the best protection that we can think of and then look at things that we know that already exist.

I think we can be a bit more creative and think of a few ways that maybe we don't know and we haven't seen before but it might work and will work. So that would be my plea. Yes, the Membership model with its legal enforceability is something that would probably work, if everybody would agree to it. My worry is that we won't get enough people and organizations and structures that will agree with it and that will make us end up empty-handed, like I came to this table. Thank you.

THOMAS RICKERT:

Excellent conclusions. The [inaudible] were excellent. I'm afraid we don't have video, so we won't make videos out of them, but that would have been good. Sam, you're next.

SAM EISNER:

Hi, everyone. Sam Eisner from ICANN. I'm revisiting an earlier conversation that we have. I don't come here with the answers. We don't have the answers. We don't have a model that's already laid out that we want to spring on you at the last minute. We're working through this proposal along with you and have questions. I'm hearing that some of the other colleagues in the room have questions as well.

What I come here to say is my vision is that we have certain characteristics of a model, and it could be Membership, it could be

Designator, it could be Alan's alternative model. It could be the creative model that Roelof was just asking for as well.

But then I think it's important that that model have certain things that are inherent within it. One of those is that it doesn't pose a challenge of ICANN's not-for-profit status and the development of it. I think the fact of ICANN as a not-for-profit is very important.

And we have to make sure particularly as we look holistically at the proposal that we anticipate coming out of the ICG that incorporates the new post-transition IANA function operator that will be a separate entity coming out of the CWG, if that proceeds to the ICG proposal.

But looking at the changes that happen with both of those in mind, don't do something combined that requires us to then – if we move to a Membership model – have to redefend ICANN's position as a not-for-profit organization as we move there.

I don't know if that will happen, but I do know that there have been recent concerns of organizations seeking not-for-profit status from the IRS about not-for-profit status when they're Membership organizations.

It doesn't mean it's impossible. It doesn't mean that it's a road that we can't go down, but I think that we need to have certain characteristics that we hold as very important. It's a question we need to look at.

I think that there should be some further-looking, if we're moving down the path of a Membership model, that we understand that it's an

appropriate model to use when it's a collection of potentially disparate interests.

We have a very robust model within ICANN that we all come here because we have one fundamental interest in mind, and that is we support the continued operation of a secure, stable, reliable, globally interoperable Internet. But we come at that from many different perspectives. If we all agreed, we wouldn't be sitting here today after months and months of conversations and many different working groups.

It's not clear to me – and again, I don't have the answer – that the Membership model that's been proposed makes sense in an organization of disparate interest instead of those who come at it with very clear, cohesive interests on a range of issues as opposed to holding one fundamental item above all.

I think that any model that we go to needs to maintain open pathways to new participants. The Membership model, we need to really look and see what does it mean to be someone new who comes into the system? Do you have a voice? Do have a pathway? Do you need to immediately associate yourself with in an AC or SO in order to be able to meaningfully participate in the community empowerment models that are being developed? Are there easier pathways to assure that people still have access to come into ICANN and have voices when they walk into the organization itself without having to immediately align themselves with a group?

And most importantly, that we have a model that's tested and has the terms raised and considered. I've heard the hesitation come from other people as well. We need to make sure that we have an organization that we're not going to unknown territory, that we're holding up the value of stability of certain parts of the organization when we're entering into a new territory of a transition of stewardship, that it's the same place that we need to hold out to the global community that we're a stable organization and we understand how to work together.

Does this mean that Membership should be totally off the table? No. There are still questions that we can answer within it. I think that we could also think about a path towards Membership if there are lesser changes that wind up not giving the results that the community wishes to happen.

THOMAS RICKERT: Thank you very much, Sam. That was very well put. Sebastien is the next speaker.

SEBASTIEN BACHOLLET: Thank you. I was never trained to write a book, but I used to do demonstration in France when I was [inaudible]. I have a lot of slogans. I'm sorry about that. Maybe it's because I am all for revolution within ICANN, but not just between the so-called constituency and the Board. We need to be a holistic review.

I am very puzzled at the fact that the [inaudible] name. We try. [inaudible] proposal. I will not give you the one you will take, but just to give you one proposal. For an ICANN accountable – sorry, it’s a slogan. For an ICANN accountable diverse, open and transparent, multi, equal stakeholder will give [inaudible].

And if I take all the first letter, I put them together and in French, it’s done [inaudible]. I will translate it in English. It’s “my gift” to the community.

What is important is that wherever we go, we be sure that we don’t put any legal characteristic or legal bodies in between the relationship between any groups of ICANN, any groups of ICANN. We don’t need the legal to be involved – legal jurisdiction; I’m sorry. US legal jurisdiction of California [inaudible] to be involved in setting discussion between any groups, including the Board within ICANN.

We have to remember that all those groups are us, and even the Board is us one way or another and that’s important. If we ask accountability for the Board, I am all for that, but I want us also at our level to be accountable. It’s remained to be seen.

We need to trust as a model. We need to trust each other. Even if we disagree, we can trust that you came with the best idea, with the best wish for the organization. Maybe it will not be true at the end, but if we don’t come open mind with the [inaudible] empty with no weapons, we want to talk and find a solution and that’s important. I don’t think that creating new structure will allow this open discussion and enhance confidence.

It's important also that we find a solution where we can leave this organization open to all, and open not just to the one who knows where they want to go, how they want to go, but open. And eventually also open to create new structure or to merge structure or whatever.

If we are too solidified, and we're already too solidified in the structure of the organization, it's odd to come and say, "Hey, guys, I have this topic and I would like to take this topic into account within the organization."

Multi-stakeholder for all, and by all it's important also because – thank you, next time I will do it in French and in three minutes. It's really the same point as it must be open. The current model is with different stakeholders. We don't know what will be the future. Maybe we will have, I don't know, a user of Internet [inaudible] who would like to come and to be a new constituency, a new SO, a new AC, whatever and we need to be open to that discussion. But the question is how we can create it, who can create it, who gives the agreement, and so on and so forth.

My last point is that diversity is an absolute need. And when I said diversity, it's real diversity. It's not just, okay, we are five regions. We are [inaudible] five regions. It's much more than that. It's also the question of culture, the gender, of age, and a lot of others – diversity. It is difficult to take into account, but if we don't have that in mind when we choose, we will not solve the necessity of this.

Just one last point. We talk about the headquarters in the US, and I put in my comment that maybe one way to help to solve this diversity

is to have a presidency from another region that shared the [inaudible] from another region and so on and so forth. That will ensure better diversity than just to take, say, okay the headquarter must not be in the US.

I will stop here. I have a lot of other things to tell you, but it's better to have this five minutes than no minutes at all. Thank you very much for listening.

THOMAS RICKERT: Thank you, Sebastien. Next is Avri. And while Avri is joining, Erika, were you asking to be added to the list?

ERIKA MANN: That was my intention.

THOMAS RICKERT: Okay. So then we have Malcolm, Becky, and then—

AVRI DORIA: Okay. So I've come to supporting what has been called the voluntary model. I tend to think of it more as the multi-stakeholder cooperative democratic model. It's the same model that the Internet has been created on. It's the same model that we've been living with for a very long time. It's the same one that we're using to find the solutions for transition and for accountability. My first assumption, if it's good enough to get us this far, perhaps we shouldn't quite abandon it.

It has been a successful model, albeit not perfect. But like all models, I don't know of any that are perfect. But like all models, it's one that benefits from constant refinement, constant improvement. In fact, that's what we've been doing. Whether it's the ATRTs that have reinforced it and renewed it each couple years, and in fact we have another one of those that we're about to go into. We've now spent a year – a little bit more than a year – refining it and improving it.

If we get the reconsideration request improvements and we get to fix the IRP, and we have a means of removing [inaudible] directors, then whether it's singly or in a group, then we have improved it, we have reinforced it, we have made that model better. So we will have then taken the ICANN model and reinforced it and made it better just as we had done before. I believe in that notion of step-wise refinement and a perpetual process of step-wise refinement.

And I guess closing I'd like to say that the court of multi-stakeholder community opinion is by far the strongest enforceability mechanism we can find. If we are not being accountable, we will be told. We will have the world pressing on our door. And by remaining open, by constantly doing outreach into the model we've got, we've got a much better chance. Thank you. And I really did do it all upside down.

THOMAS RICKERT:

That's really amazing. I don't know how you do this.

AVRI DORIA:

I have experience in reading across the table.

THOMAS RICKERT: In less than two minutes and thirty seconds. Next is Malcolm, then Becky, then Erika.

MALCOLM HUTTY: Thank you, everyone. My apologies, everyone, for not being here at the beginning. I've just literally got off the airplane. Chairman, you introduced this session by saying that its purpose was to introduce new things that have been overlooked or passed over too swiftly.

What we've heard, a lot of what we've heard so far, has been actually pitches for the relative perspectives that have been pretty [inaudible]. I would like to actually bring up a variation on the model that hasn't really been discussed, that was briefly mentioned and very quickly passed over, and I think it is worthy of further of exploration.

We have really essentially two camps here. We've got a group of people that think that enforcement is fundamental to this process, and that if we don't achieve enforceability this process is dead.

Now, if you don't agree or prefer or whatever, you can at least see that for that group of people, it's going to be very hard to build consensus with them if you don't actually have something that achieves that quality.

Those people have been told that the only way that you get ultimate enforceability is through the ability to go to [inaudible] which only applies if you are a member.

They've also been told that the Boards don't even have a duty to honor the bylaws. Ahead of their own belief is what's best for the organization as a whole, unless you have a Membership organization.

That leads to a strong commitment, to some form of Membership model in that group, but it doesn't necessarily have to be the Membership model that we've looked at. The criticism that's been given to the Membership model that we've proposed is that the creation of unincorporated associations is very complicated. It creates new structures that we don't understand. We've [inaudible] opportunities for unforeseen consequences and potentially the possibility of [inter-regress] in the question of accountability.

That's a serious criticism that those of us – and I am on the side of enforceability here – need to reach out to and address.

So my suggestion is this. Let's have Membership for everybody. Let's have tens of thousands of members. Why not? What is the harm? Certainly then you would have, under that model, there would be no accountability of those members to anyone else. They'd do exactly what they wanted. So what?

Let's look at what the powers that members have. Firstly, the Board have their duties to their interest. Let's make the whole members. That would be fine. They would have the ability to go to court and say, "ICANN has broken its own rules. We've gone through the process and the bylaws for approaching this and it has still defied it. Please enforce this against them." If the whole world have the ability to do that, great.

And then there may be some other statutory powers – and there are some other statutory powers – and we will need to look at that. Many of these are things like the right to have access to certain types of statutory information. Again, I see no harm in making that available to the world at large.

And then if there were some others that make it difficult to apply this, I think we owe it to ourselves to spend some time to see whether or not that could be resolved by some other mechanism. It has been suggested that a Membership agreement is a means by which members can control how they act with each other, how they exercise these powers, that can't be applied through the bylaws which would mean at the point at which you apply to become a member, you would sign up to something that then accepted that the IRP had to be used first before you enter court, that accepted that we don't get to wind up a company unless there is 99% agreement, or whatever it might be.

A Membership agreement of all the members could be applied to thousands of members and could have them all agreeing to apply the processes that we create. But it would give us the opportunity to get past this concern about creating new structures and complication and have the simple ability to say that ICANN is here for everyone and that it is responsible to everyone and everyone ultimately has the right to hold it to its commitments.

So I think we should add to the list of things that we consider, what flaws have not been considered in this and how they might be addressed rather than quickly dismissing it because, "Oh, I haven't

thought of one thing or another,” is there something that could be done to solve that and make this alternative Membership model that addresses the concerns of the anti-Membership critics, something that would be a viable way forward? Thank you for your attention.

THOMAS RICKERT:

There’s no reaction to – after we’ve heard everyone, there’s going to be an open mic session for questions. Do you want to add your vision to – oh, I see [inaudible]. You’re using the last moments to ensure you have the last word. You’ve been there before, right? [Becky]?

[BECKY BURR]:

Was that Paul Twomey who just said that? Figures! I’d like to talk a little bit about the Empowered SO and AC model. But before I start, I want to just reiterate something that Jonathan Zuck reminded us of this morning.

More than a year ago, a little more than a year ago, the US government called on this community to develop a consensus proposal for transitioning responsibility for IANA to the global Internet community. At the time, the request that came from the US government and the Board’s response to that was very much focused on the technical and operational aspects of ICANN’s provisioning of IANA services, not on accountability issues. And in fact, accountability issues were viewed as potentially distracting and diverted.

In a moment that I think all of us will remember, all of the GNSO folks and Byron Holland, [inaudible] standing up at the podium, at the

microphone, this community came together and said, “No, we insist that the accountability issues be addressed as a condition precedent to this technical transition.”

We’ve gone through this comment period. We’ve heard from the community. Those concerns are real and they are persistent. But we are hearing some objections and concerns that I think – and this is my humble opinion – reflect some renewed concerns about the potential for the accountability work stream to delay or impede the IANA transition.

Nobody that I know and nobody that I’ve talked to in this group wants that to happen. That’s a serious thing. We need to be worried about. But those concerns should not lead us to check out – to compromise on our fundamental and shared determination to address and resolve the gaps in ICANN’s accountability. We can do both.

It should lead us to check our [dug-in] conclusions – sorry, this may be slogans – at the door to listen hard to each other and to attempt to bridge the gaps between and among what I think are all legitimate perspectives that we’re bringing to this table, this very important table.

So a number of us have been thinking hard in the last couple of days about how to address the concerns that we’ve heard about two in particular. One, that the Membership model feels like a fundamental change in ICANN’s structure and that it’s elaborate and complicated, and two the very legitimate question about who watches the watchers in that.

So we've come up with something that we are calling the Empowered SO/AC model and this is what it entails. Essentially, we are comfortable with ICANN's SO and AC structure. We know it. We love it. Let's keep it. But let's empower those existing bodies to be the guardians of ICANN's accountability by giving the SOs and ACs directly the authority and responsibility contemplated in the draft report.

Under this approach, that authority would be granted to the SOs and ACs. It doesn't involve creating any new entities that raise accountability issues. In fact, to accomplish this, the only thing that needs to happen is that the SOs and ACs articulate the status quo, that they intend and have for years them coming together to collaborate, to exercise the powers and authorities bestowed on the relevant body in the ICANN bylaws. Not only those powers and authorities that are bestowed right now, but the new powers and authorities that Work Party 2 worked up.

This intention can be expressed in the Standard Operating Procedure for each SO and AC. Resolution, if that works. It can be expressed tomorrow. It can be expressed next month. It can be expressed in six months, whenever the organization is ready. The critical piece is the intention to collaborate and associate with each other and work together to accomplish the goals and carry out those duties.

That's the proposal. That's the Empowered SO/AC model. I know this doesn't solve the concerns that we've heard about dispute resolution and contentiousness, but let's sit down and talk through those. I think that there are practical and simple solutions to these concerns and I'm

pretty sure that there are some that I haven't thought of. But that is an implementation issue. Let's resolve to really get to the point where we're talking about the complicated implementation issues. Did I make it?

THOMAS RICKERT: Almost, Becky. That was perfect, thank you. Next is Erika.

ERIKA MANN: Thank you so much. I have – I want to approach this from a little bit different angle because I don't want to talk so much about models. I like the most recent one which I heard from Becky, but this is a very personal statement and I think she's right to differentiate between the models we choose and implementations and the principles which we have to apply because they will have to apply probably in [inaudible] whatever we choose.

But I have one other point which I think we should pay maybe a little bit more attention. I'm just saying this because I hear this again and again and again. This is the idea that there is somehow the right legal model or the right headquarter and this idea of finding the right headquarter will solve all problems. I'm just not believing in this.

I think that California is maybe not the most ideal, but it's a good location. It is a place which gives us stability, which we know it has a history. I know that some governments have concerns about it, but you always have to – and I'm saying this. I mean, I'm [inaudible]. There's no alternative. That's the problem.

So even if you look for alternatives, you will always have to look for a location with the exception you would go to international waters and go on a cruise and stay on international waters. [There's always a location]. Now, there are locations like Geneva you can think about. But I think it's just taking [inaudible] from what we really have to fulfill which is to find the best model for the [current stages].

And this model, whichever we choose – and the headquarters in California as well – will always have to fulfill these principles, will have global by nature and have to fulfill the global public interest. So these are the guiding principles. Don't be confused – oh, I'm saying this because I think it's . . . When you go somewhere else, it would be better. It would not be better.

Governments, in finding the right model how the Internet will work in many locations have difficulties in identifying the best way forward. When you look into the legal intervention which we see sometimes, which some of you might be concerned about, you see them coming from all locations in the moment. It's not just from the US, but you see it from many other locations as well.

My plea is let us ignore it at this stage and let's not confuse it with the principles and the models we have to find.

That's okay? Two minutes.

THOMAS RICKERT: Perfect. Thank you very much.

ERIKA MANN: Wonderful. I'm well-trained [inaudible].

THOMAS RICKERT: A [skill] that you might consider sharing with the wider group within ICANN. I'm not speaking of this group.

ERIKA MANN: I'm not sure you will like [inaudible].

THOMAS RICKERT: Okay, next is Paul Twomey.

PAUL TWOMEY: This is the – I'd like to [inaudible] slogan – reinforce the founding multi-stakeholder principles model, with apologies, Malcolm. It's something of a response to yours.

I would basically like to reinforce a model of Alan and Becky's combination of the ASOs and the supporting organizations. The supporting organizations and others. Perhaps with enforced diversity requirements. Some have clear diversity requirements. Others do not and tend to produce the same result year in, day out, decade, decade out. I think that should be reviewed.

More power for a faster turnover of the Board is actually at the heart of all this discussion. If you look to the history of the ICANN Board, the

community hasn't done a bad job in changing people from certain decisions. [inaudible] taken two or three years to achieve that.

At the heart of this, coming to Alan's perspective, is potential circumstances were under some contractual arrangement. A supporting organization or some combination could actually move to change a Board member at mid-term. I think that seems to be the key thing that would be preferred. I think a more effective and perceived legitimate independent review panel I think is perceived as an important part.

This model strongly stands against a broader Membership model, which puts ICANN not at risk of political manipulation or broad set of members by any combination of ethnic, national, or fixed interests. I stress that Membership is not the same thing as participation.

I would finalize it by one example. We tried this a little while ago in terms of voting into Membership, and in one part of the world, we had Board members elected with 300 votes and with 400 votes, and another part of the world, we had 60,000 from one country followed a week later by 120,000 quickly mobilized in the second country. In the third country, which could have mobilized tens of millions, just came late to the game. That's the sort of thing I'm particularly fearful of for a broad Membership base.

THOMAS RICKERT:

Thank you, Paul. Now we have Jonathan. Jonathan, you opened good morning and now you're almost closing this session.

JONATHAN ZUCK:

Thank you very much. I guess I began with a little bit of a bright and cheery Pollyanna-ish view of our work and I want to return to the real politics side of it as well. I guess what I want to share is just my experience, and I've only been around for half of the life of ICANN.

But what I've perceived is almost institutional resistance to accountability, and I think that has shown itself in many, many different aspects from the failure to set measurable objectives and then measured later or not whether they were achieved.

Objectives like, "Well, we're going to hire two more people to deal with that problem," and then at the end of the year saying, "Well, we succeeded in hiring two more people to deal with that problem."

That method of dealing with accountability and with problems and a desire to drive policy to anecdote rather than data is also persistent within the organization.

If we look at the areas in which we've seen incredible revelations of the community swaying the Board, I think if we look very careful at them, they're also instances in which there was exceedingly high leverage in the hands of the community.

We got ATRT reviews started as part of the Affirmation of Commitments which was part of getting an agreement to make the US have less of an oversight role as they did with the Memorandums of Understanding and the Joint Project Agreements that proceeded the AOC.

If we look at the most recent revelation of coming and resisting what was an incredible resistance to the community, desiring to have accountability be part of this process, there was incredible resistance and delays to that process and we shouldn't forget that when talking about how well this model has worked in the past.

It was the fact that there was a deep, imbedded desire to make that transition happen that gave the community that leverage to sway the Board and to change the course the organization was taking around the transition.

The model that I want to propose as unfriendly and harsh as it may sound is one of leverage. The bottom line is that we want to empower the community, the overall community of ICANN, instead of the organization of ICANN – and I certainly don't mean to suggest the Board are not part of the community. They are. But there is an institution that has arisen and a method of operation that has evolved with that institution that needs to be tested and leveraged from time to time by the community as a whole. I don't believe that it's all goodwill that will get that done, that it is leverage that will get that done.

That's why I'm supportive of a model – and there are several – in which there's leverage put in the hands of the community from time to time when it's necessary to get the job done. I just wanted to share those observations. Thank you.

[MATHEIU WEILL]:

Thank you very much, Jonathan. It was a very, very useful set of statements. I took plenty of notes of the various requirements which were I think laid out very clearly by every speaker. First of all, I want to thank all the speakers not for managing their times properly, although I'm very grateful for that, but essentially to provide the substance around the positions that gives us greater understanding and knowledge about where they're coming from, what they're aiming at and I think that's going to prove extremely valuable in the next steps of our debates.

Thomas wanted to make a quick intervention.

THOMAS RICKERT:

Yes, just very briefly. I had reached out to Holly and Rosemarie to ask them whether there had been any statements in the presentations that made it obvious that speakers had based their proposals on inaccurate legal understanding, so that we shouldn't be misled for something that potentially couldn't be operationalized. You would certainly correct me if I'm misrepresenting what you were stating.

[They] said if we look into the detail, they can make pretty much everything work. But a lot of, or some, statements that have been made are not entirely correct. So we would actually need to look at the implementation model behind the suggestions that we have made and look at that in more detail.

So just a little bit word of caution. Not every single word that has been said can be taken for granted and we would need to further dig into that. Holly, you would like to add to that?

[HOLLY]:

Yeah, just to confirm. I think without knowing the details on which everyone who is speaking is making their position statements known, it's difficult for us to comment on any underlying assumptions because the underlying assumptions are not always stated. That's what I meant. I didn't mean to point out that there were any particular errors.

I think broadly, from what we heard, all of the different models that are under discussion are workable in some fashion. Again, the devil is always in the details. Thank you.

[MATHIEU WELL]:

Thank you, Holly. I think on the one side, devil is in the details; and on the other, the power is on our group to decide on the balance of requirements that are going to be in front of us and that should definitely drive our work further. Not rush into the details too early, but also make sure we understand upon which requirements we are advancing when we're advancing on the particular model so that we can actually explain why we're making those choices to the overall community.

I will now turn to Kavouss in a couple seconds. We'll take a short round of clarifying questions, if there are any, about the overall

discussion that took place. Then we'll break for lunch. I see everything's ready. So just for people who want to ask questions. Be mindful you're standing between a group and lunch. And lunch will enable us to chew this up. Yeah. Obviously we'll come back to the net steps after lunch.

So in terms of questions, I assume Erika and Paul are old hands in the AC room. I don't want to be misinterpreted here. I have Kavouss and then I'll go to James and Alan. Kavouss?

KAVOUSS ARASTEH: Yes. I don't want to speak on any model, but I'm just asking whether we have considered a hybrid of various models. [inaudible] model.

[MATHIEU WEILL]: There might be some hybrids.

KAVOUSS ARASTEH: Hybrids. Have we considered that?

[MATHIEU WEILL]: So the statement is there is no assumption that we have looked at all models. There is no assumption that a new model might not spring out of our further discussions. We can call it hybrid. We can call it creative model. This discussion is not over and that's precisely a point of this exchange. So [inaudible] responses.

No, we haven't considered all hybrid models yet. That might be the case if that's where the discussion takes us.

Next in the queue is James.

[JAMES]:

Thanks. James speaking. My question is for Alan or directed perhaps at Alan's description. It's going to sound like I'm criticizing it, but I'm actually kind of intrigued by it, so just bear with me a little bit.

In the instance – I think you mentioned that there would be a letter from Board members that would uphold their – or [inaudible] their commitment to representing the interest of the community. I'm curious as to how we would – and I'm deliberately trying not to say enforce – but how we would hold them to those commitments because it strikes me as the kind of person that would perhaps be subject to the use of that letter would be the kind of person that would disagree with whether or not they had upheld those commitments.

Is there another stress test in the works here or how would you possibly resolve that paradox where the person that is no longer responsive to the interest of the community is still going to honor their commitment in that letter?

[MATHIEU WEILL]:

Thanks, James. So that's the resignation letter kind of . . .

[JAMES]: Right. And I don't know if that's a question directly at Alan or if it's just something that we need to put on the to-do list to flesh out that model.

[MATHIEU WEILL]: If we move on with that model and that particular implementation model, definitely we need to be very clear about what that looks like. The next is Alan. Oh, how fitting.

ALAN GREENBERG: And I will choose to answer that question, if you don't mind. This was an idea that came out of the legal counsel saying that it is quite possible to have an irrevocable letter signed before. Requiring an irrevocable letter to be signed saying that they will step down if certain circumstances were met.

I am presuming that that effectively is a contract that it can be made enforceable and we need to identify who has the standing to enforce it. I made some suggestions in my written document. I am not a lawyer and I'm not trying to write that document, but I believe it is enforceable. So that would give [inaudible].

And I'm not convinced, by the way, that whoever – the community has to step down is a recalcitrant person. It's just someone that we don't agree with. To use the divorce phrase or slogan, irreconcilable differences. It does not mean they're recalcitrant. It just means we think differently.

The issue I wanted to raise, I put my hand up, is two of the speakers said things that I think are at odds with my understanding of reality. One of them was Robin who was suggesting the Empowered Designator model.

My understanding of the Designator model is it also requires an unincorporated association or some legal persona which is the sticking block on the member model. So I think that one has the same problem and therefore that would have to be resolved.

This leads to my second comment to Jordan's comment, that he said the Membership model puts the power in the community where it belongs. That's what we thought, but we have since found out that there's a whole bunch of parts of the community who have said they can't participate or won't participate. And therefore it doesn't put it in the hands of the whole community, but a very potentially small subset of the community. That's one of the problems I have with that. Thank you.

[MATHIEU WEILL]:

Thank you, Alan. Next is Robin and I would close the queue after Jordan.

ROBIN GROSS:

Thank you. First I just wanted to quickly address Alan's point. I actually was assuming we would have UAs in the Empowered Designator model. So I just wanted to make that correction to your statement.

Then I have a question. I'd like a clarification if somebody could help me out here. What is the difference between the Empowered Designator model and the Empowered SO/AC model? Since the SOs and the ACs are the Designators, can somebody tell me what the difference is between these two proposals? Thank you.

[MATHIEU WEILL]: I know that Becky was one of the proponents of this. A quick follow-up. An appropriate answer may be, "Oh, we don't know. We would have to actually talk this further to define whether there are differences."

ROBIN GROSS: Well, it sounds like we're talking about the same thing. If we are, that's great. But if there are different goals and distinctions, I'd like to know what they are.

[MATHIEU WEILL]: So I'm hearing from the first row there might be a difference into whether we need a legal person.

ROBIN GROSS: I don't think there is. I'm assuming we need a legal person. I'm assuming we need UAs under Empowered Designator.

[MATHIEU WEILL]: Yeah. That's what I understand from you. Becky?

[BECKY BURR]: So, first of all, I am not a legal expert on this. What I said is we are recognizing and empowering giving the powers, essentially the powers that members would have to the SOs and ACs, and by articulating their intention to come together to exercise those powers, it essentially creates the entity that you need for enforcing those.

So there's no requirement that anybody file an unincorporated association or anything like that, although I don't actually think there's any requirement under Robin's proposal that anybody file an unincorporated association. They could do designation by the same model, which is that SO and ACs.

But what I'm proposing is to get rid of the middle man and the question of who watches the watchers and go directly to the SOs and ACs.

[MATHIEU WEILL]: Thank you, Becky.

UNIDENTIFIED FEMALE: This is great because it sounds like we're talking about exactly the same thing. The SOs and the ACs themselves would have these powers. Whether you call them Designators or not I don't think is important. It sounds like we're talking about the same things.

[MATHIEU WEILL]: [inaudible] is next. Please consider lowering your hands when you've spoken.

UNIDENTIFIED MALE: Yeah, thank you. For all the proponents for a Membership model, I recommend to remember the history ICANN has with the discussion of members. In the first bylaws of ICANN, there was [inaudible] which said just member, and then in brackets to be defined by the Membership Advisory Committee.

I think this report from the Membership Advisory Committee, which was done by the Berkman Center in the background is an interesting document if you read it with today's eyes.

Then later it was revised and we had a recommendation by the [Bilt] Group from [Carl Bilt] when he recommended Membership should be reduced to domain name holders only. So we have 250 million domain name holders. This is quite a lot.

That means if you move forward with the Membership question, please be very careful how you define a member. This is really important, otherwise you [inaudible]. Paul Twomey has made some good points. This opens the door for all kinds of manipulations and [captures].

[MATHIEU WEILL]: Thank you, [Wolfgang]. I think just a point of clarification. Most of the Membership model talks here were about a model, the reference

model from the group where the SOs and ACs are the members. And I want to be very clear on that because I heard a lot of confusion in the community discussion about this about the risk of getting millions of members that is not possible under the reference model. Yet Malcolm is suggesting this, so it's also not off the table at all. But let's not confuse an open Membership model with a model where the members is just a legal tool, a slight legal tool we're adding to the SO and ACs with all the discussion that's taking place on this.

I just want to make this point of clarification to avoid the confusion spread across the wider community on this topic.

Jordan, you're the next speaker and then we'll break for lunch.

JORDAN CARTER:

Thank you, Mathieu. I kind of wanted to respond to Alan's point, but I think it's kind of already been dealt with. The Empowered SO/AC model that Becky was talking about gets the kind of middle man, the separate UA thing that creates all these vertical or linear accountability concerns.

Even when we had those in place, this idea seems to have taken hold somehow that you had to join these UAs to be able to have a say in them. That was never part of the proposal. It's even better if that just stops becoming an issue altogether.

This idea that the model would lock anyone out of participating in anything has never been on the table. So it would never [have]

affected any of the powers and [roles] that SOs and ACs have today. It won't tomorrow either.

So wherever we go, I think we have to be really clear that in building accountability tools for ICANN, the general principles should be – that I support anyway – is that everyone who can participate can do so without any joining of things being required.

In other words, that [inaudible] remains as procedurally free of any encumbrance, of any obligation of it is today. I would be surprised if anyone disagreed with that as a kind of standing principle to the approach that we're taking.

MATHIEU WEILL:

Thank you, Jordan. I think with these initial remarks, we will break for lunch. I think how much time was? I think we have an hour for lunch. That will also give us time as co-chairs to convene and think about the next steps because we've made good progress this morning. We've reviewed the whole output from the public comments and the work parties – Kavouss, I acknowledge your hand – and have this very useful discussion. So now the question for us is going to be how we make the best use of our valuable face-to-face time to move this further while we're here. So, Kavouss, you have a last question?

KAVOUSS ARASTEH:

It's a short question. Do you provide some overview or summary of discussions? Because people are talking of different terms without going through the details saying empowering the SO and AC,

empowering on what [inaudible], empowering on what standing. So just we're taking, could you have a possibility of a summary of the discussions?

MATHIEU WEILL:

I think you're talking about our last lunch here, but yeah. I'm afraid that's going to be our main course for the lunch to come, and hopefully we can share something after that. Thank you very much, Kavouss. That's called food for thought.

UNIDENTIFIED MALE:

Good session, everybody. Thanks.

[Break]

THOMAS RICKERT:

Welcome to the afternoon session of the CCWG Accountability. Welcome to those in particular who've been patiently waiting remotely for us to reconvene. Sorry it took us a little bit longer than anticipated to recap what we had discussed this morning and to suggest to you a way to advance our discussion during the afternoon session.

We planned to do this is a two-step approach. In the first step, Mathieu will reintroduce you an accumulation of the requirements that we think we've heard from the various presenters this morning. You will remember that we have based all our efforts on requirements, so we thought it would be worthwhile distilling the requirements that you presented from your statements and putting them all in one place.

So for a first step, we would like you to confirm whether we have actually captured what you deem essential as a requirement for an accountability mechanism.

As a second step, we would then look at the various models that we have, look at the various models that have been newly-introduced this morning, and have a discussion about the pros and cons and if so to what extent we think the requirements that we've established are being met by the various models. Hopefully, we'll be able to rule out some of the options on the table and re-prioritize preferred options considered by this group.

I was just reading this long introduction for the group to calm down and be full of attention and anticipation for Mathieu's intervention. Mathieu?

MATHIEU WEILL:

Thank you. Before you lose interest, what we tried to do over lunch was capture what we've heard in terms of requirements or key concerns in the various presentations. That's a form of summary which abstracts itself from the various scenarios intentionally. We'll come to that in step two.

We've tried to map this on-screen so that then we can exchange and see whether we've missed something. So this is very much based on the community model expectations that we have, but it's not to be confused with our overall requirements – sort of going deeper into the requirement [tree].

What we heard is – [inaudible]. What we've captured here are requirements we heard about in the presentations. It does not imply it is a group requirement, but it is what we've heard by at least one speaker.

So the first requirement in this graph – there's no order – was that there would be no single point of failure in the accountability framework. Separation of powers was mentioned, the providing leverage to the community to avoid this single point of failure. That's where we had different views expressed whether this leverage was sufficient through the removal or recall of the Board of Directors, with a mention that it should not take three years. That was added.

Another view was that it needs to be some authority to the community to have this leverage. Then we had a number of comments expressed

on openness, openness to all, the ability to adjust to changing Internet communities in the figure, the ability to be open to new participants, the ability to be open to very disparate interests, and still bring them in to the ICANN model.

There were requirements expressed on diversity of all the structures internally within ICANN, and there was a word mentioned of having diversity requirements that would be enforceable. That's the only time I will find the word "enforceable" here.

There were several who said that the requirement would be that the US legal system would be used as literal as possible because otherwise it would send a bad signal for internationalization, especially if the entire governance structure was too far relying on California law. So that was expressed.

Finally, there's the proposal has to meet the IANA stewardship transition timeline – that's the requirement that was also expressed – meeting the CWG expectations or conditions. Call them as you want. And, of course, meeting the implementation time needed. So the time to implement is one key consideration in this requirement.

In terms of concerns expressed, we've heard concern that the headquarter discussions would not solve problems. That's a bit of what I would say is an outlier here, but still that was expressed. The complexity of changes was mentioned several times in terms of concerns.

We had a family of concerns around infinite regress – meaning, “Who watches the watchers?” – and the concerns about internal SO/AC capture. And of course, a family of concerns around unintended consequences, mentioned through a “if it’s not broken, don’t fix it” kind of argument, avoiding the creation of new entities, and avoiding any unknown territories we would get into.

Acting outside corporate governance systems was mentioned as one of the concerns. It’s a slightly different view from “If it’s not broken, don’t fix it,” because it’s been acknowledged that the current model is outside some of the corporate governance standards, I’d say.

There was a concern of good will, which might not be sustainable in the long-term. That was also expressed.

So our first questions are: are we missing any key requirement or concerns expressed during the morning? I see that Tijani’s hand is up.

TIJANI BEN JEMAA: [inaudible]

MATHIEU WEILL: Steve and Alan. Are you up in the visual room as well?

UNIDENTIFIED MALE: [inaudible]

MATHIEU WEILL: All right. So Tijani first, and then Steve and Alan.

TIJANI BEN JEMAA: Thank you, Mathieu. It is about the requirements. I don't remember – perhaps I was mistaken. I don't remember someone speaking about the timeline. It is not something that was mentioned this morning, I think, especially because it is not the problem.

You'll remember very well what the NTIA told us. They asked us, "What is the time needed for that?" So we don't have anything to make us hurry up.

MATHIEU WEILL: Thanks, Tijani. Next was Steve.

STEVE DELBIANCO: Tijani, to answer your question, I did hear Alan say we could get this done by the end of the year. A couple of people mentioned about timing – not enough time to get this done – and complexity. So there was certainly an implication that moving quickly was better than moving slowly. I would say that.

My question is about two or three of the requirements where we call for things like diversity. My question would be do we want to say an absolute standard of diversity, or is it relative, to say more diversity than the current, than the status quo? Are we open to newcomers, for instance? Today's structure has ACs and SOs, and there seems to be a

place where any citizen on the planet at least has a designated place to go, ALAC being probably being the most wide open.

If we say that that's what we have today, is the requirement that we improve upon the status quo? If so, we would add things like "More open than we are today," or "More diverse than today," as opposed to just putting diversity and openness as absolute achievables.

MATHIEU WEILL:

Thank you, Steve. I'm navigating through the AC room queue plus others not in the AC room so that [inaudible]. I encourage you to go to the AC room as much as possible. I have Greg, Alan, and then Becky and Kavouss. Greg?

GREG SHATAN:

I think maybe the term requirement at least is throwing me. I agree with Steve that these should be viewed as relative as opposed to absolute. To some extent, they're stated as absolutes, which makes them harder to find consensus around, so I would view those perhaps as the starting points, not as end points. Clearly we need to discuss them.

I can see that some of the branches go off in opposite directions, so clearly they are starting points. I think we're a ways away from adopting requirements, much less all of these requirements.

That said, I would add my voice to those saying that we should be making our effort to think up what the IANA stewardship transition timeline is. Not to sacrifice the quality of our work, but we can't act as if we're working in a vacuum because we're working in very much the opposite of a vacuum. If we decide that we'll take the time it takes, we might be at this forever, so we need to decide the time it will take and try to work towards that in a responsible fashion, working without haste but with speed. Thank you.

MATHIEU WEILL: Thanks, Greg. I have Alan.

ALAN GREENBERG: Thank you. In response to Greg's first point that some of these things point in opposite directions, I think you did make quite clear that these were the issues raised by individuals, not necessarily beliefs of the CWG at this point.

One thing I think you left off is, on your branch on openness to all, you're saying that we need to be open to new participants. I think a mandatory requirement. Mandatory from my point of view is that we are open to all the existing participants within ICANN, all the existing ACs and SOs. That doesn't mean they can in theory participate. It means they are willing to under the terms we're specifying. I think that's really critical.

In terms of timeline, I was at a meeting earlier today that you were invited to but couldn't make. If I understood properly – and I had to

leave early – the timeline we’re looking at is we really need to have the bylaws passed by pretty much the end of this calendar year if we’re to meet the US Congress and issues that ensue, and factoring in the US election.

I believe that’s the timeline. That needs to be verified, but I think we’re looking at not much later than December this year, January of next year, for actually having the bylaws passed. So that puts things on a pretty tight timeline in my mind.

MATHIEU WEILL: Thanks, Alan. Kavouss?

KAVOUSS ARESTAH: Yes. On the timeline, although the letter of the NTIA needs to be replied to, and having considering that we never had any deadline but we have an objective, a timeline is an issue and we have to talk about it because sooner or later we have to reply to that letter. This is point number one.

Point number two is impact or potential impact on the CWG requirement because CWG requirement is directly connected to the ICG activities, and I would like to know to what extent that requirement maintains or needs to be modified. Thank you.

MATHIEU WEILL: Thank you, Kavouss. So what I’m hearing in terms of this is, first of all, a clarification that this is a checklist of what we’ve heard and in no

way requirements that we're carrying further at this point. It's just to have a global view of the various items that were brought forward this morning and which was actually very valuable.

I am taking on Board and will provide an updated version with the comment about the improvement of diversity and openness. It's an everlasting journey. No organization is ever going to be perfectly diverse or perfectly open.

As well there was the comment on the existing participants, which indeed Alan was clearly referring to this morning in his presentation. That's definitely up for comments. As for some sort of timeline, I think we've heard that from some in the room. It does not mean this is the priority or that all our work should circle around a timeline, but certainly it was mentioned as one of the expectations from the group.

With that, I think we'll now move to step two. I would like to introduce my dear fellow co-chair, Thomas, for that second step of the afternoon. That was the easy part. I will now go and get some coffee.

THOMAS RICKERT:

Okay, so we'll reconvene in 20 minutes. I just want that to be on the record in case not everybody has heard that. Don't we have any policy against discrimination of the co-chair?

ERIKA MANN:

[inaudible]

THOMAS RICKERT:

Not when it comes from Erika, right? No, she may do that because as a Board member, she's a true community fellow members, right?

Okay, can we please have the exercise in the Adobe room? We've now refurbished or added to our inventory of requirements for accountability mechanisms. Let's now try to move through a table that we've prepared or that I take full blame for because I'm not good at Excel. It's truly ugly, but I hope that it will help us structure our discussion a little bit.

So what you find in the column is actually the different models that we've heard, all contributors. I have to apologize up front that we don't have columns for all contributors. We might add some. Greg, for example, was speaking out in favor of a Membership model, so we didn't give that an extra column, although we could. Certainly we don't want to discriminate Greg, as we wouldn't want to discriminate anyone.

The idea here is that we would look at the various models, the Membership model with – UAs that should say; that's an auto-correction. Maybe, Alice, you can rectify that? Unincorporated associations that we should discuss; i.e., the reference model from our report.

Then we have the Designator model; the cooperative model which has been tagged "voluntary model" so that everybody understands what we're talking about.

Then we have the Empowered SO/AC model that has been suggested by Becky. We have the Malcom model with open Membership for the whole global Internet community. We have [my gift], or the [inaudible] suggestion made by Sebastien, although the way I understood it, it's more a list of features and aspirations that we should have when working on a model, and I think that would turn out to be very valuable when we establish features for what might our new preferred model.

Then we have a point made by Sam, primarily regarding the danger or the caution that we need to ensure that ICANN as an organization will not lose its not-for-profit status. We have Alan offering a variation of the cooperative model with advanced conditional resignation letters from the directors.

We had the idea of Paul, which was basically a merger of the Becky model with the Alan model with additional diversity requirements, and we had Erika reminding us of the jurisdiction issue and not breaking a workable system at this stage, which is a reminder that we should actually discuss jurisdiction in this context.

So what we should do now is actually go through the various items that we find in Column A. I suggest we don't call upon them one by one because that would take us too long, but I guess what we should do is identify the core features of the various models on the table, their main weaknesses or strengths, and hopefully advance our discussion on that basis.

Just opening up my own computer, the features that we should discuss are pros and cons for the various models, and to [inaudible] more specifically their complexity, their issue of watching the watchers – does the model have this issue or is it present with a certain model or absent with a certain model?.

The messaging – how easy is it to explain to the global Internet community what we’re doing here, which is also a factor that came out of the public comments?

The perceived implementation challenges. I’m intentionally saying “perceived” because there are some who say it’s easy, others who say it’s complex, and others who won’t understand what we’re doing. So let’s not discuss whether it’s actually easy or complex, but let’s just acknowledge if there is one model that is perceived to more complex when it comes to implementation than others.

Let’s talk about unintended consequences. Let’s talk about openness, the point that Mathieu made and which Alan commented on. I’ve phrased it slightly differently, calling it flexibility. How flexible is the model to let parts of the community change their status or their involvement or include new players to the game?

Let’s talk about diversity participation, the CWG expectations. Actually, expectations is too weak of a work because there is a conditionality, so we need to make sure that the model that we prioritize is actually capable of meeting CWG requirements fully, because otherwise the approval from the chartering organizations is going to go away.

We can't afford to have a single point of failure. We need to talk about authority. How much authority does the community have over ICANN?

NTIA criteria. I think since the purpose of this exercise is to get a successful transition, we need to make sure that none of the models that we identified to be preferred makes that very transition impossible because it doesn't meet NTIA requirements.

Finally, implementation time/time to adopt because for the US government, it might be good enough for us to adopt recommendations on implementation, but we don't have to be fully implemented at the same point in time.

Without any further ado, I would like to ask you and encourage you, everyone in the room as well as those participating remotely, to chime in and maybe speak to the points that they find most relevant to them, speaking in favor or against a certain option.

Since this community has proven to be very shy, I can take – Do we have volunteers? Steve is not shy. Okay, Steve, take the first crack at it.

STEVE DELBIANCO:

Okay, thank you. Column E is Empowered AC-SO. If I understand you properly, you'd like us to very quickly speak to the pros/cons, etc., in that column and point something out. This is the one that Becky discussed, and it's very close to what Robin proposed.

The pro is that it gives new powers to the existing structure. The cons are that it will take time to learn how to design and use the new

powers. The complexity is probably difficult to explain to people and understand it. The complexity of designing the IRP procedures, for instance, is going to take some time. I think that once they're implemented they may be easier to use than they were to design and implement,

I don't think the "watch the watchers" is any worse today in the sense that if we're just empowering the existing ACs and SOs to the extent that our existing ACs and SOs have internal accountability problems, then this doesn't make it any better or worse. So I don't want to dismiss it as if it's not a concern, but I don't believe it exacerbates in any way the "watch the watchers" problem

Unintended consequences would be the kind of things that staff legal memo we discussed this morning would bring up. The diversity and participation are again up to each AC and SO since we're not changing any of that in the bylaws. The CWG requirements are met. We stalled the single point of failure. We've given authority and leverage and the NTIA criteria are met.

As far as implementation time and adoption, I was asked about this when I testified at the two Congressional hearings in the United States last month. They both wanted to know best case and so on, and we described this notion that if the community could come together with consensus and approve a proposal for accountability, and if CWG could do their proposal of the autumn of this year – that is to say, after Dublin – it might still take a couple of months to implement the bylaw changes that are necessary for Work Stream 1 powers.

I explained that that wouldn't mean that every single policy and procedure in an IRP would be done – that would take much longer – but that the bylaw changes could be implemented in a matter of a month or two after the community proposals came in.

Then I turned to Congress and said, when they asked, “What should we do?” and I said, “Please back the community. Insist that ICANN implement and adopt the bylaw changes necessary to support what the community has asked for.” I said, “That is the best gift you can give to the global multi-stakeholder community: to say that you back us and you want NTIA to hold ICANN accountable for that, of implementing the changes.”

The good news is that as of Wednesday morning in Washington at least one committee in the House of Representatives unanimously reported a bill that says exactly that. So they are trying to back the community and I think we can be grateful for that.

I'll close by simply saying that Becky Burr's innovation in Empowered SO/AC is that it does not require UAs of any form. I verified with Holly Gregory at the break. I said, “If the GNSO where I live adopted a resolution tomorrow morning saying that the GNSO comes together for the purpose of exercising the powers given to the GNSO in the bylaws, and we passed that resolution in the GNSO and we hosted it on the GNSO website, would that be sufficient for us to have the ability to exercise those powers and have them actually be an authority that I can enforce?” And Holly said, “Yes, absolutely. No UAs needed. No

articles of incorporation.” None of the overhead that we thought was there.

I think this is attributable to Becky just coming up with an inspiration on the way down on the plane. I don’t know where it came from, but it solves so many of our problems and almost eliminates the need for Column B in your table.

Apologies for the long answer, but you did ask us to run through every row.

THOMAS RICKERT:

I think we need to ask Becky over a beer when her Eureka moment was. Actually, Sebastien – before we move to Sebastien, Steven, I would actually like to challenge your offer for E6 because to me what you’re suggesting has the lowest complexity.

ALAN GREENBERG:

Can you tell us what E6 is? Our chart doesn’t have letters.

THOMAS RICKERT:

Complexity difficult to explain to people and complexity to design [RP] procedures. I would think that if it just needs a resolution from the SOs and the ACs, that would be the lowest complexity that we can think of compared to the others. Certainly designing IRP and maybe discussing or explaining the enhanced IRP to the community might be a challenge, but that goes for all the other models.

STEVE DELBIANCO:

Does it in fact go for them all? I've thought about that, Thomas, because the powers, like recalling the Board, one or all. The powers like blocking a budget, blocking the bylaws, defining supermajority requirements with or without the GAC participating are the complexities that would be inherent in the model when we avail ourselves of all of the powers. I love that Becky has eliminated any complexity at participating. Anyone could participate any time they want.

The GAC could decide someday in the future that they actually really want to get in here and start exercising their votes. That's fine. The GAC could pass a resolution saying they've come together for the purpose of exercising the powers available to them in the bylaws. The post the resolution on the GAC website and they're in. So we want to make it open and available.

I agree that that's simple relative to all the rest, but the complexity is in articulating these powers and explaining the rules for IRP and the rules for reconsideration. Some of the other proposals we heard before the break didn't involve all of those powers. Some have wanted the simple status quo. "Keep the voluntary model." "Don't change anything."

That's why I recognized that there is some complexity remaining.

THOMAS RICKERT: I see that there is some opposition, so without having to listen to all of you, can we agree that the complexity is relatively low for that? And I would add that the messaging is easier, or relatively easy, compared to the other models because we want to be able to compare. I think every new model has its complexities. That's what I'd like to suggest before moving to Sebastien.

SEBASTIEN BACHOLLET: Thank you. What is interesting here is that I have the impression that we jumped to the swimming pool of the Membership model because we had this legal advice, and I'm not sure that if we don't have that at the beginning the proposal made by Becky would have been what some can call the status quo.

It's not the status quo. I agree totally because what we are doing is changing a lot of things within the current organization, but some people name that as the status quo. It's the wrong name.

I think looking to that and what the status quo was supposed to be – eventually part of my proposal – it's all the same. It's to build on top of what we have today.

I like this way of thinking of doing it. I think it's a very good [enhancement] of the current work of the working group. Thank you.

THOMAS RICKERT: Thanks, Sebastien.

SEBASTIEN BACHOLLET: And maybe we don't need to spend too much money in the future with bad advice. Sorry.

THOMAS RICKERT: I think not every advice that is not handy for individuals is necessary bad advice. I think this was extremely helpful to inform our discussions. I guess we've been reassured that if we should do what Becky has suggested – that still the SOs and ACs could exercise that power – I think that legal advice was the basis for exactly doing this.

Next in line is Greg.

GREG SHATAN: Thanks. Thomas, I'm glad you said that the legal advice was the basis for Becky. Indeed, legal advice of one sort or another has been the basis for all of this. I don't think we could have gotten where we've gotten without legal advice since we're dealing with, on one level, a legal pro.

I'm trying to speak to the second column, but they're labeled very differently in the screen in the Adobe Connect Room. In the Adobe Connect room, it says, "Membership Model with AUF." I'm not sure what that means. Then it says under here I think, "Membership Model without UAs: Reference Model." So I'm not exactly sure what is being said in either column.

THOMAS RICKERT: It should read, "Membership Model with UAs."

GREG SHATAN: Okay.

THOMAS RICKERT: And there is a typo in there. Some of the complexity to the Membership model as discussed as our reference model in the proposal stems from the fact that people don't seem to like the notion of UAs as separate alter-egos or avatars or whatever they called it. So that is to characterize the Membership model based on unincorporated associations.

GREG SHATAN: Well, I think there has been a lot of old wives' tales spread about what the UAs could be. I think they're really intended to be rather similar to what's been proposed under the Empowered SO/AC. It's intended to be a paper-thin organization. It's just a final point of execution for the SO/ACs. It's not intended to be a separate organization that meets amongst a separate group and makes separate decisions. It's intended to be a delivery mechanism for the decisions of the SO/ACs.

But in any case, in terms of the pros of the Membership model, first, the Membership model is what is designed by law to meet the needs that we have. It's kind of the right model from an objective point of view.

Secondly, it authorizes all of the powers that have been discussed – all of the community powers – and can be executed using the Membership model. So we don't have to discard any power.

The cons are that it has inspired irrational fear in people. Complexity? One the one hand, we do have a problem to solve with how to provide the UA or the legal entity for the Membership to be the member, but I think again it's not much more than the statement that has been proposed under the Empowered SO/ACs. So I think I wouldn't actually count that as a complexity, but I think it's still something that needs to be resolved.

As far as “watching the watchers” goes, again I would say that that's no worse than the current situation, except to the extent that we need to make sure in enacting the UA that the UA has no independent authority to do anything other than to act as the delivery point for the SO/AC. So I guess the “watch the watchers” issue is the proper control of the UA or proper narrow mandate for the UA.

Perceived implementation challenges, which seems to be rather long, is implementing the UA. Or maybe that is the only real issue. After that, it really isn't terribly different from a number of the other models. I guess there's also potentially the issue of controlling legal entities so that they don't necessarily go off and do whatever they want to do. But I think that's a perceived issue. I don't perceive that the SO/ACs are going to act any differently when they have this narrow extra power to use as members.

The rest of it, in terms of flexibility and openness, since all the work is actually going to be done at the SO and AC level, is just as open as our current model, what we do today. Same thing for diversity participation. It certainly meets the CWG's expectations, probably better, or at least as well as I'd say the Empowered SO/AC model and better than others. I don't think there's any single point of failure issue.

As far as authority goes, it's very much a huge pro. This is a model that gives absolute authority or the most authority possible to the community because members are the ultimate authority in a Membership organization.

As for the NTIA criteria, I don't have a judgment on that. Implementation time: again, as long as the UA is not complex and separate – it's kept simple and short and can be established with a one-paragraph document – I think the time is similar to the Empowered SO/AC model.

THOMAS RICKERT: Thanks, Greg. We have a queue of Alan, Avri, and Kavouss.

ALAN GREENBERG: Thank you.

THOMAS RICKERT: It will be your turn. Alan, Avri, Kavouss. Okay.

ALAN GREENBERG: Thank you. I'm not going to go down the long list and try to categorize everything. In my mind, several of the items listed across the top – the different presentations – represent very close to the same thing using somewhat different words. In some cases, the details may differ, but were not necessarily all that important.

I for example talked a fair amount about removing directors. If we empower the ACs and SOs and ultimately don't have the ability to remove the directors, I personally can live with it. I don't think that stick is necessarily needed. Others I believe thought the stick was mandatory and I included it in my option that I presented.

So I think there's a lot of commonality between them. We tend to be using different words, and I think we need to get around that. I will comment on one thing Steve said. He said that some of—

THOMAS RICKERT: Sorry for interrupting, but that's exactly why we're doing this, to boil it down to requirements. Therefore I think it would be valuable for you to spell out the commonalities or the differences.

ALAN GREENBERG: I will do that. Let me make that one comment I was going to make and I'll go back to that. Steve said that, when we were talking about the status quo or how we would do things, we did not talk about things like reconsideration or the IRP. From my point, though, I assumed they

were given and they didn't really come into the enforceability issues. They weren't omitted because I didn't want them; I just assumed they were there, that they were a common [inaudible], and I suspect some of the other people passed over them for a similar reason.

Going back to try to identify the exact differences, if you had suggested that a half a dozen of us over lunch get together and try to identify where what we were saying was different from each other or was the same thing using different words, I suspect we would have been able to come up and be more concise.

When I listened to Becky speaking, I didn't hear a lot that was at odds with what I said. She didn't talk about the director removal, and I've already addressed that. The rest of it I think I was talking about re-empowering and strengthening the power of ACs and SOs without necessarily the legal right for them to take ICANN to court, but putting in the bylaws, all of those things.

I heard the same words from a number of other people, so I think we were generally talking about the same thing, perhaps with different implementation details. I didn't memorize them well enough to go through them one by one and say where I think there may be small differences. I heard a lot of people saying very similar things.

I heard Becky and Avri and Roelof saying things that, if we were stuck together in the room, we could probably come to a common presentation pretty quickly.

THOMAS RICKERT: I guess, Alan, that that's an excellent point to capture. I think from our discussion – and from my observation as well, I may say – that we're using different terminology, different names, for different models, but there is actually more common ground than we might have thought.

Actually, I've lost my Adobe.

ALAN GREENBERG: If I may add, more common ground other than those who want the formal UAs and Designator/members, yes.

THOMAS RICKERT: Yes, starting from the Cooperative or voluntary model. Avri's next.

AVRI DORIA: Thank you. A couple things. First of all, I want to challenge the [inaudible] of inspired irrational fear.

ALAN GREENBERG: That was my favorite one.

AVRI DORIA: Yeah, I know, and it's a lovely phrase. I have two. Perhaps they're irrational fears. I'd actually like to explicitly list my irrational fears.

One of them is that it does turn an American solution, now with NTIA as our guardian, into an extremely American solution with American courts as an integral part of our policy mechanisms, which I think is

possibly problematic, at least to some folks. That's definitely one of the cons I would like to propose on that, and I think it goes beyond an irrational fear. Certainly there would be people who would question it.

The other one that I keep bringing up on that is, as new structures, as new ways of structuring things, they do bring into question new accountability issues, and in a sense, what we are doing is solving the accountability at one layer, but the global ICANN layer at the next layer down. Let's move the problem down, and it will therefore be better at the top layer. That may or may not be true. So I think that those are two issues with it.

Then, with a certain amount of hesitation but still a feeling that it needs to be done, a complexity in either the Membership model or I think even the Empowered SO/AC, where we're giving all SO/ACs an extra power in a sense, that we have never discussed what the implication is on the special bylaws power that GAC has. At the moment, we have done an equalization of the GAC by giving them special bylaws considerations.

If we put in a system that basically makes them the same as everybody else across the Board – equal footing; I would gladly volunteer for Priestess of Equal Footing – at that point have we actually given GAC beyond equal footing by saying not only do you have equality everywhere else, but you also still have the special bylaws?

I'm just putting that on the table as a complexity that needs to be dealt with in either Empowered or SO/AC, and I do that with a little bit of trepidation because I really don't want to get the governments of

the world really pissed off at me. But I really think it's a complexity that we have to look at. Thanks.

THOMAS RICKERT:

Yes. Quickly reacting to the point of irritating governments – I think that was the chosen language. I think that that's something that we need to discuss further and in more depth because what you alluded to, the role of the GAC in this whole changed environment, also triggered some comments from governments themselves. From the questions that we've heard, from the interventions that we got during our calls, there is certainly the question whether the GAC can take a legal format, whether the GAC can chime in in a voting regime.

I think while we offer it, participation on equal footing and not discriminating the GAC, with our best intentions we may have caused them troubles that they otherwise could have avoided. But I think for the GAC or governments that are represented in this room should maybe speak up at this point and say, "Okay." RSAC and SSAC have now chosen to stick to their advisory role, and the GAC could easily do the same and thereby avoid some of the complexities that we have landed them with, to put it that way.

I guess that's something we should bear in mind and discuss in more depth, but before we do so, let's follow the queue. Kavouss is next.

KAVOUSS ARESTAH:

I think you put some element of pros and cons, advantages and disadvantages. There should be some proportionality in the number

of [inaudible] of particular distinguished colleagues. We hear that there is a big pressure on a particular case to put many advantages and so on. “I can do this similarly. I can put a line up on this advantage to particular things. I hesitate to do that, so let us proportionally [inaudible] all issues in a more open and neutral manner, and do not push for a particular type of thing as we did in February. Thank you.

THOMAS RICKERT: Thank, Kavouss. Robin?

ROBIN GROSS: Thank you. I just was going to speak to the Empowered Designator column there and what I thought are some of the pros and cons of that particular model.

For the pros, I think we have the lack of complexity, that it in fact might be the easiest models that we’re looking at to actually implement. I also think the flexibility of it and the openness of it, particularly with people outside of the US, outside of the ICANN community, would be considered a pro for that particular model as well.

What I would see as the negative – and I’m sure people would agree – is that it isn’t the tightest level of control that we could have over the Board. So for those who see that tight control as being the primary driver, that wouldn’t work for them.

But I think that we could achieve a lot of that perhaps not control, but just engagement and mutual alignment of interest, just through more productive interactions and processes internal to ICANN before we get to a crisis point where the Board and the community are on different sides of an issue when it's decision time.

So I think that would be really the only negative I see to it, but I think the ease and the flexibility and the lack of complexity would be particularly helpful, especially since we're trying to do this in time for the IANA transition in the next year or so. I think it would be the easiest. Thanks.

THOMAS RICKERT:

Robin, sorry. Just a quick follow-up question. In terms of the only negative point that you found, what can we populate a cell with? I would like to capture that and populate a cell. Can you provide a first-time language?

ROBIN GROSS:

On the negativity issue? I think it's not the tightest control of the Board. I think the Board has a little bit more leeway in that model.

THOMAS RICKERT:

The Empowered SO/AC model?

ROBIN GROSS: No, the Empowered/Designated. But again, I think we're talking about the same thing on those two models. So I guess either column.

THOMAS RICKERT: Actually that would need to move to Column C. Thank you. Next is Tijani.

TIJANI BEN JEMAA: Thank you, Thomas. I do agree with Robin. I think we need only two columns here. There are two models discussed, I think, in my point of view. I think the question should be more, "Are you in favor of the UA or not?" because that is the problem. The Membership and the Designator need the stakeholders to constitute an unincorporated association. So this is the question. The other model doesn't require that, and I think that this is the main problem that we are facing.

If you ask me about [inaudible] that they have for the UA, I can give you some.

THOMAS RICKERT: Thanks, Tijani. This is very helpful. After we hear Malcolm, I'd like to try to capture some interim results based on Tijani's proposal. Next in the queue is Paul, please.

PAUL TWOMEY: Thanks for that. I thought I'd first of all apologize to all the members here because things like my name down there hasn't gotten a written

presentation behind it, so it's just been some thoughts compared to the early work where everybody's had a chance to read the materials. It's not an apples and pears comparison.

Just to clarify in terms of your criteria there, that's the sort of the thing that I was proposing. We've got clarity about it. I think it's basically Becky's model, but moving with Alan's previous [position], where there is the ability for midterm Board member replacement and there is an ability for the [splitting] of the whole of the Board, where both of those have a high standard.

I agree with Jonathan's point of view about leverage, but I do think also we've got to form a representative democracy here. We're not trying to set up a system whereby the community is sort of riding on every resolution and therefore there's got to be some high criteria for where you replace mid-term.

I think the additional item also is some wording, putting in a provision of diversity, obligations on the ACs and SOs, not just on the At-Large. At the moment, the At-Large picks up the diversity obligations to the Board, and I that needs to be examined in my proposal.

So in that sense, that adds a little more complexity. I think it does allow "watch the watchers" in the sense that you clearly have the ability for SOs and ACs to move to have the Board replaced or midterm Board replacement.

I think it's relatively easy to message. I don't think of them around challenge. I think they're probably moderate. It's still similar to what

we have with the possible unintended consequence with people feeling fearful that they're going to get replaced. So that's why this question of "How high is that bar?" is an important question to be resolved. It adds diversity participation, so I think it meets some of the other criteria.

THOMAS RICKERT:

Thanks, Paul. That's very helpful. So that's also leaning towards variation of the Empowered SO/AC model, basically. And I think, Alice, we should capture the diversity topic to the Empowered SO/AC, and then we can delete the Paul column – not to delete Paul, but to capture his idea and marry it with the Empowered SO/AC. Greg has raised his hand.

GREG SHATAM:

A couple of points. I think – I'll defer to others, including Robin, on this – that under the Empowered Designator model, a con would be that we don't have authority over the budget or strategic plan in the same way as we might, at least under the Membership model or maybe even the Empowered SO/AC model.

Secondly, in terms of the cons that Tijani alluded to, I'd like hear what they are. In fact, some of them may come from a misunderstanding of how flexible and lightweight the UA model actually can be. In any case, identifying those cons is important because it may be entirely possible for those cons to be avoided while still putting a UA in place

as the end point, or for an SO/AC to exercise its decisions as a member. Thank you.

THOMAS RICKERT: Thanks, Greg. Malcolm?

MALCOLM HUTTY: Thank you. I was going to speak to the Open Membership model, as I believe she'd hoped. To be clear, what we're talking about here, the Open Membership model, is the idea that all the powers and mechanisms that we proposed creating go to and remain with the SO/ACs, and the only thing that it adds is the idea that members of the public at large will be able to join ICANN as members and then would have the right to enforce the bylaws and ensure that the bylaws have been adhered to.

So the key advantages are, firstly, it is as close as possible to the existing situation. It doesn't change of ICANN's structures at all, apart from the ability to create members. It also doesn't require any of these entities to change their status in the way that some of the other models would have done, while still achieving the key requirements that many of us have of enforceability.

It is also – and I think this is going to be important to many people – one of least American of the approaches in the sense that it doesn't depend on the peculiarities of American law, or to a minimal extent. UAs are a concept that is just not known to many of us if you're not American. So there's that as a concern there. And Designator is

completely new to me. This is just the idea of, “Well, everyone can be a member.” It also creates the sense that ICANN is a more global organization because people from all around the world can be members and give that sense of global diversity to it. So there are the pros.

The cons. I think a principal con is that if you say that everyone will be a member of ICANN, it might give rise to unwarranted expectations as to what the members would be able to do because actually our intent is to leave the powers with the existing SOs and ACs, and some people might think, if we’re going to allow everyone to become a member of ICANN, that that would suddenly mean that they get a whole bunch of additional powers that we’re intending to give them. So there may be a mismatch there.

From a complexity point of view, it’s straightforward. It’s just: allow people to join as a member. So that’s straightforward. From the watch the watcher’s point of view, it’s also simple as well because you’re giving the power to enforce to the people for whom that’s supposed to be for their benefit: the people themselves. So on that one there I say there’s a good alignment on the “watches the watchers.”

On the messaging, I think it’s a positive message. Everyone in the world can join ICANN. On the implementations challenges, this is the key one. It does depend on correctly structuring the Membership agreement so that we don’t give members powers that we didn’t intend to. That would be an implementation issue for the lawyers: to make sure that members do not acquire powers of which there was no

intent that they'd be given to them. Essentially that covers the unintended consequences there as well. It's basically work for the lawyers.

As for flexibility, openness, diversity and participation, I think that we can group these together. Clearly the idea that everyone is entitled to join ICANN if they're willing to apply and to accept the Membership agreements has maximized all of these. This model is clearly going to be the leading candidate on those criteria.

It provides the mechanisms to support the CWG expectation because all this is doing is what all the other models have proposed: trust a mechanism for enforcement for anybody to do the enforcement. So it meets that expectation.

There's no single point of failure because actually if you've got many members that can join ICANN, then any of them can provide the enforcement function. The authority lies with the public at large, so there is no problem of lack of authority there because the authorities are aligned with who the authorities should be exercised on behalf of.

Similarly, the NTIA criteria I'd answer in the same way as the CWG expectation. We've decided how we best do that. This model doesn't provide any variance. It just provides the variance regarding the enforceability question.

The enforceability timeline we'll defer to the lawyers on. It's just a question for them to get writing.

THOMAS RICKERT:

Thanks, Malcolm. I indicated earlier that I would, based on Tijani's suggestion, try to take stock of what we have so far, and then certainly I will give the floor to the others in the queue.

What I see happening in this room is that we have quite some opposition, quite some critical comments, for the Membership model for various reasons that we've also put into this table. Then we've heard from some that basically we only have one competing and viable option, which would be the SO/AC model that seems to be getting a lot of traction, even from Robin, who formerly spoke very much in favor of the Designator model.

It was my understanding, Malcolm, that you came up with this idea of unlimited Membership because you did want to offer something to overcome the predicaments with the UAs. So I think that maybe you might even be okay with the Empowered SO/AC model, looking at this, because we didn't have it earlier.

So what I'd like to test is whether we could maybe cut this conversation short and say that the Membership model, which once has been our preferred option or reference model from the previous report, is something that we should actually take off our list as the prioritized model, and that we should focus on and further work on and further develop the Empowered SO/AC model because that seems to meeting the features that most of you have asked for.

As we move to Avri, maybe you can also speak to the question that I've just raised.

AVRI DORIA:

That wasn't why I originally put up my hand, but I'll certainly say something about it at the end and [inaudible] at the beginning. I'm fine with taking the Membership model off the table. Yeah, I think you can do that, but that's beside the point. I never wanted it on the table. So my saying that doesn't mean a whole lot.

I'll be honest. What I really put my hand up on was the notion that anyone can join ICANN. Now, I have argued quite strongly that anyone can participate in ICANN because our working groups are open, the community comments, the outreach we do.

But in terms of Membership, people have to apply. People have to meet criteria. Not everyone does meet criteria. So to say that anyone can join ICANN as a member at the moment – a different sort of member; as a constituency or an ALS or RALO or stakeholder group member – is not a true statement, I don't believe. Anyone can participate. Anyone in the world can participate in ICANN, but the whole "every single group has criteria" – and I know of people that thought they were non-commercials that weren't non-commercial enough. I know of people that are not At-Large enough. I know of people that aren't commercial enough. For every group, I know of someone that was rejected for Membership at some point. So that isn't a global fact. Participate? Yes. Be a member? No. Thanks.

THOMAS RICKERT:

Thanks, Avri. Next is Jordan.

JORDAN CARTER:

Thanks, Thomas. I think a con of the Malcolm “Million-Member Stakeholder Model,” if there was any meaningful power going to this people under this model, lots and lots of them join and there’d be an administrative cost in actually dealing with them. I mean, what are the people going to do? Sign up on the website. You’d need to have a database. You’d be sending them updates, blah, blah, blah. So there’d be an organizational burden associated with this that may not be trivial.

On the other hand, if there is no power for these members as in the right to take court action if the bylaws aren’t followed, almost no one’s going to do it, and it doesn’t solve the central problem of trying to reallocate power. And you’d have to change the bylaws in all sorts of complicated ways to create classes of these members so when they’re acting, if they choose to act within the SO/AC structure, they have the powers that were set out in the report. So in all, I think it has cons of complexity and administrative burden when you really think through all the implications of it.

I wanted to respond a little bit to something that Avri said. I think it was Avri – no it wasn’t Avri. I’m having complete mind-blank. Greg said it. There’s been the odd mention of people understanding or not understanding the thing that’s in the first column, the Proposal Membership model. I’ve used that language in the past, but it isn’t right to talk about people understanding or not understanding. The

problem is that we didn't tie it down in enough detail that people were understanding it differently.

So all of the fears and stuff that've been raised have been perfectly reasonable when you have in mind a way of implementing that Membership model.

So I think in all, I just wanted to say that the Empowered SO/AC model looks very sensible from where we're at today. Thanks.

THOMAS RICKERT: Thanks, Jordan. Tijani's next.

TIJANI BEN JEMAA: Thank you, Thomas. Let me give some cons of the models that need a UA. The first problem is that it will prevent some of the community members to participate in the decision making since they are unable or unwilling to go with the UA associations.

The second problem will be that the community will have the problem of being sued under any jurisdiction. So they are a legal personalities and they can sue, but they can be sued. This is perhaps a problem that can harm the community.

Another problem is that at the final step, ICANN itself will be managed by courts, so there is always the possibility of escalation up through going to the courts, so I personally don't find it appropriate that ICANN ourselves be managed by courts.

The last point is that we are looking for enhancing the accountability to the community. The UA models will in fact make the Board accountable to the community, but not to the members. But what about the accountability of the members to the community? So the single point of failure is still there. Thank you.

THOMAS RICKERT: Thanks, Tijani. Next is Willie.

WILLIE CURRY: Thanks, chair. Just listening to this discussion slightly from the outside of it, it strikes me that the [inaudible] here is will the community powers be effective in whichever of these models? Because there's no use in having these powers if they can't be exercised.

I think what I see here is the discussion of the very important issue of vertical accountability between the community and the Board in a classical principal-agent relationship. It strikes me that whichever of these models is chosen, it must be capable of being exercised. Otherwise, it will not be of value.

So it seems that either the UA or the SO/AC model could work, but I would urge that they'd be looked at very carefully in terms of any possible chinks in that position. That's just an observation.

THOMAS RICKERT: Thanks, Willie. Rest assured that it was our plan always to put any proposal that we come up with in front of the lawyers to see whether

it's going to be robust in terms of the requirements that we have established, and the community powers are an integral part of the set of requirements that our group has come up with.

Next is Greg, please.

GREG SHATAN:

Thanks. Briefly to respond to the comment that Tijani brought up, I think under the model that I was expressing, which maybe deviates from the reference model somewhat – but I don't think so, actually – the decision-making would still take place in the SOs and ACs. It's only the execution that would take place in the unincorporated association. There would be no separate decision-making capacity within the UA.

In terms of the possibility of being sued, the UAs – at least the California UAs – offer limited liability. So it's only the UA that goes sued, not the individuals.

Under the current situation that we have here, it's entirely possible for individuals, even individuals in an SO/AC, to be sued for the decisions, and the only limited liability they would have is if it was decided that somehow ICANN's limited liability protected the decision-making of the SO and AC because it's all kind of within the bubble.

That may be, but either way, the ability to sue somebody who's made a decision that negatively affects you doesn't disappear. It's only a question of how you sue them. Something that provides limited liability, whether it's the UA or conceivably ICANN itself, is what you

want, rather than being exposed. Well, I don't think we have a proposal that's neither.

In terms of being managed by courts, I think that that's baseless. The idea that somehow we're going to be in court all the time just because there is an entity that has standing to go to court – I have the ability to stab myself in the eye with my pen, but I don't do it.

UNIDENTIFIED FEMALE: [inaudible].

GREG SHATAM: You'd be surprised. Going to court is a hell of an option, especially for an entity that has no counsel, no war chest. I think the idea that the courts are all of a sudden going to be full of ICANN matters is just completely far-fetched. I don't see how it would happen. I think that the general activities of the SOs and ACs will remain just as they are now. Again, remember that the SO/AC would have to decide to go to court and send the UA there just as its execution point.

As far as the issue of if you only have some community people in the Membership, that is something that is an issue. How do you involve in any of these cases all of the community members? That's one where there is some issue there, but that may be an issue in some other models as well. That's one for which I don't think there's a complete answer, although then we go back I think to the community council idea, which is not one of my favorites, but at least it did solve that issue, that decisions could be made at that counsel level and then just

executed by the members; again, the members just being an execution point.

Another idea that is possible is to just have all of the SO/ACs get together and form a single member and have this just be a one-member organization and have all the decisions made outside the member and just have that single member be the execution point. That's kind of a new variation. I'm sorry I didn't mention it earlier, but that would solve the problem of who are members, who aren't members, and the like.

I don't know if it's too late for that to be a new column. Instead of every individual human being a member, there's only one member, and it's just the final execution point for all of the current structures. Thanks.

THOMAS RICKERT:

Thanks, Greg. Jonathan, then Kavouss, and then Malcolm.

JONATHAN ZUCK:

Thank you. I guess I want to come back to Tijani's comment in some sense. We actually had an e-mail exchange about some of those same points.

I guess just to take a step back, I think one thing to remember is that when we shared a lot of the extra discussions and things like that that happen inside ICANN, one of the number one things that ICANN does is create contracts with contracted parties to actually run the DNS, right?

So at its core, everyone's setting policy, and the contract is what they do. Those contracts create legal standing that is ultimately enforceable by courts. And yet all those parties don't spend most of their time in court. They deal with contracts from clients and the processes that are internal.

So I don't think ICANN is an organization that's been afraid of enforceability historically because the real work of ICANN is these contracts, and every one of those contracts creates legal standing and the potential to end up in court. But that's what empowers ICANN over those contracted parties.

I think there's a big analogy to be drawn, and there's no reason that only contracted parties should have a formal relationship with the organization. That's one issue.

The other issue that I hear a lot of – Greg I think began to mention it as well – is this notion that we haven't yet solved the problem of accountability of the ICANN community to the broader Internet community. I completely agree that we haven't yet solved that problem, but I don't see that in any way as an argument not to solve the problem of the Board's accountability to the ICANN community. At the very least, we'll be creating an incremental improvement in overall accountability of the institution of ICANN, and a more Empowered community may in fact be more attractive for participation by the Internet community when they see that the community is ultimately the one driving the organization.

So I think that's a problem that needs to continue to be worked on, but I'm not sure that it's the problem with which we were presented here because we're looking at this abstract materialistic entity of the United States government and how to replace that role in what hopefully is a more sophisticated framework for accountability than previously existed.

But I don't think anyone assumes that we solved every problem of the organization with this framework, but we've made another increment, another step, in the maturation of the organization.

THOMAS RICKERT:

Thanks, Jonathan. I'm not sure whether Malcolm or Kavouss was first. Malcolm? Okay, Kavouss, please.

KAVOUSS ARESTEH:

Thank you, Thomas. I think the whole purpose of this exercise of Membership was to empower the community to the maximum level with respect to all aspects of decision-making.

Having considered the difficulty and the restrictions and problems to be a member, it may result that not only the achieved in power the Membership to exercise its power, but on the other hand, we ex-power or empower or depower the membership because they cannot join to be members. They cannot. Once they cannot join to be members, they do not benefit from exercising those powers.

Above that, you also result in an organization with more and more inhomogeneity, that some of the constituents have power to do something and some other do not have power to do something. So you end up finding that the inclusiveness, the democratic and so on [inaudible] which is part of the main core value will no longer be achieved.

I don't see any reason why we push something which acts against its purpose at the end when implemented and if implemented, which is a very difficult thing to be implemented. It is quite clear that some of the AC at least, or maybe SOs, have difficulty joining membership because of application or implementation of UAs – serious difficulties.

I don't want to give an example, but that means that they should be separate themselves from those who are members.

This sort of the universality, inclusiveness, of the community will be totally broken. So I request those distinguished lawyers who are very capable to talk and talk with these and kindly understand that this disadvantage. It is total disadvantage against many others, and we will not achieve what we intended to achieve. Thank you.

THOMAS RICKERT:

Thanks, Kavouss. Before we move to the next speaker, I'd like to highlight again that this very discussion and this chart that you see in the Adobe Room or on the screen is not meant to be a legal analysis. It is meant to help us discuss which features we would like our preferred option to have.

I have specifically put “Membership Model With UAs” in there because as you rightly point out, Kavouss, the difficulty for many in the community is the creation of the UA being perceived as an alter-ego or an avatar next to the group itself. Therefore, just to take the legal spin out of this – because my gift will also not be a legal term/description of a model – let’s call it the Avatar Model because I guess that’s what we have difficulties with.

I have not heard anybody speak against a Membership model because it’s a Membership model because it empowers the community or can empower the community. The vehicle to get the Membership model is the issue.

So let’s be very clear that we want to get away from the predicament of creating separate legal entities to go through a former process of establishing these and what the consequences are. I guess that that needs to be clear that in terms of features, it is my understanding that this group and the wider community has an issue, particularly with the type of UAs, the formalization of UAs, the registration of UAs, and the associated questions and difficulties. With that, we can now move to Malcolm.

MALCOLM HUTTY:

Thank you. And my comment follows on very nicely from that, actually. You asked me earlier – and this is my first opportunity to reply – since what I was seeking to do with the Open Membership model is also satisfied in many respects by the Membership with the

UAs or the Empowered SO/AC model, whether that would mean that the Open Membership model could fall away.

I would say the answer to that is no for this reason. Yes, they are all seeking to do the same thing by different groups. They are all seeking to ensure that the powers and mechanisms that we have all agreed upon exist and are exercised by the SO/ACs, and they're all seeking to ensure that in the final analysis there is a duty to abide by that and that there is an ultimate power of enforceability.

Then, some people have been, as you were just referring to, Thomas, criticizing UAs as a model for achieving that for various reasons. So the Open Membership model is alternative way of achieving the same thing that doesn't have UAs.

If those that are criticizing UAs say, "Actually we've been persuaded now. Our concerns have been satisfied and we're willing to go with that model," then we can look at dropping the Open Membership model because the purpose that it was offered for is no longer needed.

But as long as those criticisms stand, then one must also consider, "Well, here's an alternative way that answers those criticisms of achieving the things that we're seeking to achieve."

Finally, one final point, which is slightly different. Jonathan raised a good point a moment ago, and that is the accountability of the community to the public at large. One unique benefit, one benefit that really resides uniquely with the Open Membership Model, is [that]. If in the circumstance where ICANN has acted in a way that is, for example,

outside its scope or inconsistent with its fundamental commitment, if that is done [inaudible], then the other models provide mechanisms for doing something about that.

But if that is done in association with or at the behest of the community organizations, the SO/ACs, then they don't provide a mechanism for dealing with that. The Open Membership does. The Open Membership model would allow an individual who was affected by this misbehavior of ICANN to go to the IRP and get a judgment in their favor.

Then, if ICANN decides to ignore that judgment, perhaps because the SO/ACs themselves support ICANN in ignoring that judgment, that individual who had won the IRP could still ask for enforcement of that IRP judgement. That is something that the Open Membership model offers that none of the other models do. Thank you.

THOMAS RICKERT: Malcolm, you made a suggestion earlier to drop the Open Membership model. I'm all okay with that.

MALCOLM HUTTY: No, I did not. You made a suggestion that we should drop that. I said we should not do so.

THOMAS RICKERT: Ah. You've outsmarted me. But nonetheless, should you choose to withdraw the Open Membership model . . .

MALCOLM HUTTY: As I said, when Alan and Avri are content to say that support UAs, and when Chris agrees that enforceability is a key requirement for this organization, come back to me about dropping the Open Membership model.

THOMAS RICKERT: I'll take very good note of that. I think you will go down in ICANN's history as the one requesting ICANN to be populated by billions and billions of members. So I'll take revenge.

Next is Sebastien, please.

SEBASTIEN BACHOLLET: It seems that we may need to learn from the past, and Paul Twomey gives some explanation of what happened in 2000. Maybe we need to have somebody else who was there at the same time tell us what happened and why we ended up changing as an organization from the individual voters to an At-Large structure like the current At-Large structure members, the RALOs, and ALAC.

I am not sure that the world has changed and the organization has changed dramatically to give us the opportunity to try again with multi-hundreds or multi-millions of members in the organization. I just don't want to think about the WHOIS issue about all those members, where the database will be, and how we will work with that. Is it a legal requirement, from which country, and so on and so forth?

Maybe we need to find another solution. The solution of adding today I think to the current organization new structure on top of what is currently existing is also adding a lot of complexity, and I really think that we need to do the least complex as possible because one thing we didn't do since 2002 are two other full reviews of the ICANN organization. With the new gTLD registry, 1000, with the new registrar, hundreds, and so on and so forth, we need to have a look to this organization and not silo but silo, but overall.

But it was not possible to be done before now. We have the IANA stewardship transition to take in care. So it's not the right time, but it must be some time when we return it to the agenda for the future.

Now for the question of diversity, I hope that in each and every proposal we will be able to push for more diversity at each level of the organization, and we need to try to find the solution for that, but I suggest that we put that issue in the second part of our work and not in the Work Stream 1. Even if it's very important from my point of view, it may need some in-depth discussion. We need also to see what we need to do right now and what we can wait for.

My last point is about the change of the bylaw. I think it's a very important work. We have to do it in this group, but with the other group and with the whole ICANN. The fact that the Congress asked that the bylaw change must be done prior to the transition, it must be a good incentive for us to do it and to do it with the least amount of complexity as possible. Thank you.

THOMAS RICKERT: Sebastien, let me ask you a follow-up question. Your point was, in respect to the overall review, would that be sufficiently covered by the ATRT reviews that we plan to perpetuate? Because they would look at the overall system, right?

SEBASTIEN BACHOLLET: I am not sure. Read what is on the ATRT. There are specific topics they can take on board. You need to change the ATRT if you want to do all that. It's 9.1, 9.2, 9.3, but there are people who know better than me because they were in ATRT, either 1 or 2. But they can do this overall. It's why they keep some narrow topics and not the overall organization. I don't think inside ATRT. It's a missing piece from my point of view.

THOMAS RICKERT: Yeah. But the difficulty I have – please bear with me – is that our group is chartered with looking at the accountability, so it would be out of scope for us to entirely revisit ICANN. But what we could certainly do is add some traditional language requesting additional things during the ATRT reviews that we plan to perpetuate in the bylaws. If you have some language that we could put in front of the group, by all means, please do liaise with Mathieu, who has drafted the response to public comments with respect to Work Stream 2 items, so that we can maybe have a concrete suggestion from you that we could discuss.

Another question for you where I would like to ask you for a very concise answer is, looking at the Empowered SO/AC model, is that

something that you would deem least changed to the existing system? Is that something that you could support? Because I see a lot of traction for this model, and I would like to make sure that we take you with us, and if we could do that with some additional language to this model, then I think we would be more than glad to do that.

SEBASTIEN BACHOLLET: Thank you for the question. From my understanding now, I think it's going to the right direction. Of course, the devil is in the details, but if we can work and spend time on this proposal to find the best way to go there, I think it's a good way, and I don't see any problems to be on board on that with you.

THOMAS RICKERT: And hadn't I muted my microphone, everybody would have heard my sigh of relief. So that's excellent news, Sebastien. Thank you so much, and certainly we would be more than willing to take the suggestions that you made into the profile of requirements for that specific model, which I think is a good refinement or amalgamation of all the models that we've previously discussed.

Tijani?

TIJANI BEN JEMAA: Thank you, Thomas. Thomas, you were right when you said that the main issue was the UA. That's why I suggested that we have only two columns, one solution with UA, and another without UA.

Now to Jonathan, two points. The first one, you made a comparison between the contracted parties and the actual discussion. The contacted parties with ICANN have a contract together, and both parties have to respect the terms of the contract. If one of them doesn't, there is court there.

This is different from making ICANN accountable to the whole community. There is no contract between them, so this is absolutely different, and that's why I don't see that there is a comparison here.

Second point, you said that, yes, the single point failure is still there, but it's not the reason to not accept the Membership model. I think that the ultimate goal or objective of all these exercises is to make ICANN accountable to the community, so if we still have a part of this ICANN not accountable to the community, we have to review the whole system. We have to see what we can do, unless we have a solution to it. If we have a solution to it, yes, we can continue the discussion about it, and we can consider the model. But if we don't have a solution to it, I don't think that we reach the objective of the exercise. That's why I don't think it's a good model. Thank you.

THOMAS RICKERT: Thanks, Tijani. Next is Alan.

ALAN GREENBERG: Thank you very much. I'm going to agree with most everything that Sebastien said. I too think the overall organization and certainly

specific parts of it need a review. I don't think it's within our mandate to recommend it.

I think that's something that's going to have to live and die on a life of its own, and it's political water we don't want to wade into, at last in my humble opinion.

Regarding the ATRT, we've yet to see the detailed results of the recommendations. One of the comments I made based on a fair amount of ATRT experience is that we should change the rules so that ATRT is not required to do A, B, C, D, E and nothing else, that any given ATRT may choose to do something very different still in that same area. We'll see whether that makes it into the final document or not.

So it's a very relevant area. It's a very important area. I still don't think the organization of ICANN is the job of that group, but that's a different issue.

In terms of the bylaws, I think the way we're going right now is – I won't say minimalist – but is something that's going to be a lot easier to put in place than what we were talking about before. The timeline is short enough, the work is heavy enough, that I think that's important. I think it will make a difference.

The thing I vehemently disagree with Sebastien on is that he doesn't think that much has changed in the dynamics of the world since 2000 and the problems we had with open Membership. I think what's changed is that the technology has made the kind of abuses we had then a lot easier, so I would avoid it like the plague.

THOMAS RICKERT: Thanks, Alan. Willie?

WILLIE CURRY: Well, I don't want to put a spanner in the works here, but it seems to me that this issue perhaps should be explored, the issue of individual Membership, even if at the end of the day it is dismissed as unpractical, because if it's something dismissed without being taken seriously – which my impression is that Malcolm's suggestion is not being taken seriously – that is not really adequate, particularly because of perceptions that the SO/ACs perhaps constitute an insider community.

Even if it is not adopted, I would imagine one could look at a hybrid form of Membership where you have the organized community and you have individual members. That certainly seems possible, but there might be legal and other issues. There might be something that Sebastien saying, that it just becomes unmanageable, that it can be gamed, that it can be corrupted. Sure. But perhaps it should be looked at.

THOMAS RICKERT: Thanks, Willie. Just to respond to that briefly, I think that we have listened to Malcolm's proposal and we've taken his talk seriously. I think that this group is sometimes characterized by allowing a little bit of humor into a serious discussion.

But even more, at the outset of our work, there have been discussions about the possibility of Membership by natural persons. There was some back and forth on that, and ultimately at that early stage, our group had decided they did not want to pursue that path. So it's rather the discussion about whether we should reopen that topic or not. My impression – and that's also something that we would usually operate on – is that we collect ideas and look at those ideas that get traction with the group and others that don't get traction, and then we would perceive in our talks consensus to build on those that got substantial traction in the group.

All this is recorded. All this is transcribed. We're not going to dismiss anything today. But from a chairing perspective, I think that the Individual Membership model is one that got the least traction among the models that we previously discussed.

But it's not off the table, and the hybrid model that you're suggesting, whereby you can have two layers, where a legal entity or an SO/AC would exercise certain rights and they could themselves constitute themselves of individuals, could be a way to actually solve the “watch the watchers” issue. That I guess is the driving force behind your comment in the first place.

Let's now hear Steve.

STEVE DELBIANCO:

Thank you. A few of you have mentioned whether the ATRT Review Number 1 is sufficiently broad enough to cover the broader

accountability, and I wanted to indicate that when we imported it into the bylaws in our proposal, paragraph 310, we looked at the language in ATRT Review Number 1. It was 9.1, Sebastien. You had it right. And 9.1 is incredibly tough language. It says that the Board shall cause a periodic review of ICANN's execution of its commitment to maintain and improve robust mechanisms for public input, accountability and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders.

That is an incredibly high bar of review, one that was achievable only through the leverage exerted by, frankly, the Commerce Department when it replaced the JPA and MOU with the Affirmations of Commitment in 2009. That shows what leverage can give you, so we want to use the same leverage here.

But I do think that that's a broad statement. Sebastien then noted that potentially – this is Alan Greenberg in the ALAC comments – they were worried that the list that follows is somehow limiting on what the ATRT can look at. What we imported from the AOC was the language that said that, “In this review, particular attention should be paid to:” And there was a list of several items.

So we took full note during the analysis of comments of the ALAC comment that that might be limiting, and our proposed reply to that would be to change the language to something like, “Issues that may merit attention include.” Right, Alan? So it's instead of implying in any way that it needs to be limiting.

But the ATRT? Very powerful review. It took a lot of work to do the reviews, which was one of the reasons we said it should be required no less frequently than every five years. But this community could do it every three years or every two years if we wanted to. Five years is at the outside. You wouldn't want to wait more than five years to do a review.

THOMAS RICKERT: Thanks. Actually, I'd like to close the queue after Alan, but let's hear Jonathan's first.

JONATHAN ZUCK: I'm cognizant of the dangers of a tit-for-tat kind of conversation, but as someone who, along with Alan, might have favored a debate, at some point I want to let some things not just lie.

Tijani said that this is not the same as a contract, and a contract is something is very different. I have to take issue with that because I believe the bylaws from a legal standpoint actually represent a contract, and that the memo that Becky was talking about us writing, which is that we embrace the responsibilities outlined to us through the bylaws would in fact be our response to that contract and would in fact create a contract in relationship very similar to the one that exists with contracted parties.

The other issue is that I also don't want to cede the notion that we've just still got a single point of failure because if we disperse power into the SOs and ACs and the various constituencies within them, each of

those groups is going to be diligently working on the issue of, “How do I bring in more diverse Membership? How do ensure accountability to the constituencies that I claim to represent?” etc., and I think that’ll be an ongoing reform.

So I think that that’s something that’s going to continue to happen inside ICANN, and once again, it’s probably too big a thing for us to solve because it’s so dispersed in the process of this engagement. I think that this will create an incremental amount of accountability to the community as a whole, but there will still be and will always be, I believe, work to be done to improve that accountability.

If you look at the ALAC mission to be accountable to all end users, that’s probably a mission that they’ll never actually accomplish. It’ll be Steve working on it indefinitely. I’m part of the IPC and we’re working to make sure that we’re representing IP interests throughout the world. Geographic diversity is probably one of our biggest issues.

So I think those are things that we continue to work on, and they should be imbedded in the bylaws as aspirational goals, and that’s part of the reforms that we’re recommending.

THOMAS RICKERT: Alan?

ALAN GREENBERG: Thank you. A few things. The kind of things we’re talking about – is technically a contract, a memorandum of understanding. We’re told

earlier in this process that since ACs and SOs are not legal people, those contracts are not really binding, but ICANN has a long history of such things.

The RALOs are created by a memorandum of understanding between a RALO and ICANN. The RALO doesn't exist as a formal entity. But this is a memorandum of understanding and it does constitute the summary of what that group is doing and what it's allowed to do. So there's a long history, and I don't think we need to worry about the legalities of whether it's enforceable or not.

With regard to Willie's comment, I will point out that four of the five At-Large regions support individual membership. For anyone who wants to do any work to support ICANN, we have a vehicle. I hope the fifth one will be doing it soon.

So you don't have to have membership in ICANN to be able to participate. There are lots of vehicles. And certainly for individuals, At-Large vehicle which we hope is viable today and will get more viable as we improve it.

Lastly, on the ATRT, the statement was written by me and submitted on behalf of the ALAC. I doubt there are many ATRT former participants who would not endorse it. There may be one or two. But the fact that the ATRTs were both constrained to look at those things and constrained to not look at other things was a really important thing.

One could imagine that we will be mandated to do an ATRT every five years. We could charter targeted ATRTs to look at specific issues on a more frequent basis, even run them in parallel. There are all sorts of flexibility once the rules don't constrain you. Thank you.

THOMAS RICKERT: Tijani has asked me to briefly – can you keep it very brief, please?

TIJANI BEN JEMAA: Yes. Very, very brief. I agree with Jonathan that the bylaws is something that I consider as something important, and as a contract between the community and ICANN. That doesn't give a legal entity to the members of the community, so it doesn't bring any problem. So I do accept what he said if we stop here. But if we go further and make a UA for each community, it will be a problem.

THOMAS RICKERT: Okay. Let's stop here. Kavouss, you've raised your hand? You don't accept us stopping now? Okay, very briefly. Please. Please go ahead.

KAVOUSS ARESTAH: Thank you. Can you or somebody please describe what membership is without UA? What is the status of that? If it's the same, why do we need UA? If it is not the same, how, without UA and still the Membership Model, could we achieve those two elements that we wanted to have empowerment: budget and [inaudible]? So, from the very beginning we were told that UA is an integral part of the Member

model. But now, you say that you could have the Member model without UA. What's the situation?

THOMAS RICKERT:

Before I turn to Becky, let me just say that all of those who thought we would be breaking for coffee now will have to be patient for another two or three minutes. Becky, would you care to respond to that?

BECKY BURR:

First of all, I just want to repeat what Thomas said about solving that avatar problem, the sort of unincorporated association sitting in between the SOs and ACs and the Board. That's really what the Empowerment model solves.

What it does is the bylaws say to the SO or AC, "We give the SOs and ACs the powers that members would have." Then the SOs and ACs agree, if they want to, to work together to exercise those enforceable rights. That's what's going on.

Now, we could legally tear this apart. It creates the structure that makes it legally enforceable, so in a way it creates a legal person, but it doesn't have that separate thing. It's the SO and the AC, if it makes that election to have that enforceable powers.

THOMAS RICKERT:

This is why I like the term Empowered SO/AC. We don't do a legal analysis of this now. So I think what's important for us to take away is that we seem to have a lot of common ground for this easy-to-

implement, one-resolution, seems-to-be-sufficient-to-evidence, this joint will of having enforceable rights.

I do remember that Josh at one point offered advice, speaking exactly to that. So if that helps us reconcile the differences between those in favor of an enforceable system, an authoritative system empowering the community and those who are severely objecting to incorporating and registering unincorporated associations, I think that's a good sign.

Before we break for lunch, I would just like to – for coffee. Lunch again! It's all on Alan. Let me just try to take stock. I think what we can convey and what we should convey to the community is that we have presented a reference model with our report clarifying that this is not a consensus position. We got feedback from inside the group and from outside the group, but there were difficulties in understanding as well as difficulties from a legal point of view with the concept of registering unincorporated associations in particular.

We have understood that message. We have reacted that. We will bury our reference model as our preferred choice. If there's any objection to burying the reference model, the Avatar model, as our preferred choice, please make yourself head.

Now in our communications with the community, we can say we've learned that lesson. We've come up with something easier to use, but yet, haven given authority to the community, which we call the Empowered SO/AC model.

I think we can put all the other models at rest. Let's concentrate on the Empowered SO/AC model. Let's have it tested and see whether it meets our requirements. We shouldn't be doing that in a rush now. We're not doing a consensus call now. We should then proceed on that basis and further look into all the details, including the diversity questions, the question of whether we can keep or maintain not-for-profit status.

As Sam said, "Other niceties need to be evaluated." Kavouss, you can't resist to ask another question?

KAVOUSS ARESTAH:

Yes, yes. You have a very strong argument to do that. Moreover, there is precedent. CWG had very complex procedures. After the public comment, they tried to totally review that and had more [simpler], which is more acceptable. So you can do that.

THOMAS RICKERT:

And we should be doing that. I think even more so, we've never made a firm promise that we would do the reference model. We always said it's a suggestion up for debate. We're now readjusting, which I think is a very inclusive and community-embracing process.

Alan, you don't like coffee, do you? There's also orange juice.

ALAN GREENBERG: Excuse me. I love coffee. I and a few other people have another meeting at 4:30. Could you summarize what you plan to be doing in the last session before we break?

THOMAS RICKERT: Mathieu will take over for that, but let me take the opportunity before I hand over to Mathieu to thank everybody for what I think is a very constructive session. I think we made huge progress, reconciling what could be called divergence in the group as well with the wider community. I think we now have something tangible that we can use as a starting point for our engagement with the wider community throughout the week.

MATHIEU WEILL: Thank you. Very quickly, what's left on our agenda is ensuring we have common views on what the message is going to be. We're sharing with the community in the next few days. How are we going to discuss with the Board on Sunday? Are there any messages that we need to work on or prepare for the ICG? Any specific messages for specific communities? There's an idea floating around about a communique out of this meeting that would serve as a basis for that. That's also on the agenda. And start a discussion about how we would respond to NTIA's letter regarding the timeline. Those are the outstanding items on our agenda. With that, coffee. Reconvene is 15 minutes.

[break]

Okay, we're sorely missing our fellow co-chair, Thomas, who I hope will join us soon. He appeared to be quite exhausted with the previous session, but I'm sure he'll recover quickly, and I hope so.

Just a quick point that we've received some comments that it can be a little bit noisy and difficult to follow discussions in the background if people have side discussions, so can I please encourage everyone in the room, including those in the back, to have their conversations if need be maybe outside of the room so that everyone can follow even if they're at the back of the room? That would be much appreciated.

With these very friendly reminders, I can move to the rest of our agenda. As I was saying before the break, we still have to look at the exchanges we'll have with the ICG and CWG stewardship. One important aspect is probably to score our progress against the conditions set out by the CWG stewardship final proposals, so that's one ICANN will go through.

We also need to have an initial discussion about how we would plan to respond to the letter we've received from NTIA regarding the timeline.

Number three is looking at the various sessions that will take place during the week, including the Board session and the engagements session. We would like to discuss what you feel are priority topics we should address in this.

We have two work sessions during this week. We also need to have an initial discussion about what the expected agendas should be.

Finally, we would suggest that, based on the progress we're making today, we could publish a communique out of this face-to-face meeting that would inform SOs, ACs, and any observers of our progress, and obviously drive the communication of our progress to inform the fruitful exchanges that we'll have across the week.

We ruined our lunch break. Now we ruined a coffee break for preparing this, and we'll share this is moment with the group. [inaudible] is currently reviewing a draft so that we can have an initial discussion on this in this room before we leave tonight.

Those are the outstanding issues, and without further ado, I'd like to just initiate with – maybe we can start with the CWG scoring? There's an outstanding slide prepared by the CWG stewardship for the webinars where they highlight the conditionalities with our work, and I would hate any duplication, so let's look at this slide together.

The conditions they're setting are the fact that there are community rights regarding the development and consideration of the ICANN budget. I think the feedback we're getting from the public comment, as well as the discussion we've had today, shows that this is still very much an achievable goal. There's actually no very strong wording on that not being achievable.

Second is the community rights regarding the ICANN Board, and specifically the ability to appoint and remove members and to record the entire Board. That is very much something where while there were some concerns expressed on implementation, that is still very much

on our agenda. There's nothing on the horizon saying that's not going to be achievable.

The IANA function review incorporated into the ICANN bylaws – no problem with that. CSC incorporated into the ICANN bylaws – we've had a back and forth with the CWG stewardship. It could easily be a proposal by the CWG plus ICG or us. But we've very open and still see no objection to that.

Independent review panel made applicable to IANA functions and accessible to TLD managers – yes it is, with the provision that it does not address the delegations and revocation aspects, but as consistent with the CWG as well.

Finally, all the mechanisms addressed be provided as fundamental bylaws. If you look at the public comments received, there's no objection to that, either. So we would suggest that the scorecard of our current progress against CWG conditions currently shows that we're on track, that none of the comments we've received would reveal serious concerns about visibility or achievability of these goals. That should be communicated to the SO/ACs, especially when they're considering the final proposal of the CWG because that might be useful for them to consider when considering their next steps with this final proposal.

Would there be any objections or comments on this assessment on how we are making progress with regards to the CWG stewardship conditions?

[inaudible] AC room, which I'm not. Thomas are you?

THOMAS RICKERT: Sebastien, go ahead.

SEBASTIEN BACHOLLET: Thank you. I don't want to enter into a loop with the CWG and what we are doing, but I am concerned that with the second column we are considering, we are discussing, we have different proposals on the table, and I feel that they are a little bit too prescriptive on what we need to do and how we may end up with regarding removing Board members.

I don't know how to say that, but it's a topic and a discussion. If not, we have to take it out of our discussion and decide that they already have decided. But I hope that is not the case. Thank you.

MATHIEU WEILL: All we can say at this point on our side is that that was part of the initial requirements we set out in our initial draft proposals, and that's still very much being considered after receiving the first set of public comments. I think that there's no intention to go any further than that.

UNIDENTIFIED MALE: [inaudible]

MATHIEU WEILL: Yeah. There were some implementation details that need further refinement, but in principle, there's some for raw consensus in the public comments on that. Steve?

STEVE DELBIANCO: Thank you. I'm just looking for clarification based on your conversations with CWG. It has to do with the last bar in gray, the notion that all foregoing mechanisms are in the fundamental bylaws. I'll just ask you to clarify that they understand it's not just the label "fundamental," but that it carries with it an entire process that we've proposed, a process for affirmative approval by a certain threshold based on weighted voting of ACs and SOs having a certain representation and structure – Empowered AC/SOs or whatever we want to call it. All that's baked into the line saying, "Make it a fundamental bylaw," because they want all of those other protections to go with it.

MATHIEU WEILL: We can certainly get back and confirm, but that is being made clear in our conversations, as well as probably correspondence, and I think within the CWG group as well, thanks to the outstanding colleagues who are on both sides.

Thomas, will you want to follow up?

THOMAS RICKERT: If my memory doesn't fail me entirely, even on one of the courts that I attended on behalf of the CCWG, I was explicitly asked whether their requests could be made fundamental bylaws. The CWG is cognizant of the implications of making them fundamental bylaws, so I think we can take that for granted. I'm not against double checking, but we should assume that the CWG requires these to be fundamental bylaws with all the legal implications that this has.

MATHIEU WEILL: Thank you, Thomas. Any other comments on that? Good. I think I would also encourage each of you in your discussions – I'm sure you'll be part of discussions on the CWG final proposal – to make sure to communicate this to your respective groups because I know there's been some concerns around the ability to consider the CWG Stewardship final proposals because of the conditionalities. It's very important that this message gets conveyed during this week.

So that's Item Number 1. Item Number 2 is the NTIA letter on the timeline. We're going to put in on a screen. If I were to summarize my understanding of the letter, it is about how long it's going to take to you to finalize your work. The recipients of the correspondence were ICG chairs and CCWG co-chairs. We are aware of the ICG starting to consider the response and the need to coordinate with the ICG. That is definitely on our plans in the coming days.

We've received correspondence from Keith asking for some details on the timeline on our list today on behalf of the ICG. Keith and Kavouss

are acting as ICG liaisons, so there's a need for coordination with the ICG on this.

But what we'd like to achieve here is an initial discussion on what the feelings are in this group about the kind of response we can provide, the kind of timeline we might be considering, and basically any directions for us co-chairs to liaise with the ICG, or for the group as a whole to further work during this week towards a [inaudible] timeline and response to Larry.

With that, I think Kavouss raised his hand to for first intervention. Please, Kavouss?

KAVOUSS ARESTAH:

Yes. As a liaison of ICG, yesterday we discussed the NTIA letter to the chairman or co-chairs of ICG. We reminded ourselves that the same letter more or less came to you, and we considered that although the reply to the NTIA would not be identical, it should not be a contradiction with each other. Therefore, we were assigned to raise the issue to you. Whatever reply or framework of the reply or message you prepared with respect to the timeline, we reconsider that in the ICG in order to assist us to formulate out final reply. Presumably if I'm not mistaken, we have a short meeting [inaudible] on Thursday, and perhaps if by that time there is some sign of the framework of your reply, perhaps we'll be able to convey that to the ICG. Thank you.

MATHIEU WEILL:

Thank you, Kavouss. Just to remind you of the specific questions raised by Keith on behalf of the ICG, they were related to, “At what stage in the work of the accountability group will proposed bylaw amendments be published for public comment? Is that text going to be developed specifically by the accountability group, or will that be [inaudible] during a later implementation phase? Should we consider batching our proposed bylaw changed into a single process or conduct them separately?” So there’s a lot of synchronization to be had.

Before I move to the queue, just a reminder that the current timeline we’ve had in our public comment document was that we were aiming for approval by SO/ACs of a final Work Stream 1 proposal in Dublin, and implementation was planned to start right at that point, or maybe even a bit before, and conclude – our estimates which were obviously estimates – June 2016.

We have received comments asking for further details, but haven’t received any comments saying that it was too fast, too slow, or whatever at this point. It’s just to make sure we have this in the scope.

I see a queue forming with Steve first. Thank you, Steve. That was quick. Now we have Thomas.

THOMAS RICKERT:

Thanks, Mathieu. I guess looking at the letter we need to specify two milestones in our plan, one of which would be the finalization of the transition plan, and one for the implementation, because as you

know, our Work Stream 1 requirements need to be committed to, but they don't need to be fully implemented.

As you would have seen from our discussion earlier today, we have changed our approach in terms of what the community model is going to be. We have to check with legal counsel on what the consequences or the impact on the timeline would be.

I would suggest that we roughly stick to what we have in our plan, and maybe this group gives some discretion to the chairs to liaise with the other groups and also to liaise with legal counsel and ICANN Legal to drill down to the level of detail needed in order to make adjustments, should they be needed.

But I guess that the rough pillars of our plan are being specified, but in order to come up with a concrete date, I think we would need to do a little bit more outreach to the groups I mentioned.

My recommendation would be that we take this off your shoulders, off the shoulders of the plenary. We liaise with the groups. We get back with information on you, and then we seek agreement with the others that need to get back to NTIA.

MATTHIEU WEILL:

And we have working sessions for that later on. One aspect which I think might be valuable to test goes – and that's an echo to something we've discussed earlier – we release some of the pressure on the timeline. If ICANN were able to assign some resources to prepare some of the language and the details – I'm not speaking about

implementation because I understand it's difficult work – maybe as soon as after this meeting, not waiting until Dublin to start on the type of recommendations that are getting a lot of traction and are not withheld by any further discussion, including the mission and values discussion, including some of the concerns we've received from the Board about the consistency of the changes we're proposing to the bylaws with the overall bylaw system. That's something that probably could be started right away to avoid pushing back the pressure on the timeline down to the end of the year. So that might be one of the key messages we would convey to maybe NTIA, but also to the Board.

I'm almost anticipating the next point. Kavouss, I saw your hand was raised.

KAVOUSS ARESTAH:

Yes. Yesterday also in the ICG there was some suggestions that the ICANN Legal department or the legal counsel or both together start to draft the partial draft of the bylaw after it was mentioned that it is not appropriate to do something. We have to wait until we have the full picture with respect to the drafting of the new bylaw into two parts – fundamental and traditional – and waiting for the result of the CCWG. Perhaps you mention that in your timeline when you expect that this new bylaw would be drafted and ready for implementation. In that case, ICG for the time being perhaps would not ask for any partial or preliminary data of some part of the bylaw, waiting for the entire picture to be clear and then starting to ask the particular [inaudible] concerned group to do that drafting. Thank you.

MATHIEU WEILL: Thank you, Kavouss. I think that highlights an issue that we need to clarify with the ICG leadership and report to the group, so that's certainly going to be one of the key aspects of our discussions. I am seeing Sam and then Jordan. Sam? Where are you, Sam, now?

SAM EISNER: Oh, so apart. Hi there. Thanks. This is Sam Eisner from ICANN. We've also been thinking about how we can make sure that as we understand where the proposals are how ICANN be of help to the community in moving towards implementation as quickly as possible. I think our thoughts are directly in line with what I'm hearing here, so we're on the same page.

MATHIEU WEILL: Thanks, Sam. That's very good to hear. Jordan?

JORDAN CARTER: In terms of the timeframe, we have the constraint of having to try to have a report ready for SO/AC signoff at Dublin, right? That's still the kind of central target. That I think relates to the degree of, if we're going to get into the bylaws drafting stage as part of our next proposal, that means we have to really do that bylaw drafting in the next two or three weeks because we'd need to discuss the bylaw drafting at the face-to-face meeting in Paris in July and then seek public comment on it through our 40-day PC period.

I think we just have a project management task to do to work out how much we can do between now and when we have Paris and when we have to go to public comment. I think we need to keep in place the caveats, and with any communication we do about timeframe, that we're going to do our best to get to the Dublin meeting.

I don't know how to say it right. We might not. But if we don't, we'll definitely have it for Marrakech. That sounds a bit blunt. I believe that we should be able to get everything we need done in time for Dublin, but I guess we'll know more about that by the end of next week.

MATHIEU WEILL:

The plan we had and communicated so far was not to provide final bylaw wordsmithing as part of our final proposals because we know that's too challenging a task to achieve in such limited time.

However, we want to be extremely precise into what these bylaw changes will capture and cover. The other reason why we were saying this is precisely for the reasons set out by the Board. We are not in a position to fully assess the implications of wordsmithing changes in the bylaws with regards to the overall bylaw architecture, or potentially references to these bylaws in contracts and other things.

That's ICANN Legal's job, obviously, and we need to be very careful about this, that we don't set an expectation that it's going to be perfectly wordsmithed, when actually it would probably be a risky thing to finalize this too early.

So when we say we stick to the plan, currently our plan does not intend to have final wording, a word-by-word definition of the bylaws. However, we have highlighted this morning a number of discussion points regarding the mission and core values, like, for instance, private-sector led or whatever. Those items need to be clarified in terms of what our proposal is so that we can then follow up and ensure that the final wording is consistent with our bylaw changes requirement.

I think it's important and that's certainly going to be a discussion we'll have with the ICG to make sure we're on the same page on what we are about to deliver and when.

I see Kavouss has a follow-up.

KAVOUSS ARESTAH:

Yes. Sorry to come back again. You are absolutely right. The actual preparation of the final draft of the bylaws is not a CCWG mandate. You indicate what the changes are. These changes should be in the fundamental or should be in the traditional, and so on and so forth. You send the proposal to the ICANN. It may change. It may be subject to some comments and so on and so forth, but the final drafting of the bylaws is, in my view, a duty of ICANN with or without the legal counsel or within only the legal department of ICANN. Put it to the public comment. It is a separate issue from the public comment of the CCWG. I hope that we could be clear on that. Thank you.

MATHIEU WEILL:

Thank you [inaudible] very much. Okay, so that's I think what we need to go and liaise with the ICG on that matter.

Moving to the next item, we need to consider the various sessions we'll have over the week, starting with a very promising session of engagement with the ICANN Board. We've started the discussion this morning. This session will I understand be chaired by Markus Kummer, who is here, which is very valuable. Thank you, Markus, because that enables better preparation.

We have apologies from Bruce Tonkin, our Board liaison. He's unable to join this meeting in Buenos Aires until Tuesday, but he'll join us for the later sessions.

The suggestions I would make to start discussing this Board meeting, because obviously then we want to hear from you, is that, first of all, we discuss about how we can communicate between the CCWG and the Board in an efficient fashion to explain the proposals, understand the concerns from the Board members, and iterate around this. I'm tempted to say without exchanging lengthy papers, but maybe that's a bit blunt. I don't know. I don't know if it's diplomatic enough.

There's a topic of discussion that is how we can – I mean, further the discussion, I understand from the papers that we're receiving that there's a very strong amount of interest within the Board for our work, and rightly so, and that there's a little bit of a struggle about how to best communicate this interest to us without interfering with outgroup. So that's certainly something we need to discuss honestly and with the Board.

The second point would be obviously how we move forward with the list of questions we've received. Certainly this session would not be the right place to go into each and every question, but maybe if there's interest from Board members, there could be other sessions where I think face-to-face sessions would be much more useful than answering each and every one of these questions in a 120-page paper that would then be summarized by someone else to the Board members, who would then get back to us with 10-15 pages of extra questions. That's definitely not the kind of process we need to have right now, so certainly we'll have to address this second point, which is how we move forward with these legitimate concerns and questions.

The third aspect would be the question we started raising about how the Board could direct and allocate resources to start the consideration of setting the proposals, at least the proposals that get most traction, into details as soon as possible so that we lower the pressure on the timeline for the end of the year and the beginning of next year.

To me, those would be the three types of questions I would have with the Board, obviously including the introduction to our proposal and the report about our face-to-face meeting. I'm open to hearing the group if you see other topics to be discussed or things you'd want to prepare for that Board meeting.

I like when there's no questions.

We're looking at an agenda. We're going to report on our face-to-face in progress. There's going to be discussion about how to move forward with the questions from the Board, discussion about how to best communicate with each other, and discussion about allocation of resources within ICANN to support the further stages of work even before Dublin. That's the kind of agenda we're looking at. Okay? That's fine. Good. Good, good.

Other sessions during the week: we have an engagement session on Monday, right after the opening ceremony. I don't remember what's planned, but it's basically an engagement session, so we'll update about our progress and have as many questions as possible. We're preparing for that tomorrow, right?

UNIDENTIFIED MALE: Yes.

MATHIEU WEILL: Yes, Thomas? Please.

THOMAS RICKERT: Yes. Actually, there have been some discussions with the CWG on how to best go about with this town hall meeting. We have liaised with Lisa and Jonathan, and we've agreed that we need to set the scene correctly for the community to understand what we're doing.

Basically, we're going to have three parts or three segments of the sessions. In the first session, we're going to introduce the history of

our works of all the four groups, including the two other technical proposals, starting with the NTIA's announcement last March. But that's going to be quite brief.

We're then going to discuss where we are, and our group will be the host of this meeting, if you wish, so we will be chairing everything. After we have presented, we'll talk about where we are now, what the outcome of the public comment period was, and the update on other deliberations today.

Over the weekend, we will then hand it over and invite Jonathan and Lisa to the podium to speak particularly to the dependencies between the CWG and the CCWG.

So we will not that much dwell on the proposal work done by the CWG because the CWG has its own engagement session on the afternoon of that very day. So emphasis is on the town hall meeting in the morning. After the opening ceremony, it's going to be our group, and then the focus of the afternoon session is going to be the CWG.

I hope that helps clarify a little bit, but if not – Lisa, am I correct? You're nodding? That's excellent. Thanks.

MATHIEU WEILL:

Okay, so that's the engagement session. We also have on Tuesday a day full of engagement with many constituencies, a ccNSO session. The ALAC session is on Tuesday as well? Yeah? So we're going to be all over the place. That's why a formal communique is going to be very useful because it provides documentation to the progress we've made

today, and in truth, consistency of messages carried across the various communities.

Those sessions will probably be very much dedicated on a bit of education for understanding and clarifying. Also, getting more clarify on feedbacks we've received when needed.

On Wednesday, we have a GAC session, where probably we will raise some of the questions that were mentioned earlier by Thomas about the intentions of the GAC. In the new framework we're setting up to join the community mechanism and stay as in advisory capacity, we're going to inform. We will have some of the government questions/legal memos, and we'll have the lawyers with us to provide answers when there are questions. We will also probably ask a couple questions to the GAC, or at least indicate the directions that could be provided after this meeting, which would certainly help inform our second public comment document very usefully. But obviously the group is still very flexible about adjusting to government willingness to be part of the community mechanism. That's going to be I think one of the key discussions, although there's the wider set of questions and concerns that can be addressed.

After that one, we have other sessions. Then we get into our second working sessions. We have a working session on Thursday afternoon and on Wednesday afternoon, and a third working session on Thursday morning.

Items that will have to be on the agenda include the NTIA letter. That's something where we'll need to come back to you with a more

substantial proposal by then. I suppose we would have time until Wednesday to elaborate a little bit on the Empowered SO/AC model and get back to the discussion, based on a written permission.

Other items that I would suggest we start discussing, at least as initial discussions, are some of the new items requested by public comments, including SO/AC accountability, accountability round table – sorry, Steve?

STEVE DELBIANCO: Stress tests. Several additional stress tests and enhanced –

MATHIEU WEILL: Stress tests need to be addressed – you’re right – as well as diversity enhancements. I think that’s all I’ve had.

UNIDENTIFIED MALE: Human rights.

MATHIEU WEILL: Oh. Human rights, if there’s progress on that. And other discussion topics might progress in that. But human rights I think are in a process of Work Party 2 refinement, which if it’s ready, could come back to the agenda.

The other item I think we need to discuss, at least to get a broad direction of where the group would like to head, is Board-staff accountability discussions. That’s one of the items from the public

comments, where we haven't really discussed whether we want to take this on in Work Stream 1 or Work Stream 2, and how far we want to go.

We are prepared as co-chairs to prepare sort of a short issue statement at the beginning so that we have an initial discussion and then see whether we need to assign a task to a work party to refine this until before public comment number two.

The other topics that need to be put on our two agendas on Wednesday and Thursday? I noted stress tests. We'll try to keep some flexibility there, but obviously the feedback from the community is also going to be on the agenda.

Sebastien has raised his hand? Oh yeah? I'm so sorry. I'm just not looking in the physical room.

SEBASTIEN BACHOLLET: Thank you. It's not doing too much with what we will have to do, and I know Thomas already answered at the beginning of the meeting that the work parties are open.

But with what happened today, I would like very much that we have a clear understanding of how the work parties will work during this week and when they will meet to allow this openness of these work parties. Thank you.

MATHIEU WEILL: Thank you, Sebastien. I think it's a fair comment that any of the parties working on the documents should make clear where and when they're meeting during the week to ensure the highest participation possible.

I see no other hand or comment, so – yes, Thomas? You want to add something? Oh, yes. There are still sometimes slots open where we can do the presentation into some constituencies on Tuesday, or even some time slots on Wednesday. We still have nine slots, I'm afraid.

UNIDENTIFIED FEMALE: [inaudible]

MATHIEU WEILL: Well, I don't know about you, except that we have nine slots [inaudible]. Sorry. Oh [inaudible].

UNIDENTIFIED FEMALE: Yes. If there are some slots, the ASO has been discussing about being able to meet with the CCWG. Would appreciate being given a slot. Thank you.

MATHIEU WEILL: Okay, so we're tasking [Alice] and Adam to liaise with ASO to find a suitable slot. That would be I think very valuable, considering the very thoughtful and useful feedback that we received from the numbering community to further expand on this. Tijani?

TIJANI BEN JEMAA: Thank you, Mathieu. I'd like to ask to inform us or to send an e-mail with the updated schedule with the right rooms because, for example, for this meeting, the room has changed. So if there are any other changes, please send the whole schedule with all the changes that may happen.

MATHIEU WEILL: Action item taken. Who is that? I'm turning to Sebastien.

SEBASTIEN BACHOLLET: Thank you. I know that you are open to go where SO/ACs and others are asking to go. My suggestion is to maybe the reverse. I think it's important that the whole community gets the same information, the same presentation. I hope that you will also reach out to some SO/ACs who I see has not asked you to come to get to them. I think it's important.

MATHIEU WEILL: Just for clarification, we've reached out to everyone. The point of having the discussion we were about to have about a communique is to standardize the message that everyone gets so that if there's an ambiguity in the way that this message is conveyed on the podium, the reference document is existing so that everyone can refer to the same information. I hope that we'll accomplish at least partially what you're expecting.

You wanted to add something, Thomas?

THOMAS RICKERT:

No, just to say that we have reached out to all community leaders. We've offered to come see them to answer their questions. Some have gotten back to us asking for us to join them, such as the BC, the [IPC], and some others. Others have said that they have asked their groups and they're pending feedback. For example, the ISPs have communicated to their constituency. They don't yet know whether our services are required. Others have remained silent. I just wanted to illustrate that there have been different levels of feedback.

If you have other ideas for us to be more inclusive, by all means, please let us know. But we think that by having public meetings, the town hall meeting, offering to join them on cause or come visit them, there's not much more that I can think of doing in order to embrace them.

MATHIEU WEILL:

Okay. Tijani, is that a new hand? No, it's not. Good.

We're coming to the closing remarks, astonishingly. The closing remarks are about what do [inaudible] the overall word about this meeting. As we speak, I see [inaudible] is circulating a first draft happily arranged to [inaudible] for language and grammar and everything. But we've tried to cover the key points for this meeting.

I see a hand raised from Steve.

STEVE DELBIANCO:

Thank you, Mathieu. While you're waiting to circulate that, I was talking at the break with our legal counsel for the CCWG, and they strongly recommended to make a clarification that would be helpful. It might even be something that sneaks into the communique that you're drafting now. I'm still phenomenally excited about Becky's breakthrough on Empowered AC/SOs.

When we discussed that, we said that any AC and SO can adopt a resolution say that they're coming together in order to exercise the powers given in the bylaws. I had said that that resolution alone was sufficient to give that AC and SO the legal personhood it needs. It doesn't have to register as a UA. It doesn't have to create articles. It doesn't have to create voting avatars.

All of that is accurate, but I should have added this one other requirement: the ICANN bylaws would need a single-sentence provision indicating that any AC and SO could get the rights of members if they chose to associate or act together to do so. You create a hook in the bylaws so the resolution passed by the GAC or the ALAC or the ccNSO ties into that.

Then the AC and SO can directly exercise the power, which resolves all the concerns about registering as UAs which we've heard about from the community. So thanks. I can put that in the chat or send it to you in case it's something that's appropriate for the communique.

MATHIEU WEILL: Thank you, Steve. Let's look at the communique along those lines. [inaudible], did you manage to send it around? I'm not sure I'm getting my e-mails anyway.

UNIDENTIFIED MALE: My connection is not that stable, as I think many of us are experiencing difficulties. But then it's going out, so it should be out in a second.

MATHIEU WEILL: Should we start reading it then? Yeah, let me stop and see whether I have something that enables me to read it.

UNIDENTIFIED MALE: Yes, [inaudible] You should have it already.

MATHIEU WEILL: Let me start reading it. Sit back. Relax.

“Members and participants of the Cross-Community Working Group on Enhancing ICANN's Accountability” [inaudible] accountability? – “imagine Buenos Aires, Argentina, on June the 19th, 2015.” Is there any objection? No.

“The CCWG face-to-face meeting in Buenos Aires, Argentina, was attended in person by” – we still have to count the members and participants – “as well as by a number of participants and observers that joined the meeting remotely using the Visual Meeting Room.” We had I think one advisor. Willie?

WILLIE CURRY: [inaudible]

MATHIEU WEILL: So one advisor also participated. That's the easy part. "The group reviewed the comments received from the community during the first public comment period on their initial draft report" – we provide the link – "and we can report the following. [inaudible] support was received for the overall accountability architecture proposed based on the four building blocks; i.e., an Empowered community, the Board, the bylaws, and independent review process." We will provide the links to the videos where we describe this accountability framework in three languages.

By the way, if there are any volunteers to do that in more languages, I know [inaudible] is very willing to do that. So if we can do it Arabic, if we can do it in Chinese – the script in English available – it's just about reading this is front of a prompter for five or six minutes. It's terribly exciting.

THOMAS RICKERT: You found it terrible because I did the original version so [inaudible] basically to say what I would say [inaudible].

MATHIEU WEILL: "Most of the comments considered the proposals as improvements to ICANN's current accountability mechanisms. Several commenters

recommended that the CCWG take a more detailed look at the accountability of the community itself – the SOs and ACs – and also to ensure that ICANN is accountable to all stakeholders, including those outside ICANN.”

“While most commenters expressed support for the recommendations, some expressed concerns regarding implementation details and complexity, as well as on the underlying costs and risks associated. The CCWG values in the input received so far and will continue working to refine its initial draft record.”

“While encouraged by the support received on the overall approach, the group acknowledges the concerns expressed and will give due consideration to suggestions and concerns as it develops further versions of its report.” There’s a little bit of redundancy here that we’ll need to fine tune.

“With regards to the Community Empowerment model” – that’s our discussion this afternoon – “the CCWG revisited the various models being discussed and acknowledged commonality of views was regards to expectations from such models, including the need to set up mutual accountability and enhancements to openness and diversity. A number of commenters have criticized the reference model under which SOs and ACs were required to set up separate legal entities such as formally registering unincorporated associations as their legal vehicle to exercise community powers as too complex.”

“The CCWG has analyzed these comments carefully and now focuses on the refined model. The approach provisionally called the

Empowered SO/AC model gives the community comparable authority while not adding legal entities separate from the SOs and ACs.” That’s the kind of wording that we need to be very aware of.

“The CCWG also considered public comments related to the dependencies with the CCWG Stewardship’s final proposal. As this proposal is under consideration by chartering organization during ICANN 53” – that’s something I made up right now – “the CCWG feels it’s important to report that each of the items related received overall support from the community, and none of the comments suggested that CWG requirements could not be met.”

“The CCWG will share these outcomes and considerations with the various groups and communities during ICANN 53. The group looks forward to continuing the fruitful exchanges that inform further deliberations towards a second round of public comment, which is expected to be published by the end of July.”

Thank you. It’s even worse than a prompter. Let’s take discussion, and Kavouss is first.

KAVOUSS ARESTAH:

Three small suggestions. First, we have not reviewed the comments. We have reviewed the results of that. We have not reviewed at this meeting the comments, but the result of the review. The review was done before, and we spent a considerable amount of time on that, so we should not give the impression that in these two hours we reviewed all those 85 pages. That is point one.

Point two, in somewhere you're talking about complexity, you need to add legal implication, also. Third one, you referred to the term or word "criticize." I suggest to replace that by serious concerns. Nobody criticized us, but they expressed their concerns about the applicability or result of that.

These are the three quick things that came to my mind if I remember correctly what you said. Thank you. Again, take any note. I just had this impression that these three small suggestions [inaudible].

MATHIEU WEILL: Thank you. Tijani?

TIJANI BEN JEMAA: Mathieu, either you repeat the last sentence before the mention of the CWG, or you send the document so that I can read it better.

MATHIEU WEILL: The document is underway. I don't know if it's right.

TIJANI BEN JEMAA: Okay, thank you.

MATHIEU WEILL: I can't do two things at a time – well, I can only do two things at a time. Sebastien?

SEBASTIEN BACHOLLET: Thank you very much. I have just one concern with the word “overall” in the last part, in the first line before the end. “Item related received overall support.” I would be more comfortable with another one. I don’t know which one. It’s a question I asked during the discussion about what the CWG asks about the recall of the Board and so on and so forth. If we say we have overall support, then we will not discuss this issue and it’s a done deal. If we are still under review, then we will discuss that. I hope this is the case once again. I would like to find another word than “overall.” Thank you.

MATHIEU WEILL: Maybe “received support from the community” would fit. I see Tijani – that probably was an old hand. Process forward, when do we want to publish this? That’s my key question.

UNIDENTIFIED MALE: [inaudible]

MATHIEU WEILL: Yeah. Well, there might be a little bit of implications for putting this into a nicer frame, but I’m also conscious that there might be a need for just putting it down for a few hours.

UNIDENTIFIED MALE: [inaudible]

MATHIEU WEILL: Yeah. So we would ask for objections or concerns on the list until, what, 23:59 UTC?

THOMAS RICKERT: I'd suggest, if I may, that if there's anyone in this room that needs to further look at the communique, do it, because the only thing that I think we would need to have done, and that's one of the sacrifices you have to pay when you're having a linguistically diverse group. You know that you get crappy English. So we need [inaudible] to clean that up. But do you guys need more time to review substance? If not, I think we consider this approved, and we just submit it as soon as the language is polished.

[What's that?]

UNIDENTIFIED FEMALE: [inaudible]

THOMAS RICKERT: Okay. Is Hillary in the room? [inaudible] how quickly they can turn this around. [inaudible]

MATHIEU WEILL: Yeah. If they can turn it around fast, then midnight is appropriate. But they're turning it around by 11:00 tonight, I guess that that would be a little bit of a tough requirement. Let's set a target to publish it by tomorrow midday, local Argentinian time.

THOMAS RICKERT: If you're willing to tidy up the language, that's fine.

UNIDENTIFIED MALE: I was just going to say that I don't see what comes with [inaudible] to be honest. It's our report about a meeting, and if you want someone who's an English language native to look at it, I can see like three re-orderings of sentences that might help, but we might as well just get it out there as quickly as we can, right?

THOMAS RICKERT: If you're volunteering to review, please do, and then can circulate earlier, except objections or concerns, by midnight, and disseminate as soon as we can.

MATHIEU WEILL: What we can do is close the meeting. We could close the meeting. Motivated people can stay and do that in an open and transparent manner and circulate it.

UNIDENTIFIED FEMALE: [inaudible]

MATHIEU WEILL: Yeah, it leaves five hours for feedback. Then we aim at publishing this early, at least in the first few – oh, we have Jim coming in. Excellent. How about a communique?

Then we'll publish this very soon on Saturday. All right? Leon, would you like to do any other closing remarks? Because I'm totally through.

LEON SANCHEZ: No. Of course, we would like to thank everyone that's been with us in this room for the day, and we have a very packed agenda for the rest of the week. Of course, a big thank you to my Co-Chairs, who mainly had the complete burden of chairing these sessions today. Can you join me in a round of applause?

[applause]

MATHIEU WEILL: People in the background are drawing strings.

THOMAS RICKERT: And I'd like to thank our excellent staff for managing the AC room. Sometimes my impression is that they take notes even quicker than we speak. Thanks to the technical people in the background, and to all of you, and last but not least, to Miracle Weill and Magic Sanchez.

MATHIEU WEILL: Thanks, everyone. Robin?

ROBIN GROSS: Thank you. I just wanted to ask a quick question. Could we certify that the lawyers can meet with the drafting group tomorrow on the model?

MATHIEU WEILL: We haven't had time to fully consider that this is how we want to proceed on the bylaw and others, so I'm not in a position right now to say that we certify or not because I don't have a view of everything that will take place tomorrow. But we'll certainly consider this quickly so that we can have a productive Saturday, and Sunday as well. We'll turn to Becky for how she would suggest we arrange this.

With that, thank you very much, everyone.

[END OF TRANSCRIPTION]