
DUBLIN – ccNSO Members Meeting Day 2
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STEPHAN WELZEL: Good morning everybody, and welcome to the second day of the ccNSO Meeting. We will start, as you know from the Agenda, with the legal session. I'm Stephan Welzel, I'm General Counsel to DENIC, the registrar for .de. With me on the Panel today are, in order of appearance, Elizabeth Ekstrand of .se, Nigel Roberts of .gg, and .je, and Farzaneh Badiei with no dot, but from the academic world.

She's with the [unclear 00:09:35] Institute for Internet and Society. I think we have two interesting issues. We'll hear something about stupid ideas with respect to registry liability from Elizabeth, and then we'll come back to the discussion we had before, about the question of whether domains or ccTLDs are property, and if they are, what possible consequences there are. We start with Elizabeth.

ELIZABETH EKSTRAND: Thank you Stephan. As you might be aware, we have had a case in the Swedish Court regarding a claim of confiscation of domain names, and the domain names are thepiratebay.se and

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piratebay.se. The claim was directed both against the domain holder and the registry. This is the first time in Sweden that a case against .se has been tried. What is this case actually about? It's about ongoing copyright infringement, and it's ongoing through the use of the domain name. The Court is trying if a domain is an object or tool according to the Swedish Law, and also if IIS is liable for complicity, for contribution to copyright infringement. Then, if so, can a domain name be confiscated from a registry?

Before going through the verdict, I'd like to set the scene for you. The current situation in Sweden regarding illegal content on webpages is that currently the law enforcement agencies are trying different strategies to get to illegal content on the web. Those strategies include intermediaries enabling communication. Internet provides a new possibility to provide copyright infringements. The laws are very old, and if there are changes to them, they're only minor changes.

I will focus on who is actually responsible for copyright infringement on webpages, and who can be responsible for contributing to these copyright infringements. We know that according to the Swedish Law, the responsibility for complicity is very far-reaching, but how far? Is there a clear outer line for this, or not? It all started with a case that had its final verdict in 2012 against the four founders of the Pirate Bay. They're an actual

person, and they've a contribution to copyright infringements. That was, by the service that they provided, allowing access to copyright protected material on the Internet.

It's important here to remember that the users of the service that was provided by the Pirate Bay, they are the ones committing the copyright infringement, the crime. The founders were only convicted for contribution to copyright infringement. Then we've had cases in Sweden regarding confiscation of the registrant's right to the domain names, and in both cases IIS has taken those domains down after a final verdict, but they after that have been released in accordance with normal procedures.

We have also seen cases in Sweden where ISPs are held responsible for contribution. We have also been asked by the agency, the Rights Alliance, to use our own terms and conditions to deregister the Pirate Bay, and the terms and conditions state that we have the possibility to remove content if it's clearly violating the law. We didn't act to this question and we referred to the ongoing case. The background for this case is the Swedish prosecutor, about two years ago, took legal action against the domain holder and the registry regarding those domain names.

They said that they can be confiscated from both the registry and from the domain holder, and the prosecutor said that the names are tools used for copyright infringements, and they can

therefore be confiscated according to the Penal Code or the Copyright Act. There are two different laws. We responded to this and we said that a domain name is absolutely not an object or a property according to the Swedish Law. Also we argued about that our position in the society and the service that we provide can never give us a position that we would be held responsible for contribution to infringement of copyright material.

Then we had the verdict from the District Court this spring, and the prosecutor's claim against IIS was dismissed, but the domain name [unclear 00:15:42] to be confiscated, but from the domain holder. This means that the right to the domain name will accrue to the State. This case was then appealed by both the domain holder and the prosecutor. .se, we won the case, so we could of course not appeal it. We hope now that the Court of Appeal will try it, maybe in January or February, and we know also there's going to be an oral hearing, so this case is very important. It's seen as an important case.

The District Court found there is still ongoing infringement. I don't know if you have visited the Pirate Bay, but you can see from the content that there is a lot of copyright protected material. They say there is still infringement going on, and the prosecutor claimed confiscation, as I said, from two different positions; both from the Penal Code, saying a domain name is an

object. But the Court stated the domain name is not an object, and also that it doesn't have the specific nature so that it can be used in a crime. So that was an easy one. The Penal Code was not applicable.

Then they started with a Copyright Law, and in Sweden it says a property that has been used as a tool in crime can be confiscated from the offender or other contributors. That's where we come in. IIS could be seen as an other contributor, and the Court stated that a domain name is property, and it's also used as a tool for committing the crime of copyright infringement. Then the Court had to take into consideration if the domain name is actually property at IIS. Is it actually property with us? It is a property, but is it a property that .se is able to handle in a way, that we can actually have it? Can it be confiscated from .se?

Then they said as we are setting the rules for assignment registration, deregistration and transfer, we have the authority over the domain name in a way which enables confiscation from us, because we have the authority over the domain name so we can handle it. Then the Court had to take into consideration the thought about complicity; about us aiding in the copyright infringement. The Court stated off with saying that confiscation can be made from legal entities – which is something new – and it doesn't have to be personal responsibility from

representatives, so neither Danny nor I need to go to prison for this or can still be convicted for this.

As we continue to sign, we continue to grant and renew the subscription, and we even charge for the service, even if we know that the crime is ongoing. We continue to do this, and that means in a linguistic meaning that we are contributing. The Court says that we have no responsibility control, but we have the possibility to act, which means that we can do something, if we like. Then the Court says that it's a merit to the notion that it is a responsibility of service providers on the Internet to respond to specific allegation of infringement.

This statement is taken from the original Pirate Bay case. It was stated in that case that in some cases, service providers shall act, and then it says again that we've continued to do this; provide a service, even if we have the knowledge about the copyright infringement. Both Danny and I have written blogs about the case, which maybe some of you have read. This was taken up by the prosecutor during the oral hearing, and the Court took it into consideration. It said, "Well, now we know that you were aware of the copyright infringement, so we took a clear stand not to react."

This meant that we were acting intentionally, and from a legal point of view, this is very, very important. They said that we did

this with purpose – we were aiding in the copyright infringement on purpose. The summary is it was a very extensive copyright infringement going on, on the Pirate Bay website, and IIS, we are not willing to act voluntarily, and the risk that's going to continue, the crime that's going to continue is impending. It doesn't cost IIS anything to take it down, so therefore there are strong reasons for confiscations from IIS. They also say that it's not necessary, the act of complicity.

Here it comes: the responsibility for complicity is very far-reaching in Sweden, according to the Swedish Law. But then luckily they were taking one of our arguments into consideration and they started discussing the social adequacy for IIS. It's a legal theory of freedom from responsibility under certain circumstances, and that can be if it's a valuable tool, it's a valuable service in a lawful activity that we're providing, and it's useful for the society in general. This is also something that was discussed in the original Pirate Bay case.

So what happened is that they say that we acted intentionally; we did this with purpose. But we've motivated our positions in public, saying that we have no obligation to act, but rather an obligation not to act without direct instructions from a Court; we could react to a Court order or something like that. The Court says that they found that the assignments, as manager of an

important public function, to not [unclear 00:23:34] to judge what, in a specific case, can be considered unlawful or not.

The Court found that the starting point for our view is seen as legitimately motivated. What was actually the outcome is that our behavior in this case is permitted, for it was intentional but permitted behavior. The legal consequence is that the case against us was not approved, the domain name thus be confiscated; not from us, but from the domain holder. This means that the domain name shall accrue to the State, and our disposal of the domain names will then be limited.

As I said, it's appealed, this case. Still, even if it's appealed, we're going to have a final verdict some time in the future, and the question that arises is: "Could this court case impact our role as a registry, and what will happen next? How are we going to handle this in practice?" And when it comes to the first question, will this Court case impact our role as a registry, I would say the answer is no. It's a very specific case, and there's a large amount of copyright infringement going on there. I would see this as the specific in this case.

The outcome, how that will be handled, is something that we'll have to discuss in the future with the prosecutor – are the domain names then going to be the property of the State? Are they going to pay for it? Or under what circumstances, how long

are they going to have the domain name for? We will see. There are still a lot of questions there, and I'm really looking forward, as a lawyer, to the final word for this case. Thank you.

STEPHAN WELZEL: Thank you Elizabeth. In the meantime we've been joined by Milton Mueller. He's also from the academic world. He's with Georgia Tech University. We'll hear from him and Farzaneh later. First of all, questions to Elizabeth, or answers to the questions she posted. Nobody knows the answer. We need a card to get some answers. Thanks a lot. That brings us to the next presentation from Nigel. There is a question actually. Finally there is a question.

SPEAKER: Why did IIS appeal the decision?

ELIZABETH EKSTRAND: We didn't.

SPEAKER: Who did?

ELIZABETH EKSTRAND: The prosecutor appealed the case, and also the domain name holder.

SPEAKER: So you had no objection that it was recognized as property?

ELIZABETH EKSTRAND: We of course had, but as it was seen that we'd won the case, we were not allowed to appeal.

NIGEL ROBERTS: Thank you. My name's Nigel Roberts. Many of you in the room know me, but I see others in the room, so for those of you who don't, I trained as an engineer but I qualified in English Law in 2008. I've been a ccTLD manager since 1996 and I've been part of the ICANN traveling circus since 1998 and of the IFWP even before that. I also do, as you can see from my URL, occasional writings on matters to do with ICANN and particularly legal matters.

The story starts a few years ago, maybe ten, maybe longer, when there were several terrorist incidences around the world. This isn't my presentation. Lots of my slides are missing.

STEPHAN WELZEL: Is it possible for him to use his own laptop? You can switch to your own laptop. There seem to be some technical problems with Nigel's presentation, so we'll switch presentations and do Milton and Farzaneh's presentation while Nigel is sorting out his issues.

FARZANEH BADIEI: Hello everyone. My name is Farzaneh Badiei, and as Stephan announced, who I'm affiliated with too, I'm a doctorate candidate at the University of Hamburg. Here is Professor Milton Mueller, from the Georgia Institute of Technology. The topic of our research is about conceptualizing the relation between ICANN ccTLDs and governments, within the context of sovereignty rights and property rights. By no means is this a finalized research, and we've not finished the paper, and we are very grateful that we've been given this opportunity to present it to you, and your comments will be considered. We have hard copies of the paper if you want.

There are two issues that we tackle. One is ccTLDs as sovereign space, and by that we mean can the State assert sovereignty over the delegation of the ccTLDs? It means whether they can decide who the delegate is. The other issue that we tackle is whether ccTLDs are actually property. This is not only a theoretical issue. It has also practical implications. There have

been two cases about this, and one of them is Ben Haim v. Islamic Republic of Iran, in which the claimant that had a monetary judgment against Islamic Republic argued that .ir is in fact property and it should be attached to the claimant. Now I will pass it to Professor Mueller to continue.

MILTON MUELLER:

The full paper contains a historical section, where we go through the evolution of delegation policies with respect to ccTLDs, the rise of the GAC Principles, all of these things – but we assumed you people were pretty familiar with that, so we didn't go into detail. Just in more abstract terms, of course delegation means who is assigned the globally unique TLD, and what we want to call attention to here are the kinds of issues raised by this simple act of delegation.

In one sense, of course, entering a TLD in the root zone is a technical act, but as you can see from these bullet points, it also involves an act of recognition and acceptance by the IANA, and an exclusive award of what is, in many cases, a very valuable economic asset, in the sense that you're giving this particular registry the right to sell domains under the TLD. And of course there is also some requirement of the ongoing provision of a service by the IANA to the TLD.

All of these facts raise some very interesting policy and political questions, as I'm sure most are aware. For example, if there are competing applicants for the same TLD delegation, who gets it? Is the recognition or acceptance by IANA revocable? If so, on what grounds? Can the asset be attached? We've already raised that as an issue. And, do states have a sovereignty claim over delegation.

Let's talk first about sovereignty, and I'll expose you to a bit of political science here. The concept of sovereignty fundamentally means the idea of a supreme or exclusive authority within a territory – or more colorfully, the right to be the legitimate and exclusive user of violence within a particular territory. Now, political science has broken down the concept of sovereignty into four different types, the simplest of which is international legal sovereignty, which simply means that other states recognize you as a state.

The second one is what we call Westphalian sovereignty, which means that the authority structure is the political authority structures within a territory are domestic to that territory and exclude external actors. For example, imperialism of various kinds, or colonialism means you're not sovereign. Then there's domestic sovereignty, which means effective control of a territory. Then there's inter-dependent sovereignty, which means the ability to control what goes through inside and

outside your borders. The point of distinguishing these is that all four of these seem to have something to do with what we mean by sovereignty, but they don't necessarily co-exist.

For example, you can be recognized as a state and not be in effective control of your territory, or you can be recognized as a state and not have completely excluded external actors from your authority structures. Now, the units of ccTLDs, namely the ISO 3166 two-letter codes, seem to correspond to type one sovereignty, in the sense that in order to be put onto this list you have to be recognized as a territory. Although this list does not correspond perfectly to political units, some of them are territories that are under the sovereignty of another state, there's an 80-90 per cent correspondence between ccTLD units and political geography.

However, you can make a case that you do not need to be in control of the delegation of a ccTLD in order to be a sovereign. Sovereignty over a ccTLD does not provide a national government with control of all TLDs accessible in its territory, so you can't argue that you need control of delegation to have domestic or inter-dependent sovereignty, and in fact states can regulate a ccTLD registry and its users, as long as they are in their jurisdiction, without necessarily controlling the delegation.

We, in the paper, mount a critique of sovereignty claims. We believe that really ccTLD delegation should not be seen as something in our sovereign rights. Now, we recognize of course that the main reason why sovereignty has been raised as an issue is because of control of the root by the US Government. That means that one state has a form of authority over other states, which in a traditional principle of sovereignty it should not have. In traditional concept of sovereignty, every state is equal, they're like an individual, they have equal rights, and because the US controls the root, it really has a form of authority over other states' TLDs that does in fact not conform to traditional notions of sovereignty.

However, this control of the root is ending, or so we hope. So that claim for sovereignty should be falling by the wayside. The other thing to keep in mind about the sovereignty claim is that the DNS is a namespace, and not actual territory. The relationship between a ccTLD code and a state is purely semantic. So we don't see how a semantic reference to a country justifies state control over the administration of a semantically related unit of a namespace.

For example, if I created a file space on my computer that had the names of countries, and one of those countries was Sweden, I don't think the government of Sweden would be able to assert a claim that it should control what goes into that file structure, and

so on. Now I'll turn it back over to Farzaneh, who's going to talk about the property rights aspect.

FARZANEH BADIEI:

In the paper we've used [larn economy 00:41:06] Theory to understand property rights. In [larn economy] Theory we have a property right as a bundle of rights. Something is property, and we allocate the property by the right to use, the right to exclude, the right to the benefits of the revenue, and the right to transfer it to others. When we look at the ccTLDs and domain names, we see that all of these characteristics can be applied to these ccTLDs and domain names. For example, by definition, domain name assignment is exclusive. Domain names have a value, the registrant can benefit from it, and also exclude others, and TLDs and ccTLDs can be, and often are, traded, such as .tv, .cc, .me.

There have been court cases that address the matter of whether domain names are property or not. Most of these involve TLD registries versus second-level registrants, or those that have claim over the second-level domain names. Registries usually argue that a domain name is a contract for service, which registrants argue that domain names are actual property. Courts in fact have ruled both ways; either they are property, or they are contract for service.

However, when we look at the judgments, we see that what the court addresses is that they are focused on whether the economic value of a domain can be ceased. So they don't directly address whether it is property or not. As well as, for example, in the .ir case also, the judge said that ccTLDs are not property, subject to attachment. So this does not mean that ccTLDs are not property, they are not property, subject to attachment, so we cannot take the economic value away from them. I will pass back to Professor Mueller.

MILTON MUELLER:

The main purpose of our paper was to try to lay out the broader global governance implications of these decisions. We think people have been looking at this at the microscopic level, and particular court cases, particular TLDs, and we wanted to look at the bigger picture and figure out what is the right, overall governance scenario. We created this matrix that you can see, in which you have four alternative structures. On the rows here you can recognize sovereignty over delegation, and in the others you cannot recognize sovereignty.

In the columns you can recognize TLDs as a property right, or as a public trustee. Let me give a few words about the concept of a public trustee. You're probably familiar with public trustee concept from RFC 1591, and this is also a concept that has, at

least in my own country, a lot of play or relationships. For example, broadcast licenses were assigned as so-called public trustee. What it means is that the holder of a public trustee does not have a full property right.

They are actually subject to all kinds of constraints – typically regarding the transfer of the property, or they have to meet certain kinds of public obligation. For example, broadcasters had licenses they could hold for a few years, and then they had to be renewed. In order to continue to hold this license, they were supposed to do certain public service obligations, and they couldn't just sell it at will. The important thing to remember, the public trustee sounds really nice, really good. Everybody thinks that sounds like it would make everybody happy, but the important thing about a public trustee is that there has to be some authority out there that decides who the trustee is.

So in this model scenario here, if there is sovereignty over the delegation, in effect the national government of the territory is deciding that a particular delegation is a public trustee. Whereas with the property rights, presumably the government would simply be recognizing this property right as a one-off. We give you four different scenarios here, one of which we call the Mercantilist option, in which we have both sovereignty and a property right recognized, and it's sort of like a grant of a monopoly by a government in the manner of the old pattern

monopolies or trading company monopolies of the 18th or 17th Century.

If you have sovereignty over delegation and the public trustee concept applied, you have what we call the PTT or the post telecom and telegraph model, which is like the old national telephone monopolies. If you have no sovereignty over a delegation and you adhere to the public trustee concept, then you get what we call the RFC 1591 model, in which ICANN is the authority who delegates the public trustee right. Then in the other scenario you have what we call a free trade, in which you have both no sovereignty and a property right given to the holder of the ccTLD delegation.

One of the points we make in the paper is that there's no inherent nature to any of these choices. Governments can assert sovereignty over the delegation. It's not like they can't. It's physically impossible for them to do so. You can treat it as a property right or as a public trustee. For example, arguing that ccTLDs cannot be property is just wrong. Really, what we do here is a policy choice. With respect to sovereignty – and we're really summarizing our arguments very superficially here – we say no, as noted earlier.

We recognize that the upside of sovereignty is that you have global diversity and distribution of authority among different

states. But the downside is that the government overrides all other stakeholders and you get all of the political factors and instability associated with that. With respect to property right or public trustee, the upside of recognizing the property right is that TLDs in fact do function in a competitive market. There's just no way around it.

When you're running a country code, you are in effect competing with all kinds of generic TLDs, unless you choose to shut all kinds of things out of your national market, which is probably not a very good idea. So TLDs are in a competitive market, and recognizing property rights over these assets encourages investment and allows ownership and management to respond more flexibly to these market forces. The downside of property rights is that it does give less leverage for public authorities to influence their management, which you may think is either a bad or a good thing.

In terms of our overall recommendations – and again, I encourage you to read in more depth about what we've proposed – we think the Mercantilist option is the worst of both worlds; the combination of sovereignty and the exclusivity of property rights might not be so nice. The PTT model we view as a step backwards, towards the more fragmented, jurisdictionalized world of the '70s and '80s, which the Internet

was supposed to overcome. A global public trustee model really centralizes way too much power in ICANN.

It would make it essentially the regulator of registries for the world, and one of the blessings of ccTLDs is that they can sit and watch what happens to their gTLD brethren, and they have a lot more autonomy. If you made ICANN the designator of who was the most appropriate holder of a TLD in a given territory, I'm not sure that's a requirement they could fulfill very well, and I'm not sure we would want them to, even if they could. So we view the free trade model as probably the best overall for domain name registrants in a competitive, globalized market. Thank you very much, and I look forward to your questions.

STEPHAN WELZEL:

Thanks a lot. I would hope that you will be given an opportunity to give that presentation to the GAC as well. That would be interesting. Any questions or comments? Peter?

PETER VEGOTE:

Good morning. Peter Vegote from DNS Belgium. Thank you for the presentation and for the study. It surely opens up what I would consider as a very intriguing and interesting legal debate. What I noticed is when you were addressing property you used a set of criteria. What I wondered is why the timing of property has

not been taken into place? Because if we're talking about domain names and if we're talking about TLDs, it's very different compared with owning a house or being the proprietor of a sum of my view. In my view, property is also connected to what are you able to do with it, given in a certain timeframe.

Here with domain names, you're right to call it limited in time. It needs to be renewed, and you need to be in accordance with terms and conditions of somebody else. With a second-level domain it's terms and conditions of the registry. If it's a TLD it could be that you have been given the right to administer by a concession of a government, or it is at least – if there is absence of government interference – there is at least your obligation to respect the principles of RFC 1591. So I would like to know, have you considered that also when you have defined the notion of property?

FARZANEH BADIEI:

No. Time has not been considered. These are the bundle of rights that in [Larn economics] we use. However, for ccTLDs I don't think time actually matters, because when you assign the ccTLD to the ccTLD manager, they have almost permanent delegation unless there is a dispute. But it's a good point, I have to say, and also with regards to domain names it's a very good point, because if we consider domain names as property then

time will play a very effective role in it, and we have to look into it.

MILTON MUELLER:

I would like to supplement what she said. So in fact what you're saying is that the grantor of the TLD delegation is able to impose time limits. In some cases they do – for example a government might say, like with .us, somebody has been recognized to do this for a particular period of time. In other cases it's open-ended and it does not. Obviously, for the second-level domain there are these time limits, and that fits in perfectly with our theory. We're just saying that a second-level domain is essentially a leasing of a sub-property right from the overall property owner. So there's nothing particular unusual about that. In fact, it reinforces the notion of TLDs as a series of contractually assigned property rights.

What we're saying is that whether you give them a complete property right, or more of a limited public trustee right is precisely the policy decision that we're facing now. For example, would you prefer to see ccTLDs delegated as a public trustee for a limited period of time by an authority that can take it away if you don't meet the obligations? Or would you prefer to see it more as a permanent grant of a property right that could then be

reallocated in the marketplace as needed? I'm turning the question back at you.

PETER VEGOTE: I was looking at it from if there are so many conditions that put my property into jeopardy, that make it conditional, because I'm not the owner of the full array of what could be considered to be property rights, I would more make a shift in the matrix towards that it cannot be a property right. So it will probably end up more in the category of public trustee.

STEPHAN WELZEL: You're saying it cannot, or you don't want it to be? Because it can be. There's no question. People in discussions of property frequently get hung up on this idea of this absolute, unqualified property right, and if it's not that then they say it's not property. Name a single form of property that is not qualified in some way and limited in some way? If you buy a house, you have all kinds of taxes, regulations and limitations on what you can do with it. It's the same with TLDs. So it's more like a spectrum, and the question is where you want to be on that spectrum.

PETER VEGOTE: I don't want to monopolize the floor here, but I don't think I'm quite in agreement with that, because the reference to a house is

partially true, and yes, it's conditional – you have to pay taxes, et cetera. But still, it very much relies on what you do as being the owner, while with TLDs and with second-level domains it's not the same scenario. It pretty much comes down to how you're supposed to behave, because you need to act according to the standards set by somebody else – either the general terms and conditions of the registry; either RFCs like RFC 1591.

So I don't think that the parallel matches completely. I would say that property in terms of TLDs is far more conditional. So the big question is whether we can see it as property or not. As I said, I think it's a very interesting legal debate, and I thank you for having opened it. I think that it needs further study in order to determine where we finally are going to act.

STEPHAN WELZEL:

I'm afraid we have to move on. I will take your question if it's quick and you can answer it if the answer is quick. I think the good thing about the presentation is that it was explicitly said that there's no right answer, but you can choose. So everyone can choose whatever everyone wants! A quick question?

SPEAKER:

Actually, it's just a note. The meaning of property, legally speaking, is quite different, but if the tradition is the [comolo

00:58:32] or the [savalo]. This is a huge difference, and perhaps you have to keep in mind that the difference between the legal systems are quite different among the ccTLDs. In the case of Latin America we have [civil law], so property is something very definite, and if you don't have all the checks that we need to check in order to say, "This is property or not," then it's not. That's it. Thank you.

STEPHAN WELZEL: That was neither quick nor a question, but I think it was an interesting point. Thank you.

NIGEL ROBERTS: While Kristina is sorting out the presentation, it's worked out to be extremely serendipitous that we had that technical problem, because in the presentation we've just heard, which I found extremely incisive, and corresponds a lot to some of the discussions that have been going on for many years, as a teleological approach that we've just heard, that we've been looking at the purpose of things, I'm going to go very much into detail into one of the cases that was mentioned in the presentation. That was the case that was mentioned under the name of Ben Haim, and it's now confusingly changed its name.

The story starts a few years ago. I can't tell you exactly what the dates were. It's different for the different incidents that have been joined together. But there were several terrorist incidents that were said to be state-sponsored – that is effectively by various states funding and providing practical help to the people who perpetrated the incidents. What happened was that the victims, or the heirs, sue in US Courts, and after a lot of legal maneuvering – it's very complicated to try and sue a sovereign country in the courts of another; there are vast exceptions that prevent that a lot of the time, and vast complications in terms of serving papers and proving service.

If you're amused and not able to sleep, searching for how service was proved in the Ben Haim case and others is quite fascinating. So the story starts – they've already detained default judgments because none of the defendants are showing, on the basis that we're sovereign territories and we don't show in the courts of another sovereign territory. But the story really starts when the judgment creditors try to enforce. They start looking for property, particularly in the US, that belongs to the governments of the three countries that they've got judgments against, which are Iran, Syria and North Korea.

Now, obviously those three countries appear quite often in various other contexts in the US. They had some minor success. I think they found some property that belonged to the previous

government of one of the countries, but by and large this effort has been rolling on for many years. When it comes to our particular world on June 23rd 2014, when a subpoena was served on ICANN, and essentially a demand to hand stuff over. They claimed access to documents, and they required ICANN to hand over several ccTLDs, including at least one IDN ccTLD, and also – and this has largely been ignored in any of the coverage that’s around this – IP blocks, on the theory that the IANA, which is currently run by ICANN, is the ultimate source of all IP blocks in the world.

As you might expect, ICANN defends. They’re referred to in the proceedings not as a plaintiff or defendant. They are third-party garnishee, or in the case later on, the name changes again slightly. But ICANN is a third-party, but in practice it’s a defendant. Why do we care? I probably don’t need to tell you this, but why is it very important for ccTLDs collectively that we know what’s going on? It affects us. Whether any legal precedence is established, it affects us.

This is going on in the US, where the IANA sits, where ICANN is incorporated, where historically the University of Southern California has delegated ccTLDs – on Jon Postel and DDN NIC [was 01:04:31] – just about every actor in history, other than the ccTLD manager has a connection to the United States. This is a personal opinion. I submit that we don’t care either way what

the outcome of the case is. I think we're fairly neutral about the actual outcome of the case, but we really, really care if there's some binding or even persuasive precedence set within the United States Court System that defines something maybe in a way that we don't like.

We haven't had the opportunity to review or give the Court the assistance of the valuable knowledge that we've all got, going back to the beginning of time. This is what ICANN says: "ccTLDs are not property." ICANN says – this is in the alternative, by the way; there's nothing unusual about this –: "ccTLDs might be property, but if they are, they are not attachable property under the Law of the District of Columbia," another important qualification.

ICANN says, "If they are attachable under the Law of the District of Columbia, ICANN cannot transfer them unilaterally." I've put that in red. It's either going to provoke questions or I'm going to say some more on that. I think we know what's going on this afternoon in this room, and we need to think about this. I've left my chicken. Can somebody pass it over please? This I've borrowed from Calvin Brown, who brings it in.

STEPHAN WELZEL:

Just a second. While he's playing with his chicken I can tell you that we're already into the coffee break, so if you need coffee you

are free to go. If you are more interested in this then you are free to stay.

NIGEL ROBERTS:

ICANN says, “Even if we can transfer ccTLDs under the Law of the District of Columbia, it would wreak havoc on the Internet.” The reason this is here is we have something called Chicken Little. It’s the argument that people run around shouting, “The sky is falling.” This is all part of ICANN’s defense, or proposition, that the defendants – that is to say the people who don’t show, the governments of Iran, North Korea and Syria – do not own the ccTLDs, even if it’s property. Then finally, even if they do own the ccTLDs, it can’t be attached anywhere in the United States, because the foreign sovereign immunity exception applies. Anyone of those arguments should mean that ICANN cannot be compelled to hand over what it’s been asked to hand over.

The basis of the argument at first instance – and bearing in mind this is not that long ago; it’s in the last few months or year – ICANN relied on the ICP 1 and the GAC Principle of 2000. I’m not going to make too much comment about that, but that was in order to inform the Court about the legal basis for the delegation of ccTLDs. The Court held. The decision came down in November. ICANN was not required to comply with the order in the subpoena. The order has been widely misreported. Nothing

was decided about property. So we still don't know whether in the District of Colombia whether a TLD could be property.

But as we heard earlier, the judge gave a hint, and it's buried in a little footnote. The plaintive did not succeed because even if TLDs are property, and as we've heard in the previous presentation, there's a very good likelihood that they are – and they might be, as it says in the footnote, or if you read between the lines – they are not the kind of property that you can attach in the District of Colombia. That is intangible property: contract of services, and so on.

So that is the explanation so far for the reports that you've seen of this case, which is now known as Susan Weinstein against the Islamic Republic of Iran. But, as you expect, the plaintive has appealed, and the basis of the appeal appears to be that the applicable Law in the District of Colombia is actually unclear on this, because nobody knew what a TLD was when they wrote the law, when it's applied to domain names. They filed a defense to the appeal, ICANN, on September 28th. So this is hot off the press. I've not had an opportunity to read it in detail, but skimming it, it seems to contain much the same legal arguments as before, and probably with a good chance of success on the original winning point, but I don't wish to predict what the outcome of a Court might judge. It's unproductive.

However, appeals are more on law and fact, as appeals generally are, and the most significant factor appears to be how this statute law is to be interpreted. In other words, if a TLD or IP block, which nobody is referring to, remember, is property, whether it's the kind of property that can be ceased. Now, I'm not going to read this totally, but something I'm beginning to learn about US interaction between federal and state courts is there's a procedure that if the decision on a federal case depends on the interpretation of a state law, they can refer it to the state court for a definitive ruling on what the state law really means.

It's similar to European eyes of referring from a member state to the European Court of Justice on a construction of European Law. The plaintiff applied to do this. ICANN is opposed. You'd think that maybe they wouldn't oppose it, because they'd want clarity, but it's just the way this game seems to be played. Finally, what next? In the Courts they're currently arguing over whether to refer the question to the District of Columbia Court, and this oral argument in the case is scheduled for late January 2016.

A refusal to refer by the Federal Court to the State Court – I know D.C. is not a state, but that's a principle – or a [unclear 01:11:40] from the D.C. Court that, “Yes, it can be attached,” would probably appear to determine the appeal. In summaries, and this now echoes a lot of what we've heard, ccTLDs might be

property. The Court seem to think it might possibly be so, but we still don't know, because it wasn't required for the Court to decide this act first instance. Finally, just a thought. Other US States have different laws – perhaps where intangible property can be ceased. Any questions?

STEPHAN WELZEL: Thanks a lot. Any questions, even without coffee?

SPEAKER: This is [unclear 01:12:31]. I'm a former director of .ir, so I have some interest in this, but my question is the following: it's a question about the State versus the US Federal Government. What worries me is that with this whole transition going on, the US Government's hold on ICANN may become weaker. On the other hand, the State of California's hold may become stronger. So let me give you an example. In the past, when we had problems about changing something in the database, ICANN or IANA would send it to the US Department of Commerce and wait for a certain period. If they don't answer, they make the changes. That was the procedure.

Now, as far as the State of California goes, it's really different. The State of California sticks to the nitty-gritty of the law much more tightly. Let me give you an example. .ir has almost 700,000

domains, but they have not been paying a penny to ICANN for services. The reason being the State of California cannot accept money from the Islamic Republic of Iran. In the distant past, they used to send letters asking for a contribution, but they stopped doing that after the sanctions, or even slightly before that. So Iran is getting this service free in a way, but that's the upside of it.

On the other hand, there's a question of what happens if the State of California is going to be... What's worried people is if IANA and ICANN are entirely under the control of the State of California, what the consequences would be for something like .ir.

NIGEL ROBERTS: I'll take that as a comment, but it's a very good one. Anybody else.

STEPHAN WELZEL: If there are no more questions then we can close this session. Thanks a lot to the presenters again. Thanks a lot for your endurance.

[coffee break]

SPEAKER: It's a pity, but we need to start because we have hard time constraints of the schedule. We have to leave this session in just one hour. There's a slight schedule change from your schedule. The first one who is presenting is from CN NIC. Mo, yes please.

MO DONG: Thank you. Ladies and gentlemen, dear country code friends, good morning. My name is Mo Dong. I'm from the Chinese Internet Networking Information Center. We operate .cn, the ccTLD of China. It's my pleasure to be here and talk a little bit about the governance issue. I'll talk about how and why ccTLDs are in the frontier of the Internet governance system, based on our practice in the experience of our data drops of CN NIC. To amplify this topic, I'll try to start with sticking out the position of ccTLDs in Internet governance. I think a graph is missing. I'll just use my own computer.

Firstly, what is Internet governance? One of the official definitions of Internet governance came from the World Summit on the Internet Societies – at least that Internet governance is the development and the application by governments, the private sector, and civil society in their perspective roles of sharing principles, norms, rules, decision-making procedures, and the programmers that shape the evolution and use of the Internet.

We can see there is a relatively extensive range of things covered in the definition, including infrastructures, information technologies, laws and regulations, culture, economic development, and cyber security standardizations. I'm supposed to have a graph of all that. I'm sorry for that. Internet governance is a behavior rather than this definition. It could be carried out by various subjects, and based on the experience of ourselves, at CN NIC we think ccTLDs are rather the subject than the object of Internet governance.

I think something is missing too. I'll take ICANN's multistakeholder model as an example. ICANN is the major governance organization in names and numbers. We can tell from the multistakeholder model that any move we make, any decision we make, cannot leave the [input 01:23:19] of different communities. We are the stakeholders, and we are an essential element in this graph. We are categorized under the technical communities. Because of the nature of it, you really focus more on technical issues. Many of us tend to think technical problems could only be solved at a technical level, but we think not.

The experience has taught us that without the support of policy and regulations, technologies could be a double-edged sword. The imbalance between policies and technologies can create chaos. Because of the position we are in in this ecosystem of Internet governance, we think ccTLDs sometime get involved

imperceptibly, so why not pay more attention in this matter and do more? The reason we chose this topic is because we realized the national advantage of ccTLDs in governance, from the practice of CN NIC.

I've heard this saying that ccTLDs are solving the three philosophical questions in the Internet. That is: Who are you? That is the issue of naming. And where are you from? That's addressing. And where to go? Which is routing. Correspondingly, we manage the critical resources of domain name servers, IP addresses, and AS numbers. To answer philosophical questions we need to have sensible reasoning and be serious. In this case, we need to have regulations [extenders 01:26:42] of resource management. That's the nature of what we do every day, and [unclear] already are, you can tell, is a governance behavior.

So [our delight] the national advantage in four aspects. Firstly, we ccTLDs are national resources, and also fundamental resources. The nature of national resources gave ccTLDs a cultural importance. We are a country code. We sometimes could even play strategic roles in cultural decisions. That's why we put a lot of effort on localization of domain names; for example pushing IDNs and email address internationalization. Also, the reason we do this is that people in our countries need

that. It gave us this mission to provide these kinds of services. That's what our national resources gave us to complete.

Also, the nature of fundamental resources requires us to ensure the security of the Internet in our areas. So we work on DNS securities, we push technologies like DNSSEC. Also we consider more on the matter of sustainable development; so facing the [defeated 01:28:38] addresses the way we promoted IPv6 deployment. Secondly, I think ccTLDs have the advantage of international communications. Almost every country has its own ccTLDs. We have 156 Members of ccNSO, which enables a vast and stable communication platform.

You can't expect every legislative institution of our respective countries to sit together and discuss Internet matters; at least not this often. But we can, especially when ccNSO has provided this wonderful roof for us. We're very grateful to be here and discuss issues together. We have commonalities, so we can cooperate. We have differences, so we can learn from each other the situations in our respective countries.

It creates some perspective that we can be one step ahead from learning from each other, and moreover, comparing to government and other Internet governance entities, ccTLDs are always the pioneer of their own countries to reach out internationally for Internet issues, since we need to build the

infrastructure first, before the regulations and the rules came first. That has become a convention, so ccTLDs played very proactively in international communities.

We are well connected to regional and global organizations, like ICANN. CN NIC [are secretaries 01:30:45] of APTLD, ourselves. We have close connections with IETF, IEEE and organizations of that nature. Also, certainly back to our own country's ccTLDs, we have close liaisons with the organizations and the communities in our own country. We are in the middle layer between telecommunication infrastructure and the content applications. We have the [technician 01:21:23] to connect all these societies of technical communities, civil societies, academia, and we are [unclear] the country's national interests.

Our engagement in the global Internet governance can therefore attract [unclear 01:31:48] and the [state] associate actors to follow and ensure the adequate distribution of Internet governance matters. For example, a [couple of reasons] abide by the requirements and regulations from ccTLDs on the registration of domain names. The fourth [adventure 01:32:25] listed there is our technical communities. We are more of an improved community of all aspects. We technologists are renowned for stubbornness. We have our own values, not easily compromised.

We also are exposed to the most advanced technologies, which gives ccTLDs perspectives, points of view on policy development. We are also open to every possibility with less limitations. To summarize, as one of the major stakeholders of the Internet, we support everyday users of the Internet, and we are the focal point for dissemination of Internet governance, concepts and technical expertise. I'll now start to demonstrate this matter. From the practice of CN NIC, the ecosystem of China in Internet governance is a bit complicated.

Firstly, we have legislative institutions of the National People's Congress, and the second layer is the administrative and [critical 01:34:04] institutions like [unclear] ministries, like the Cyberspace Administration of China, the Ministry of Industry and Internet Technologies, and other related ministries, state council, courts. On the outside layer we have the entire Internet industry, including enterprises, public institutions, organizations, civil societies and academies. You can tell that ccTLDs belongs to public institutions here.

A brief introduction – you may also know us by the name CN NIC. We are a non-profit organization established in 1997. The main responsibility is established from the beginning. Firstly, we are the operator. We operate and are responsible for the administration of critical resources of the national network, and we undertake research and development and security work of

fundamental resources. We also do research on Internet development. We are responsible for providing the platform for Internet technical exchange.

Our rules decided that we can have our engagement in different aspects, with the communities related to us. Firstly, the government – we provide policy advice and proposals. We produce the statistical report and [counseling 01:36:30] services that are recited by the UN and national researches. For a very long time we have been holding international conferences, and had the experience to support a governance and get more involved. To organize these kind of events, in 2014 we got involved in the World Internet Conference Summit. There is a picture of the Internet Governance High Level Panel in that meeting.

In the academia part, we established the organization of CN NIC Institution of the Internet Governance Research. We have a strategic partnership with other think tanks, like the Shanghai Institution for International Studies. We have a partnership with the China Academy of Telecommunication Research. We are going to have more joint workshops and an expert platform in the future. We have held a workshop on IGF Meetings in 2014 and 2015.

The next part, within the technical communities, we will build a joint lab, and also the National Engineering Lab for Names and Addresses...

FACILITATOR: Sorry, but you are eating into other presenters' times. Could you make this the last page?

MO DONG: Okay. All right. We did a lot of different aspects with the organizations we are connected to. I will just make a short conclusion that ccTLDs have the natural advantage in the Internet governance ecosystem, and it is an [attributable 01:38:58] trends that ccTLDs will get involved, and be the frontier of the Internet governance ecosystem. We just talked about sovereignty and property rights.

CN NIC wants to advocate that ccTLDs should get more involved, and we want to see more ccTLD people with technical proficiencies and international perspectives; taking actions and being a strong force in the Internet governance ecosystem. We could surely benefit from this engagement and close the gap between technologies and governance. Thank you.

FACILITATOR: Thank you. Sorry for rushing you. Sorry, but there's no Q&A time, so we'll move to the following presenter, who is Louis from .pr. Yes please?

LUIS MEDINA: Good morning everyone. My name is Luis Medina. I'm the IT Manager of the .pr ccTLD. We're continuing with the news section. We have some news we'd like to present. This is going to be more of a status report in terms of DNSSEC adoption and what's been going on in our region. These are the topics I'm going to briefly go over.

First, what is our purpose – a brief background of our story and what we've done with DNSSEC. We have, in particular, two case studies that we've been following closely and we're going to be evaluating. We have twice made efforts for our end users to adopt this technology. What is the status of it now, and what do we plan to do in the future? Our main concern is to promote the widespread adoption of DNSSEC in the .pr ccTLD.

Why? Because we believe the benefits outweigh the efforts. At the beginning it was a fairly new technology but now it's very much matured. It's been widely adopted and we want our end users to benefit from it. We're going to evaluate current implementation obstacles that are preventing the adoption in our region, and propose a few solutions to aid in this process.

So what did we do? We signed our zones back in July 2006, four years before the root was signed. We were the second ccTLD to adopt DNSSEC, right after Sweden, .se. we were in the first in the western hemisphere. By the 23rd of September 2012 we uploaded our DS records to the root as soon as it was signed. What was it like? Before the root was signed we used DNSSEC [unclear 01:42:59] validation to enter the chain of trust. [DOV], as most of you know, allow validating resolvers, of which their parents weren't signed, or didn't publish this record for the children to have DNSSEC this way.

To validate we used the drill extension for Mozilla Firefox. Today we mostly use DNSViz or OARC's open DNSSEC resolvers, either one of the two. These are pictures from 2006. We were excited, we had made an accomplishment, so we wanted our end users to follow suit. We did a number of attempts to have the local community adopt this protocol, but in general they were met with absolute resistance. We couldn't have anyone actually implementing the protocol. Now that we look back to it, it's reasonable. It was fairly new. The root wasn't signed, and many other things, but we couldn't get any of our users to implement it.

The approach that we've taken to mitigate this issue is based on two case studies. The first is the Brazilian ccTLD, who provide DNSSEC hosting for their zones, in limited sizes. This has

accounted for 22 per cent of total .pr domains being signed. The other case study is the Federal Government, which they did back in 2008, to have all the .gov sub domains deploy DNSSEC. This resulted in 87 per cent of .gov domains being signed. This is the .gov DNSSEC adoption timeline, provided by the National Institute of Science and Technology.

We can see since 2011 it's been a gradual growth, and now it's slower because almost all of the sub-domains are signed. When the root was signed we thought that maybe this would be the solution that our users were waiting for. We did a second initiative. We sent a mail to selected domains, mostly municipalities and media, and we were very active in seeking out our users, but out of those who responded, which was not all, none actually converted to a successful implementation, even though we offer our direct help in implementing their system. But they show interest, but nothing happened even then.

This is congruent with what we have seen in the industry. This is a graph of representative [.gum 01:46:19] that also [the list] has provided, and they think they are representative of the industry. We see that since 2011 it's almost a flat-line. We know that this is not mostly the end users' fault, so it is a hybrid of factors, but we are seeing a similar behavior on our part. So what have we done with this? Now that we have established that it is also a problem on our side, we still actively promote the adoption.

We give out tutorials and configuration, and we are willing to assist our clients in any way we can. But this has been the key concept, the key approach, that has resulted in growth on DNSSEC on our part. We have an incentive program for selected domains that are on this program, and for government organizations. We are hosting their DNSSEC zones, just as Brazil did, and if they are going to be on this program they are required to have DNSSEC. So it's a hybrid of the two case studies that we mentioned before.

This has resulted for second-level .pr domains, out of the total of 1,581 that we have, we could say only 16 have DNSSEC now, but it's more than zero. This accounts for one per cent only, but we hope to continue observing a steady increase in this number, as long as we keep at it. A parallel solution that we're going to be implementing is an economic incentive; an initiative for local companies, only for the .com.pr extension. We'll be offering a 90 per cent discount. We are considering this initiative, with the initiative that we host and sign their zones. They could also do it themselves, but DNSSEC will be a requirement under this program.

To summarize what we have seen, if we enforce this particular technology, we have gotten good reception. That's no surprise there, but it gives results. If we leave it alone we have poor reception. We thought the end users would jump at it, but it's

not like that. With an economic incentive we will see... We hope to provide you with an update on this sometime in the future.

To conclude, we have seen that clients don't mind at all DNSSEC as a requisite, as long as they don't have to manage it. They don't like managing it, even though nowadays it's easier, network admins included. People that don't know anything about DNSSEC, they show interest right away, and they understand the benefits and they like it, and as long as we do it, they don't have any problems. Just to implement it at a TLD level and let it sit like that, for us it's not enough. We need alternative methods to incentivize our users to implement it. That's it.

FACILITATOR:

Thank you Luis. Let us have only one question. Not one question. Thank you Luis. Next presenter will be Jay from New Zealand.

JAY DALEY:

Thank you. Yesterday I promised you the most boring presentation. I think though that Nigel beat me! Yes! Today now is the most interesting one, because I make no mention of domain names and no mention of ICANN at all. This is about diversification, and as I said, it's nothing to do with domain

names. This is about a product we launched recently called the National Broadband Map. Just so that you remember our very complicated structure, I run the registry for .nz. That's my company and my bit on the left, over there.

The registry is owned by Internet New Zealand, which is a membership society, which Jordan Carter runs. Internet NZ also owns a company called the Domain Name Commission, which is the regulator and the policy setter, which is what Debbie runs. So there are three separate organizations there. It's the best way of keeping us all honest and ensuring that the overall ownership of the ccTLD is about the Internet in New Zealand. It's not just a thing for itself. That's our structure.

I could do another three-hour presentation on that later, if we want one. Business development, to many of us is a necessary activity. It's not an extra. The one thing that worries me is we'll be the manufacturer of the old heavy telephones that we see in our grandparents' house in a few years' time, that we have to understand that what we do with domain names is as likely to become outdated as any other technology that's ever been outdated in years. There's nothing special about domain names that means it will stay fresh forever.

So we need to avoid stagnation. We need to future-proof our revenue, if we use our money for the good of the Internet, and we

need to motivate our staff, and we need to maintain our relevance. We are looking at multiple opportunities with different approaches. Some are business development, where the primary focus is on making more money, and some are service development, which are more of a service to the community, and we want to commercialize it to ensure sustainability, such as the National Broadband Map.

This is what happens when you load the National Broadband Map. You get a nice picture of New Zealand to start off with. You can search by an address in the top left, drop a pin, see an aerial view, or you can start to browse the layers of different access technologies within New Zealand, broadband. When you do a search for somewhere, it will tell you what type of broadband, what physical cable technology is available at that location. This is the availability report on the left, and then on the right is the map so that you can visualize it as well.

We have this small number of access technologies. We're looking at fiber, cable, two types of copper, and fixed wireless, and you can find out if that is available. This is not telling you who you can buy from. It's telling you what type of connection you can get. This is particularly important, as we have a large government fiber rollout underway, and particularly important if you live in a rural community where there are different means of access that you may not be aware of.

Broadband is increasingly vital to a local economy, and so people knowing what is available that they can use is a vital part of building that Internet economy. We are commercializing this as well. There is the free part, which is the web search that you've just seen, where you can get the answer yourself, it's intended for consumers and small businesses to look at, and for low volumes. We don't allow people to write a script to work against it. If you're willing to pay, then that's when you get the computer-to-computer interface, the API, and you can have higher volumes, and you only receive the data. You don't get the maps. This is going well for us so far.

How did we do it? Now, there are two parts to this. One is the practical means, which I'm sure all of you know. You collect the data, you build a minimum viable product, you do some testing of that, and you get feedback, refine the product, a couple of iterations, you then launch the product, you measure everything for a period of time, you refine the product and you measure the changes, and then when you've refined it you then look at the feedback in more depth to add new features, you implement those and you measure again. It's a measure and change thing, very quickly.

In order to do this though, we had to get data from some 20 providers, many of whom were very sensitive about their data. I have had to sign contracts that have handed over two of my

children if I let their data get stolen from some of them. I have more, so it's okay. But others though are very happy to give us their data. We thought at first it was easy for these people to give us the data, but actually it is a high cost for them to provide it. It is generally a part of their systems.

They need to extract just the bits we need, they need to keep it clean and tidy, and so we've spent about 18 months asking them nicely. We have not paid anything for it. We have demonstrated the security of the system, gained their trust. We have sold them the whole idea of what this is about. Then for those who are finding it very difficult, we wrote some software to help them provide the data. Some of the providers who have wireless coverage can just enter a spreadsheet of their antennae details now, and it will generate the coverage maps for them.

The way we did this as well will seem like the wrong way, but there are times when you need to build something to find out if you were right. Many people tell you to start with customer research, start with validating the market, get all the evidence, and then build something. But sometimes people don't know what it is that you're asking about. We did it the other way around. We built something for people to see. Once people could see it, they could tell us what they thought of it, and we then changed it very quickly and very substantially, based on the feedback we got. That's an important method for us.

We used an external company initially, just with a fixed price, let them develop it entirely the way they wanted. We had no say. We didn't attempt to make them fit with our processes, because that would cost more. This was something that we didn't know if it would last, so we let them do it the cheapest and quickest way possible. Then, once we had the testing of the product, then we did it internally, because we sat next to each other as a team and did that quickly and iteratively over a period of time.

Then our production infrastructure has no capital outlay. We have not bought any servers or any equipment. This is all in the cloud. The whole thing is hosted on Amazon Web Services. We use a geo data hosting service, an address lookup service. Wherever possible, this is simply an operational expenditure, so that if we want to turn it off, then the loss is limited significantly. Then the launch. It was reasonably successful for us. As you can see, within the period of 12 hours we had 116,000 users look at it.

It was launched by the Ministry of Communications. We didn't expect this. We built the site to be embedded by somebody, but we didn't realize that the major news sites in New Zealand would embed it on their front pages for everybody to see and use when they started using that. That was fantastic because the Minister Tweeted it for us, and so it went out. So the launch went very well for us. We have now got to a stage where I think we're close to having this financially sustainable.

It may generate a small profit over a period of time, but it is certainly something that has changed the landscape as we intended it too, and something that's been a successful thing, and has been done at a relatively low cost for us. So overall, we're pleased with it. That's all.

FACILITATOR: Thank you Jay. Questions? No questions? Everything clear? All right, thank you Jay. Next is the last presenter, [unclear 02:00:39], who is another who is making money!

SPEAKER: Thank you for letting me give you a brief walk-through of our validation of our registrants. I don't know if you recall that I did a presentation on that we had to implement a new validation system earlier this year. I did a presentation on how we implemented this. Now we're back to looking at what we're going to do with the existing database. To give you a quick brush-up, why do we validate the registrants? We do it because in March 2015, an obligation was introduced to do the validation, and we needed to do that to ensure the anonymity of the registrants, and to ensure the data we have on the registrants are correct.

Earlier, it was that the registrants themselves were responsible for correct data. Now it is the registry that's responsible. In the law we have a requirement that all our registrants have to be visible in the WHOIS database with their name, telephone number, and address. We don't show the email, but we show the telephone number, unless they're anonymous in the telephone database – then we don't show it. Because of this change in legislation, we were responsible for all the data going into the WHOIS database.

Well, new registrants are taken care of at the moment. When you register, you are checked towards the Danish civil registration system, and we actually subscribe to any changes for the actual registrant. If they move or change their names, we will get an update automatically pushed into our system. We also match the companies towards the Danish Business Register for Companies. You cannot have a domain name active in our system before you are validated.

So we need to have a match – and this is only for the registrants that are resident in Denmark. What is it we check on this? We check that the registrant data is correct, and we also check if they are anonymous, according to the Danish Civil Registration System. The anonymity is only for the private registrants – not for companies. They cannot be hidden or anonymous. They have to show in our database. We actually accept that the

registrars send in an application, and we do the checking. We don't leave it to the registrars to do the checking.

We tried to do that, and that made an uproar within the registrar community, so we had to change it back. So we do the checking of the registrant. If you live outside Denmark, we can't check, we don't do any validation. So there's a little imbalance here, but that's the law that defines that we have to do this check for the Danish residents. But what about our existing database? We have a lot of registrants that are not validated, that have been there forever. Some of them don't even have an email address.

We actually have tried to match all the registrants in the database towards the two registers – the Business Register or the Danish Civil Registration System. As you can see, we're able to match 59 per cent upfront, and they could only do a match if we had a 100 per cent match on name and address for private registrants, and for companies you needed to have a match on the name, including their registration number for the companies, and the corporate form. So this is a very sensitive system. We are very rigid in the way we do it. But that's the only way we can do an accurate match, and the law is pretty clear on this. It needs to be accurate. This is causing a lot of problems for us.

As you know, it's not easy to write your name or address correctly, because the Danish alphabet has three letters that no

one else has, and we have registrars that have trouble writing this, so we have a lot of issues that can create a mismatch of the registrants. But we have to handle this, so every day we send out between 1,500 to 2,00 emails, including a token for the registrants that are not validated. This token works for four weeks and then it dies. But we send out the token and there is a link to where they can check their address and their name for whatever is misspelt or left out, so it can't have a complete match.

But we don't allow people to change that much themselves, because if we allow, for example, a person to change their name, it will be a new registrant in reality, or you can have a handover of a domain name that was not supposed to be. Because we push out all these emails to the registrant, we are very careful of ensuring that if a name has to be changed, it's a change of a registration, per se, and you need to be able to do that with your passcode, and you need to be able to trace it so everything is inline, and you need to do that on our self-service platform.

This is very difficult to understand for people, and I understand it's difficult for them, because I would feel annoyed getting our emails. It is difficult, but it is a way of protecting the registrants from an accidental handing over of a domain name. So for companies, they have to transfer it by using an online service,

and private users can either use our public digital signature to do it, or to do a transfer on the online system.

But the public digital signature is not very popular with everyone, but it's an easy way to do it, because then we have complete validation and we can see who is doing this. It's a very straight line of someone else saying that they are the person they say they are. How can we do this? We couldn't do this on our own. We send out all these emails. We get a lot of calls back every day from a lot of people who have difficulties on understanding our emails. We have tried to make those emails very education. We made small videos of how to do it. On the website you also have a written manual on how to do it.

We had to hire in seven students. That equals three full-time positions. We have a full-time employee who is only looking at this too, and two supervisors who are involved in the data validation. So a lot of people are looking at this, and the specific difficult cases, we have one of the full-time employees taking care of those. So we got a lot of calls to our call center, and we had to establish a new call center. Now we have one for normal registrants, and we have one for the actual validation of the existing database. We didn't envision this when we started, but you learn as you proceed.

So what are the validating numbers? The existing database, before 1st of March, there were approximately 700,000 registrants, and of these, you have 640,000 that reside in Denmark. We were able to validate 60 per cent of those, roughly. It's been a tough process, we're working with it, and we actually have a problem of what do we do next? Because we are almost done with the first round, so what do we do with the second round? We know that half of the emails that we send out result in an actual validation, but the other half... How do we do that?

Should we do a second round of emails? Or do people get too annoyed with that? Should we send a physical letter to the registrants? Do we suspend them temporarily? We could do that. Anyway, what we plan to do is actually to be in close contact with our authorities, because the validation is a requirement by law, and there is this clause saying you have to validate them if technically possible. Is it technically possible to validate the rest of the registrants that are not actually answering our emails, or letters, or whatever we send out?

We have to discuss this with the authorities, because we want their decision on whether to suspend any registrants. We would like them to tell us to do that, and not take that decision ourselves. Thank you to listening about our quest for correct data in Denmark. We still have some way to go. I don't know if you have any questions.

FACILITATOR: Questions? Carson?

CARSON: Carson [unclear 02:14:10], [.ae]. I just wonder, from a financial perspective, what additional cost has been put on an average .dk domain name by this exercise? Have you done any calculation about this? Will you?

SPEAKER: Actually, we haven't done any calculation of the cost, because building this system has been very, very expensive, and during the actual cleaning of the database or validation of the database, it's also quite costly. Now, we have students that are cheaper than normal full-time employees, but we haven't increased the price or cost of this, and we haven't put any extra cost to the price.

CARSON: Okay, because building the system is just "capex", capital expenditure, but running the system is "opex". As you say, you've opened up a new call center even, to carry out the task, and I just wondered... Yes, but okay.

SPEAKER: But the call center is not going to stay. It's only temporary. We will close it down afterwards.

CARSON: Okay. Thanks.

FACILITATOR: Thank you. Any other questions? Margarita?

MARGARITA VALDES: One question – when you said there are these special characters of the Denmark language, do the navigators help people to write the correct names?

SPEAKER: Well, we are allowed, if it's a special character that's misspelt, you are allowed to do that correction in the call center, but that's the only correction they can do. Or if they need a number on their street... Things like that are fine.

MARGARITA VALDES: The second thing is what is the term that people normally register a domain name? Because I'm thinking if you need to clean the database from time-to-time in order to... The domain names that are not renewed, for example?

SPEAKER: You can't register without being validated, so new registrations are fine. You can be renewed even without doing a validation, but if you want to do any changes to your domain name and you're not validated, you will not be allowed to do so. So we lock the non-validated registrants in order to force them to validate.

FACILITATOR: Okay. Last question from Byron?

BYRON HOLLAND: Do you have any sense of the metrics in terms of your success rate in getting people to update incorrect or questionable information? Sending emails to people is notoriously inefficient – or at least that's been our experience. What's your experience, and how successful have you been in your outreach to get validated data?

SPEAKER: We haven't done the math on who validated without our help, just by email, but we know that half of what we send out by email is validated. So we know that rate, but it's only half. We don't know how many of them needed to be in contact with our customer service. We don't do that tracking.

BYRON HOLLAND: Beyond the emails, to get to that other half, it becomes probably exponentially expensive as you get closer and closer to the end. What are your plans beyond that? Are you willing to just live with some level that will not be validated, and then be in contravention of your law?

SPEAKER: Actually, it's not up to us. We could live with having the small part, or the last half not validated, because in the end you would have a slow validation, because people need to do changes, and we would not allow them to do any unless they become validated. So that would give a natural validation of some of the rest, but we will ask the authorities – that's the Danish Business Authority – on, "What do you want us to do with the rest?" Because this is a law requirement, and of course it's nice to have a clean database, but this is not the way we would have done it if it were our own choice.

FACILITATOR: Thank you. Thank you [Alice]. Thank you. This is the end of the ccTLD News Session. Just on time. I'll hand over this microphone to the Chair of the next session.

MATHIEU WEILL:

Thank you for bearing with us whilst we took our seats. We are getting into the part of this meeting where we will discuss, in depth, the CCWG on Enhancing ICANN's Accountability proposals. This is probably our largest chance to get into that discussion, into whatever level of detail you find appropriate, as well as clarify what the core expectations from our community are, and signal them into the process. As I was saying yesterday, our group is currently finalizing its report. We will discuss the next steps later this afternoon, but obviously there is still ongoing discussion, so it's still very much something that the ccNSO itself can influence, should there be core concerns.

I think all our Members in this group, who are Roelof here, Jordan, Eberhart behind, Giovanni, and me, we are definitely here to listen to these groups' views so that we can channel them into the CCWG. Byron was mentioning yesterday how the sessions we're having now are useful to also provide the ccNSO appointed Members with direction on how to take position when it comes to consensus calls in the group. What we're going to do in this particular session before lunch is briefly re-introduce the context. Jordan Carter, to my left, is going to go through the non-contentious issues, so that we check that we're in-line with this.

Then I will go to Becky, who will explain the Work Stream 2 concept, and what's being considered in terms of topics for that.

Nigel Roberts, who has been a very active participant in the last few months on the topic, will update on the human rights aspect of our proposal. Very briefly, on the proposal, what matters here is to remember that this is the CCWG Accountability, which is a parallel track to the ICG track, however there is a close link with the CWG Stewardship on the Naming Function of IANA, because the report of the CCWG that the ccNSO has approved in BA was a conditional approval, upon the completion of certain requirements in terms of enhancing ICANN's accountability.

As a consequence, ICG and the CWG are now impatiently waiting for this work to be completed, before they can proceed through the final steps of forwarding the proposals to the NTIA. So we are all inter-linked, inter-dependent, and that needs to be taken into account, both in terms of the wiggle room we have on adjusting our proposals, and of course in terms of timeline as well.

One thing that also needs to be very clear is that the CCWG Accountability is not attempting to change anything in the policy-making aspect of the ICANN community. We are not touching the basic structure of the ACs and SOs. We are not changing the structure of what is the current organization of ICANN in terms of SOs and ACs. We're not changing the rules of the ACs. We are working on a broader level to enhance ICANN's accountability. That's been consistent across the process.

We've worked from the start around four building blocks for ICANN's accountability. The Bylaws, where we find the principles about the mission of ICANN, how it behaves, and what it commits to. That's the guarantees and core values. The review and appeals processes that enable challenging of a decision – that's on the bottom right. On the upper left of the screen, the community itself, and it's been a core aspect of our proposals to empower this community.

The ICANN Board is front and center in the proposal, as it is now, to conduct the affairs of the operation on a day-to-day basis. It is still very much the executive, a constitutional metaphor, of the organization. They're still elected by the SOs and ACs, as we know it today. Those are really the four building blocks, and we'll go through all of these during the course of the day. So that's been our process so far. I'm not speaking so much about process and public comments. I don't think that's the core of the issue, but I'm happy to answer questions later on this. I'll turn to Jordan for an update on what the latest public comments have shown, and where there is agreement. Jordan?

JORDAN CARTER:

Thanks Mathieu. Jordan Carter, with .nz. I'm Rapporteur for one of the Work Parties. I was trying to write up a list, because there was quite a lot of consensus. I thought I might talk briefly about

the core areas where there was consensus and where people felt the second draft proposal was better than the first. The existence of these four components of the proposal was broadly agreed. In terms of the empowered community, the community powers that were set out, there are three green dots there and two yellow dots.

The ones where some more work is needed, indicated by the comments, are in the budget power, and in the removal of individual ICANN Directors. The other ones are on having a community say on Bylaw changes, on fundamental Bylaws and removal of the whole ICANN Board. The processes for those ones are largely agreed, and the decisional process for all of these is something we're going to talk about a bit later, I think, this afternoon.

In terms of the role of the ICANN Board, that hasn't changed. In terms of the independent review mechanisms, which Becky could talk about to a length, that hasn't changed either. There are some reviews and revisions that came from the public comments on the principles and the mission part of the proposal.

The other point to make is that as we analyzed the public comments on the second draft proposal, people really appreciated the move from a multiple member approach in the

first proposal, where each SO and AC would be a member of ICANN, to the sole member vehicle in the second proposal. You may recall a discussion in BA about unincorporated associations and the concerns with legal personality, and would people have to join something. So there was a lot of support about the broad architecture of the second draft proposal, in that respect. We solved that problem, and the feedback that we got supported that shift.

The other strong support, which isn't entirely obvious from this slide, and I don't think it's on the next one either, is that people agreed with the contention that discussion is a really important part of exercising any of these powers. So what we're trying to do is avoid any of the community powers being exercised in a smoke-filled room, or just a ccNSO room like this, generally speaking – that before any of these reserve powers are exercised, there needs to be dialogue, discussion and debate across the ICANN community.

What we said there was that there should be an ICANN Community Forum, where all the SOs and ACs were represented, but where anyone from the ICANN community could come and observe and have a say. There would be a mandatory process before any of these powers were exercised, and people really liked that. They pointed out that we didn't put much detail in

about it, so that's an area that needs to be improved; some more detail and specificity about how that process works.

But nobody challenged that basic logic; that before you're to go exercising any of these powers, it's really important that there is a cross-community dialogue. The other point is that in terms of exercising the powers, again, of those five community powers that are listed, the only one where a decision is made by an individual SO or AC is in the removal of an individual director that they have appointed. That process needed improvements, and there are some improvements that have been developed by the CCWG on that.

Aside from that, we said it isn't up to just one part of the community to say no to the ICANN Budget, or to block a change to the Bylaws. It has to be cross-community work. It has to be all of us working together and making a collective decision, with a high set of thresholds, before any of these powers are exercised. I'm emphasizing that, because the point that it makes is that this is not a fracturing of the multistakeholder model. The premise behind all of these powers, the way decisions are made, is that it's a reinforcement and strengthening of the model.

So those are the core queries where there was a lot of agreement. I don't think I've skipped any of them. In terms of

areas that needed improvement, is that what I should be moving straight into, Mathieu?

MATHIEU WEILL:

Just to outline the program, so that everyone's got a view, this afternoon we'll discuss about the independent review process enhancements, and of course that has implications for ccTLD delegations, for instance. We'll be discussing about how the new powers may impact the ccNSO or other ACs or SOs accountability themselves. We'll discuss how we're meeting the CWG requirements, as well as those empowered community, yellow things on the slide.

They are related to the Budget process, to the Board – individual Board Director removal –, as well as the underlying model, and how these powers may be enforced in the unlikely case where there would be persistent disagreement. Those are the outstanding issues in the program for this afternoon. At this point, what I'd like to check before going to Becky and Nigel is whether on the issues that Jordan has described, there are any concerns in the group, questions for clarifications?

Or if there are perceptions that some issues need to be added to the list of not consensus issues – because they still remain open – but more to make sure we're absolutely covering all the issues that you have in mind, and that we're not leaving anything aside.

Nigel, do you want to start? A first question from the Panel is always good.

NIGEL ROBERTS: It's not a question, just a comment. While people are getting ready to ask questions, I'm sure there are lots of people with lots of questions, it's a presentational thing. I don't think we should be requesting to add things to the list of things that do not have consensus. I think we should be explicitly ticking off and making sure that those things that we think have consensus, have consensus, positively.

MATHIEU WEILL: Thank you Nigel. Peter?

PETER VEGOTE: Thank you Mathieu. I had two questions for clarification. The first one I'll ask two questions, and you can decide on how or how not to handle them. The first one is on something Jordan said; that there's strong support from the move from a multi-member model to single-member model, but a stakeholder – there are quite a few – has some strong concerns on that. That's the ICANN Board in their comments, I think. Could you, now or

later in the day, assign some time on explaining, in clear words, what that means for the models, and what people hear about the designator model versus the single-member model that was just presented now?

The other refers to something that has been touched on in Mathieu's and Jordan's presentation, and it's the concern of a balance of power shift in the course of this implementation of the accountability proposals, and the Stress Test 18 that we keep on hearing about. One of the things I personally fail to see is the logic where in writing down, in the Bylaws, that the GAC could not change their decision-making process. That could make things worse than they are now.

As I understand it, any individual GAC Member can basically veto a GAC consensus by expressing a position against it. That is as worse as it can get, because that means that one government has the power to basically steer very strongly the whole GAC process. So I'm sorry if this went too much into detail, but I want to underline the importance of what the Stress Test 18 is. is it, in your views, possible that this agreement on that Stress Test could undermine the whole process? Thanks.

MATHIEU WEILL:

Thank you Peter. I think you raised several points. The decision-making, this is for this afternoon. The relative weight of

influence, that's on our list for this afternoon. Stress Test 18 wasn't, at this point, but I think Becky will say a word about it. Let's address it now, because that was not on our list. Then we'll come back to Nigel's suggestion to take the temperature of the group, item-by-item.

BECKY BURR:

Just for clarification, I'm going to hand this over to Chris afterwards. I think this is very important, because we really need to make sure that we don't lock ourselves up and prevent the ability to develop consensus, over what I think is actually in great part a misunderstanding. First of all, there's nothing about Stress Test 18 that says that the GAC cannot change the way it does business, or the way it provides advice. That is entirely up to the GAC forever, and nothing about Stress Test 18 would change that. That's very important to be clear about.

I just want to posit the notion of how the ICANN Board received and acts on advice. The concept of an advisory council is that it provides advice that reflects the views of the group. So the RSSAC and the SSAC come to the ICANN Board and they say, "We advise you to do this thing," or, "We advise you not to do this thing." I don't think that there's an instance where they've ever come to the Board and said, "60 per cent of us believe that you

should do A, and 40 per cent of us believe you should do Y.”
What would the Board do with that advice?

So the notion of an advisory group is they wrestle with the issues and they come up with collective advice for the Board that is then actionable advice. So that’s just the nature of an advisory group. If the GAC were to implement something that says, “We’re going to vote by majority,” which is entirely within its right, and will remain within its right, if the GAC came to ICANN and said, “We advise you not to put this name in the root. 60 per cent of us voted to advise you in that way, and 40 per cent of us strongly agree with that position.”

There is then this other Bylaw provision that applies to the GAC, and only to the GAC, which is that the ICANN Board must then sit down with the GAC and strive to find a mutually acceptable solution to the problem. So how do you find a mutually acceptable solution to a problem where the GAC has said to the Board – as it has in the past – “Many of us think this is a fine idea, but some of us think that this is the worst idea in the universe. Now sit down and find a mutually acceptable solution,” Stress Test 18 only gets to that issue. The advice does not reflect the collective view of the GAC and is not actionable by ICANN at a certain sense.

I know that there's a huge amount of hyperbole and a huge amount of emotion about this, but it really has nothing to do with how the GAC operates. It has to do with this extraordinary situation where, because the Board has an obligation to find a mutually acceptable solution, if the GAC presents the Board with a split-view, how do you find a mutually acceptable solution? That's the only thing that Stress Test 18 is intended to do.

MATHIEU WEILL:

I will add another layer to your question, Peter, because you asked whether it could be a stumbling block, something that would prevent a process. The current situation is that in our group we have agreed to freeze the discussion on this topic until the GAC has properly discussed it. We understand the GAC is extremely split about it, and it's actually a concern. We need to be aware of it. It's a very big concern, because at this point, obviously there's no formal vote going into the GAC in any way, but it might be that the majority of countries, GAC Members, might not be comfortable with the current proposal, and that's raising some serious legitimacy issue with the overall proposal.

But it's not our all. What we, as ccTLDs, need to discuss is whether we have a position on it – whether we have a view, or whether to us, and this would personally be the way I would put it forward is, that this is very much a GAC discussion, and

probably not the wisest thing for us ccTLDs to get mingled into. But that's obviously up for discussion, and Chris, I'm sure you'll start this discussion.

CHRIS DISSPAIN:

Two things, just to do with that first, Mathieu, I agree with you that it's not an issue for the cc's to get involved in. It's also not an issue for the Board to get involved in. The Board's been trying very hard to not get involved, despite the efforts of people on the GAC to try and drag us into it. But it does affect the timeline, and it's important to understand that. My understanding is that currently there is an intention not to reach this GAC decision at this meeting. I don't know if that will change, but that's the current situation.

I just wanted to quickly add to what Becky said. In essence, it's this: the Bylaw currently says that it's GAC advice received by the Board that has to go through this process. The definition of GAC advice, i.e. "It must be consensus" is contained in their operating principles. Their operating principles can be changed by a 51 per cent vote of the GAC. So for the GAC to change from consensus to voting, they could do that by having a 51 per cent vote to change from consensus to voting. All that Stress Test 18 does is to say to change it, you should only be able to change it by consensus that you currently have now, rather than have a

bunch of governments all get together, like the European Governments voting in a block of 28, African Governments voting in a block, and actually make that 51 per cent change in the operating principles to go from consensus to voting.

What the US has said is, “Please put it in the Bylaws, and then in order for you to change it, you can only change it by consensus.” Becky’s quite right, they can change it, but they can only change it by consensus. That seems to me to make perfect sense, but it’s not our problem. It’s absolutely a GAC problem, and they will have to sort it out.

MATHIEU WEILL:

Becky, a short response, and then Roelof. Then what I’ll do, because we’ve discussed this, tried to take a sense of whether we can confirm that it’s not a ccNSO problem, and then we stay out of it.

BECKY BURR:

My understanding is that the current situation is that the second draft proposal contains Stress Test 18. The discussion is frozen and stays there. The GAC is going to go off and do its thing and comes back. I agree. I think it doesn’t make sense. This is really something the GAC has to resolve within itself. However, I think it is a problem for us in the sense that there’s a lot of

misinformation and there's a lot of feeling that this is people directing the GAC to do something or telling the GAC about how to set its rules or any of those things. It's important for us to understand that that's not what Stress Test 18 is about.

Because this is a very important issue that's going to be very complicated to solve, and having the facts on the ground is critical.

MATHIEU WEILL: Thank you Becky. Roelof?

ROELOF MEIJER: First of all, I'm very relieved that we seem to agree that this is not a ccNSO issue, and I think that also means we agree it's not a ccTLD issue. I would add that in my opinion it's not an issue of any SO or AC, except the GAC. My problem is that the CCWG sees this as a CCWG issue, so as a Member of the CCWG I need guidance here. Because I either keep quiet and then we don't know what will happen, or I take the position of the ccNSO, or better even, the ccTLD community, into the CCWG. But just saying nothing, because it's not our issue, is I'm afraid not going to help the process any further.

Now, Becky, just to get back to what you said, I don't think you're exactly correct if you say that the ICANN Board is obliged to

come to a mutually acceptable agreement on GAC advice. I think they're obliged to try to come to a mutually acceptable agreement. That's a huge difference, because the second means they can still say, "We've heard your advice, we've tried to come to a mutually acceptable agreement. It's not possible. We will not deal with your advice any further." If all is well, they'll be backed by a large part of the GAC, and if all is well, by a very large part of the community.

I don't see the problem. I do see a problem if the GAC comes with a very good advice and we have a particular country – make up any you want – blocking that advice, and the community will need it to convince the ICANN Board.

MATHIEU WEILL:

Roelof, I think what's really good is you're presenting the other side of the debate, which had not been presented before. The argument has two sides, and indeed we need to see whether we, as a group, have specific instruction on that, or whether we leave the Members to pick it up. I have Eberhart behind you waiting for a question. That's why I'm trying to look behind you. But indeed you're right. It's whether we want to give instructions or not, or leave it for each of the Members' perception of what needs to be done. I think there are two ways to block the process here.

There are two stumbling blocks. One is if there is no agreement on Stress Test 18, that has an impact on the timeline, or if Stress Test 18 is not present and there is a clear signal that it might also affect the outcome of the process. At least some have definitely made clear in the NTIA that it was a requirement for them. All of this is so balanced and so intertwined with the GAC that we need to see if we want to get into that debate. Follow up?

ROELOF MEIJER:

One more thing first to reflect on. Is this really a new problem? I think the new bit is that if the GAC changes its operating principles, and it now can come with majority advice instead of consensus advice, in both cases we can have GAC advice that we cannot deal with. I ask you – what is more difficult? To refuse to deal with GAC advice that is based on consensus in the GAC? Or to refuse to deal with GAC advice that is majority based – small majority based, even.

MATHIEU WEILL:

It's very difficult. Eberhard?

EBERHARD LISSE:

My problem is a little bit the other way around – not if the Board doesn't want to go with it. The Board has gone with GAC advice in the past, like in the .africa thing, which turned out to be the

wrong thing to do. My problem is that at the moment nobody but the ccNSO makes ccNSO policy. I don't want us to open a possibility that the GAC can wade in more heavily in this. We will talk about it this afternoon with regard to community powers, to have a go at our ccNSO policies. We've been saying this in the CCWG, but I'm the lone shouter in the desert there about certain things.

We must just be aware of what we are dealing with if, or when or if not we're dealing with it. We should have a position on it. I'm not saying that I will necessarily vote the positions that are here today, but it doesn't matter what I do in the CCWG anyway, other than I get sometimes emails, "Oh, that's what you said six months ago already." We need to be clear that Stress Test 18 can have an impact on ccNSO policy.

MATHIEU WEILL: Thank you Eberhard. A very quick follow up by Chris.

CHRIS DISSPAIN: Just a couple of points for Roelof. Roelof, I think there is a difference. Given the weight that's given to GAC advice, there is a difference. I make no judgment on this, but I can think of circumstances where the objection of a single government might be an objection of my government on something that affects me,

and I might be quite concerned if my government could be outvoted on the GAC. There is a way of dealing with it that the GAC has used. It's not set in the principles, but they are, I understand, talking about doing that.

That is that if a single government objects to something, it goes through a cycle of one meeting, and if at the end of the second meeting that government still objects, and is still the only government that objects, they would agree to abstain and make a political statement. I think you'll see that's what the US did in respect to Amazon. It's not that it's impossible to deal with a single government objecting and move forwards. We will get a lot more advice from the GAC if they go to majority – a lot more.

MATHIEU WEILL:

Thank you Chris. I think we need to also keep time for other issues. I'd like to thank Peter Van Roste for triggering this, right away. At least we get into substance quickly. I'd like to warm up with a show of cards, in an easy fashion. Thank you Eberhard for showing us that you have the red card. I am certainly reassured by this. I would have been afraid that it had been captured by anyone. There are two questions we're facing here.

One is whether this group has a strong feeling of whether we should get involved in the discussion or not, and if there's a strong feeling we need to get involved then obviously, is it more

in favor of supporting the Stress Test 18 proposal or objecting to it, which is basically the case. So it is my impression that there are different views in the room, and so it's probably more representative of the community's perspective that we don't get too involved into this, except maybe for individual perspectives being provided by the various ccTLDs in relationship, for instance, with the local communities.

So unless there's objection on the question, the question I would raise is whether you would be comfortable with each of your representatives to basically liaise with the various local communities and only make positions on that; not on the basis of ccNSO views, but on their respective community views. So that there would then be a ccNSO kind of guideline on this particular issue, because we have different perspectives in the room. If you're in agreement... All right, I'm trying to recap this question. I know it's not as easy as it should be.

The question is: would you agree – show green – that you leave up to the representatives of the ccNSO to take a position on this? Or would you like to give instructions to the representatives on this particular matter? That's the position. Nigel, you have a proposal? I'm sure you'll be helpful.

NIGEL ROBERTS: No, I don't have a proposal. I have an observation. I think it would be unhelpful to say that we leave it to the representatives of the ccNSO, because I see, to quote Byron from yesterday, "A diversity of views amongst the representatives of the ccNSO." So I think it would be unhelpful for us to leave it. We either say "nout", which is an expression we use where I come from, "say nothing", or we give instructions. But if we say, "Do what you like," then we'll be responsible for whatever we get out of it, which we won't like.

EBERHARD LISSE: The ccNSO Directed Members on the CCWG...

MATHIEU WEILL: I know the way to frame it. Does the room want to ask its appointed Members to say nothing? If you want us to say nothing – green. If you want us to say something – red. If the sense of the room is we're not mature for making a decision, that's also perfectly appropriate.

BECKY BURR: I guess I don't understand why the question isn't simple, "Is the ccNSO going to take a position on this or not?" We clearly cannot stop any Member of the ccNSO from expressing their personal or local opinions.

MATHIEU WEILL: Is this group willing to take a position on Stress Test 18? Green is yes, no is red.

NIGEL ROBERTS: I still think there's confusion in the room. I don't think we understand the question.

MATHIEU WEILL: Yes. I think it's because the issue at hand is quite complex. To me... It is. It's clear that it's not mature for any decision-making on this, honestly.

NIGEL ROBERTS: Roelof is trying to be helpful.

ROELOF MEIJER: Since we're brainstorming on questions, might it help if the question is: do we take as a position we leave this to the GAC? Or do we take the position it's something we have to deal with?

MATHIEU WEILL: I don't know.

ROELOF MEIJER: We can vote on the question first, and then...

MATHIEU WEILL: Jay?

JAY DALEY: Mathieu, I think we should split it into two parts. The first part is what is our position? And the second part is should we tell the GAC that. I think that's important.

MATHIEU WEILL: What is our position is an open question that I cannot use with red and green flags.

JAY DALEY: No. Are we in favor of Stress Test 18 or not? Yes or no? We can do that. Then the second question is whether it's for us to take it to the GAC? Because I know how I feel about the first question, but I'm not sure at all about the second question.

NIGEL ROBERTS: Can I perhaps expand on what Jay said? I kind of agree with it. You've said, "What is our position?" To many of us, that becomes a matter of hard voting; exactly spell it out in literal words, when what you think you really meant is what you said in the second

part of that, which is how do we feel. We want to know how we feel, not what is our position, let's sit and draft a communique.

JAY DALEY: What I want to know is: are we in favor of Stress Test 18 or not? Because that's what we're talking about. That is a separate question from whether or not we tell the GAC that.

JORDAN CARTER: Can I add? It might be for us to tell the GAC or not, but as one of the five people who's nominated on the CCWG from the ccNSO, it would certainly be useful for me to understand the broad view in the room about whether we should support it or not, because that would be a very influential factor in whether I support it or not. I just don't know if it would be helpful to ask the people who are participating what their view is. So at least you know what your reps are currently arguing for.

MRO: Mathieu, since you're one of the Members, perhaps I can interpose and ask each of you in turn, starting with you?

MATHIEU WEILL: So the question is, as a Member, what is my view? My personal view is that Stress Test 18 has nothing to do with the CCWG on

Enhancing ICANN's Accountability. It's very clear. This is just a way of getting the US Government's view on how the GAC should operate. That has been it from the start. It's been fed through our throat, and now we have to deal with it. But then after that, as a Chair, I will not object to any of the options, because obviously that's not the position that a Chair can take.

NIGEL ROBERTS: What about the cowboy at the back? Giovanni, do you have a view?

GIOVANNI SEPPIA: My view is that if we continue like that, very honestly, it's going to be ending at 2:00 AM tomorrow. I think that the people here are a bit confused. We are talking about Stress Test 18 as if Stress Test 18 has been part of the lives of these people forever. Most of them don't understand it, they will not understand it. you are debating amongst yourselves. Either we have a slide there that's simply accessible to any human being, who's not a masochist, that explains what is Stress Test 18. Or we end up at 2:00 AM.

So personally, I share Mathieu's view, personally, because I like to keep things very simple. But it's because I know what Stress Test 18 is. I was masochist enough to read all the email

exchanges about Stress Test 18. A predecessor of Mathieu, from your registry, would have called this “administrative masturbation”. But that was a definition that a predecessor of Mathieu gave during an ICANN Meeting many years ago. I would like to invite the Panelists either to have a slide that summarizes Stress Test 18 and asks an opinion of this community, or we drop it and we move forwards.

MATHIEU WEILL: Jordan, would you share your view?

JORDAN CARTER: I agree that if we want to discuss it anymore we should have a slide discussing what it is. I’ve been broadly supportive of this for a very pragmatic reason. I keep being told the proposal will not be accepted by the Americans if it’s not in there. Secondly, from a principled reason, I don’t think SOs or ACs, when they can set their internal procedure, that’s fine for the, but the rest of us, i.e. the ICANN Board shouldn’t have to do a sudden large amount more work, just because of an internal process change that someone else chose. Both of those line up in the same direction. Thirdly, my local community supports it.

MATHIEU WEILL: Eberhard?

EBERHARD LISSE: As you know, I don't really think all of this makes sense, but if we were supposed to give an opinion, I would support Stress Test 18, because I'm really concerned about giving anybody, any AC, more input into ccNSO affairs. So I would go with the majority.

MATHIEU WEILL: Thank you Eberhard. I think we'll leave it at that at the moment. Maybe if we were able to provide some slide as suggested by Giovanni. However, I warn you, the text leaves room for many interpretations. Most of this Stress Test 18 thing is about people reading different things from the same text. It's unfortunate, it makes it very difficult to make a position on it, but we'll attempt to frame a question by the end of the session. Now, we were supposed to be speaking about consensus issues. It doesn't seem to be one. That's not my definition of consensus. Do you want a definition of consensus, Roelof? I think it's very related to what we're talking about.

The items that were introduced by Jordan earlier are: the power for the community to approve changes of fundamental Bylaws; the power for the community to reject standard Bylaw changes, the power to recall the ICANN Board, at the last resort; the need for a community dialogue before the different community powers can be used; the incorporation of the Affirmation of

Commitment Review System into ICANN’s Bylaws, as well as some of the principles that are currently some of the commitments that ICANN is making, putting them into ICANN’s Bylaws... And I think that’s it, in terms of consensus views.

So what I would like to do, taking up on Nigel’s suggestion, is hear from the room, one-by-one, if there are any objections to each, so that we can see if there’s some clarification and if we are supporting of this consensus items, which honestly have been receiving in the public comments a lot of support from the ccTLDs. We’ve had feedback from various ones of you. It may be easiest to start with the Affirmation of Commitment.

There’s currently the Affirmation of Commitments between ICANN and the US Government, where ICANN makes certain commitments to competition, enhancing trust, accountability and transparency, and basically it’s taking them on board, as well as the review system, which includes the ATRT and other Review Team systems. Just a moment. Bart?

NIGEL ROBERTS:

Mathieu, just bearing in mind what Giovanni’s plea was about confusion in the room and so on, it would be very helpful, if you’re going to go through a list, that the people in the room can see what it is that they’re asked to give their temperature on. At the moment I just see taking stock of where we are now, and you

were talking about the Affirmation of Commitments. It would be nice to have that on the Board when people are being invited to give their view.

SPEAKER:

While we're sorting the slides out, just so that we're clear, when you go to each individual one, you said, "In principle." I just want to make sure that we're clear that, for example, I might have some issues in respect to approval of fundamental Bylaws, depending on what you're talking about approving. So I'm massively in favor of fundamental Bylaws being approved, having to be approved, but I have an issue with if the change to the Bylaw flows from a particular place that I would like that to not be included. How much detail do you want to go into at this time now? To take another example, on the AOC, massively in favor of the AOC going in, but we need to be aware that there may be an issue with that in respect to the jurisdiction piece. So how much detail do you actually want to go into at this point?

MATHIEU WEILL:

Those are two items that are not on the Agenda this afternoon, so I think if there are specific reservations with specific items, now is the time to raise them. It's important that we do. Probably, if you have an issue to raise with the AOC's incorporation into the Bylaws, that would be great.

CHRIS DISSPAIN:

Just for information really – the concept of putting the AOC into the Bylaws is perfectly fine, and everybody seems to be comfortable... in fact, I think it's the thing we'd probably reach consensus on the quickest. I just think it's important to know that there is a slight difference in the way that the jurisdiction clause in the AOC is going into the Bylaws. I don't think it's anything we need to be worried about too much, but it's important to know that currently in the AOC it says, "ICANN will remain a US corporation." Bringing that into the Bylaws, it doesn't actually say that. It says, "ICANN is a US corporation."

I'm just flagging it in case, if things get completely crazy in Congress with the US Government, and if we're too loud about possible future work in Work Stream 2 about discussing jurisdiction, that's a point that they might look at. But I just wanted to make sure everybody was aware of it. That's all.

MATHIEU WEILL:

You can. My understanding, Chris, is that you're not objecting to the current way it's framed, but it's you're flagging it as a risk?

CHRIS DISSPAIN: No. I understand completely why it's phrased the way it's phrased. I'm fine with it. But I think it's important that we're aware of a possible... It's not impossible that there's a problem.

MATHIEU WEILL: You're flagging a risk. Nigel?

NIGEL ROBERTS: Thank you. I think that's very helpful actually, Chris. I want to flag up something that lawyers tend to do with these little words and so on. If you say something is, well, it is, unless you're President Clinton. If you say, for example, in a piece of legislation, which this isn't, but let's just assume it was, "Will remain..." it means will remain at the day I write this. It doesn't commit you forever, amen, because you cannot commit what future people do. What I'm saying, Chris, is that if you agree to "will remain", it means for the time being. It doesn't mean until the end of time. You can always revisit it in the future. Only it will do if we keep talking about it.

MATHIEU WEILL: Chris, it has been picked up. There have been comments received on the issue. The views are very split in the comments. There are some that are strongly in favor of reinforcing the need for ICANN to be headquartered in the US, and some who are very

much indicating that if it's reinforced, it's a red flag for them. That's still a split view. I think what the question is for us, as ccTLDs, is do we support the idea that the AOC, once the NTIA goes away on the IANA contract, be brought back into the Bylaws with this review system, which is a continuous improvement system, and with the associated commitments? Jordan, did you manage to get the slide deck ready?

JORDAN CARTER:

We're just going to put up a Google Doc, which is a table, and it says what each of these things are, and it's got a gap, which we can fill out with what the view of the room is expressed. I found that whole discussion soul-destroying, because there are no proposals on the table to change the AOC and commitments we were just talking about. But if we're able to display that screen we can work through these one-by-one.

The reason we don't have a slide detailing what's in the AOC in these reviews is because there's been so much consensus about it and so few issues raised that we didn't think it would come up in any detail. So I apologize for that. We don't have the right slide deck with us to explain the detail on that.

MATHIEU WEILL:

I don't think we should start another item now. Otherwise you'll get even more confused than you already are, and I'm seeing a lot of confusion here, especially from Giovanni. Giovanni is very confused! We'll ask for red cards, basically. If you don't have one, and you still want to convey that you have a problem with it, you can raise your hand. Let's try something. Can I see the red flags in the room, just to check how many are currently available? Anyone who does not have a red flag but wants one, raise your hand.

We're starting from the bottom of the table here. Let's see. The Affirmation of Commitment commitments and principles brought back into the ICANN Bylaws, once the NTIA is no longer with the IANA contract is something that gets concerns, objections? Red flag if you have concerns, objections, about bringing that in. Red flag if you're totally confused and actually you didn't want to vote on something like this. I have one from Mary. And two. Okay. We're not perfectly clear on the issue, and that's perfectly understandable because you're not all familiar with what's in the AOC. We won't go into that detail, because otherwise we'll be here until 2:00 AM.

But the sense of the room is that there's no strong objection at this point. Now, the AOC Review System, you may be familiar with it. Certainly some of you have participated in it – the ATRT, the WHOIS Review Team. First of all, are there any comments,

clarifications, reservations, about the principle of bring them into the ICANN Bylaws, so that they continue, even in the light of a relationship that's now very different between ICANN and the US Government? Are there any strong concerns, objections, on those principles? Nigel?

NIGEL ROBERTS:

Yes, I do have a strong concern. Not a strong concern on actually doing it. I have a strong concern that we might sleepwalk into something we don't know might affect us. Because I have to say, I do not know what the advantages or disadvantages of incorporating this review into the Bylaws might be for these four reviews.

JORDAN CARTER:

Just to be clear, there are four reviews: one of them is the accountability and transparency review; there's a competition review, related to the introduction of gTLDs; there's the WHOIS, so directory services review, and there's a fourth one; a security and stability review. At the moment, the AOC was about making sure ICANN would be a transparent, multistakeholder, bottom-up organization, and that these reviews would be a way to test and be part of the continuous improvement cycle. What the CCWG did is it analyzed what was already in the AOC about those reviews, made some tweaks and adjustments to them.

So because these are reviews that provide recommendations for the ICANN community and the Board to consider, to me, the possibility of that creating some horrible problem in the future is not zero, but so close to zero to be almost zero.

MATHIEU WEILL: Thank you Jordan. Mary?

MARY UDUMA: Thank you. Not that I'm totally confused, but I may be worried that a lot of reviews and the principle and process of review, and one of the requirements is the composition of the Review Team, and GAC is meant to be [two 03:22:34] people, and GAC must be the Vice Chair. You are talking about [unclear] it's in. You are talking about the Government shouldn't take much of a position. So bringing that into the Bylaws, would we just [ascend] those provisions that are there? So there are some provisions that will run, contrary to what we're trying to do. That's the point I'm raising.

MATHIEU WEILL: Thank you for raising this Mary, because actually, the way the CCWG is proposing to integrate this is slightly changing the role of the ICANN Board and the GAC in terms of selection of participants, which would actually be the Chairs of the ACs and

SOs that would not become empowered to select up to three Members each. There's also one thing that's fine-tuned in the process, which is the frequency of reviews – because there's been a lot of concerns about the weight of these reviews upon the ICANN structure, and the administrative weight on it – so I think it's now every five years.

So that's the two changes that are being brought in at the same time. So it's good that we are clarifying this. Nigel, you've mentioned your concern. You have another one?

NIGEL ROBERTS:

No, it's not a concern. Jordan has actually completely provided clarity on the question I had a minute ago, and I therefore have a comment. It comes from your perception of what Bylaws are. The Bylaws, to me, are like the constitution of ICANN. Now, things like WHOIS, and so on, is the general business of ICANN. I personally think that these things do not belong in a constitutional document. It doesn't mean we shouldn't do them.

It doesn't mean that the ICANN Board shouldn't produce a document saying, "We commit that we will always do this at this frequency," and so on. But building them into the Bylaws, the Articles of Association, in the way I look at it, is, "What else should we build in?" I'm sorry, but it's...

MATHIEU WEILL: Look at the ICANN Bylaws.

NIGEL ROBERTS: Yes, but that’s my point.

MATHIEU WEILL: A key aspect of the proposal on the table is also to enable sun-setting reviews. That means enabling the Review Team to recommend that it’s the last one, and we don’t have to do it anymore. Becky, you want to add something to that?

BECKY BURR: I actually do not disagree with Nigel on the slightly awkward nature of putting this stuff in the Bylaws, but frankly I also agree with Jordan that the chance that this is problematic is as close to zero as you can get. Therefore, as part of the consensus making that we were involved in, I didn’t object to this. So at least I think we ought to be thinking about it in that way. There were a lot of considerations on the table, and it was a “am I going to die in a ditch over this?” and my conclusion was no.

NIGEL ROBERTS: That dying in a ditch is a different question.

MATHIEU WEILL: Roelof, would you die in a ditch for that?

ROELOF MEIJER: I don't think I would die in a ditch for anything that has to do with ICANN, but...

MATHIEU WEILL: Thank you. That's the end of our conversation then!

ROELOF MEIJER: We're talking a lot about the process, but this is one of the most important things we've been doing for years, so I think we can all excuse ourselves that we are trying to find the best way to deal with it. I think if one person in the room, after you ask if there is confusion, says that there is confusion, then I think the "no strong objection" is not the right description of what the room felt. I think it should be "consensus". That's one point. I think it really helped when Jordan gave his explanation of what the reviews in the Bylaws are.

May I suggest that for each of the items that we're going to deal with, we give a very brief description, and then we, as CCWG Members, tell the room if we agree, or not. If we have consensus, we don't have to go into detail. If we have difference of opinion

there, I think there we have to explain what the different arguments are, because I think in that way we will deal a bit with Giovanni's problem that hopefully most people in the room are not following this email list.

MATHIEU WEILL:

I wish for you all, and for your email servers. I think for the incorporation of the AOC Review, we've done just that, unless one of the Members wants to add a different perspective to what Jordan said. Good. Taking that in mind, can I ask if there are objections or strong concerns against this incorporation? Please wave your red flag? I think that's a rough consensus, so that's good. Jordan, would you like to introduce the need for community dialogue before community powers are used? Then we'll go to the Members for any different perspective and move on for them.

JORDAN CARTER:

To restate, it's the idea that before any decisions are made about exercising a Budget veto or a rejection of a Bylaws change, or the removal of a Director, there has to be a community wide discussion in the ICANN Community Forum. It's not optional. You can't skip the community discussion.

MATHIEU WEILL: Any Member perspective to add? Yes?

ROELOF MEIJER: Maybe we should add that for most powers, the Community Forum just comes up with an advice or an outcome of the discussion, and it has no influence on what eventually is going to be decided. This is especially the case with the recall of individual Board Directors. There will be the same discussion, but in the end it will be the SO or AC that decides on this particular issue.

MATHIEU WEILL: Yes. I would add another thing. It is not a body. It does not have officers. It is a forum. It is a place for discussion; either virtual or physical. It's just a forum. There is no fight to be had about, "I want to be on the forum."

ROELOF MEIJER: It's there to make the community accountable to itself, and transparent.

MATHIEU WEILL: Nigel?

NIGEL ROBERTS: Just for clarification, because I think Roelof answered that, this is not a situation whereby we have inside the ccNSO come up with a policy, which has given the opportunity for dialogue with the other communities, and then after we've approved it that if we intend to use our powers of policy making that we have to have further dialogue. That's not going to apply in this case.

MATHIEU WEILL: That's correct. That is not interfering with our current ways of proceeding on that. Any strong concern? Objection? Hands, flags raised. I think that's a very full consensus in the room, and I think that was a breakthrough when we found out about this in Paris. I'm conscious of the fact that we're very late, but I think it's important. Let's go to the top of the table, because we're going to take the powers one-by-one, so we'd better start with the easiest ones. There are two types of Bylaws in the proposals.

There are two sorts of Bylaws in the proposal. The fundamental ones, which are really what Nigel mentioned; the constitutional. The scope is the four building blocks that I've described earlier; the independent appeal, the mission and core values and commitments, the community powers. Those are the fundamental Bylaws that require... The Board has the sole right to initiate a change, and before it comes into force it has to be approved by the community.

So that’s why it was written initially “co-decision” because at some point the community has to rubber-stamp it. It’s not just a veto, which is an option to block. It is a necessity to obtain the community’s approval for those changes. Any Member perspective to add clarity to what I said?

JORDAN CARTER:

I thought I’d just say what they are. This is the very core of the constitutional part of the Bylaws, if you like, that have been given this added protection. It’s about the mission, commitments and core values, the framework for the IRP, the process to make any changes to these fundamental Bylaws, the five community accountability powers themselves – so those powers can’t be taken away without agreement -, and whatever the enforcement mechanism is that will sit behind the decisions of the community.

There’s also the IANA function review and the separation process that arose from the CWG’s work, and the post-transition IANA governance and the Customer Standing Committee structures. So it’s only those very narrow slices that would end up being fundamental Bylaws.

MATHIEU WEILL: Any other Member wanting to provide perspective or a different view on the proposal on this? No? Chris, a question or comment?

CHRIS DISSPAIN: I'm 100 per cent supportive of the right of the community approval of fundamental Bylaws. We need to know what the thresholds are, but leaving that aside, 100 per cent, no problem. I'm 100 per cent of standard Bylaw changes being objected to, in effect so they don't have to be approved, but they can be...

MATHIEU WEILL: Let's stay on the fundamental Bylaws.

CHRIS DISSPAIN: You want to stay on that one? It doesn't matter. It's the same thing. My concern is that... And I said this yesterday. My concern is that if a ccNSO PDP, having gone through all of its consultations involving the ALAC, involving the GAC, involving everybody, comes up with a recommendation that requires a change to the fundamental Bylaws, or indeed a change to the standard Bylaws for that matter, then that policy recommendation would be open to, in the case of a fundamental Bylaw the approval of the community, and in the case of a standard Bylaw could be objected to.

The problem I have with that is that we have built a process, which puts the power of setting ccTLD policies fairly and squarely in the hands of the ccNSO. My question is are we comfortable, having gone through our PDP and agreed on a global policy, are we comfortable that another SO or AC can launch a petition that can result in the Bylaw change required to bring that policy into existence being either delayed, or not happening. I'll just give you one quick example. In respect to IDNs, a Bylaw change was required.

Now, the GNSO were pushing us all the time saying, "You should wait for us. You should wait for us. You shouldn't do this as fast as you're doing it. You should wait for us." So it would be possible under this proposal for the GNSO, once we have finished our PDP, for the GNSO to say, "We are going to petition for an objection, et cetera," and they wouldn't necessarily win. But it would slow us down. The fundamental Bylaw issue is everyone has to approve, or four out of seven have to approve. I want to say I'm not suggesting this can't be solved.

It's actually pretty easy to solve. But it's a fundamental principle about whether policy emanating from one of the SOs, having gone through the PDP, which we are bound to involve the rest of the community in, should have another layer on the top of it that requires the whole of the community to approve it. That's the fundamental point, and we need to answer that question as an

SO. I can tell you that the ASO will say no. The ASO will say it has to come from us and us only.

MATHIEU WEILL: Thanks Chris. Jordan wanted to do a short response.

JORDAN CARTER: As usual with these debates, if you mix up lots of things you confuse people. So I think that Chris, it would have been better to hold that for the standard Bylaw discussion, but let's take the example anyway. For a fundamental Bylaw that sets out the mission and core values, the framework for independent review, the rules of the game in the ICANN community, if any SO is using a PDP in their own SO environment to change the fundamental features of ICANN, and you're saying that the rest of the community shouldn't have a final say on that, that's an issue.

If we need to really carefully define a PDP and the difference between that and the Bylaws change, then you said there's an easy solution. You need to share it with us.

CDI: Two things: I'm more than happy to accept that in respect to the fundamental Bylaws there are a very small number of chances that that may happen, but with all due respect, Jordan, you have

consistently said, when I've objected to things, "But that will never happen." When I say it... You concentrate on the things that you really care about and say it's massively important that we nail this down, and it's got to be permanent, we've got to have a permanent solution. I'm saying exactly the same thing.

I'm saying it's not good enough to say it may never happen. It can happen, and the question is a principled question. It's not about some kind of subset. If it's possible that a policy could end up needing a fundamental Bylaw to be changed, and it is possible, then I say that should be excised from this process, because the policy is ours to make. We are obliged to go through a community process to make that policy, and it's not appropriate that it should be able to be hijacked by somebody else, when it's our policy.

I know, for example, that there are some that don't agree with that. There are some people who think we should subsume our policy to the greater community. But you've suggested it should be a matter of budget or money. I acknowledge that it's much more likely to happen with a standard Bylaw change than it is with a fundamental one, but the principle is still the same. It shouldn't even be able to be objected to in the standard Bylaw. I'm sorry, but this is so important – to me, anyway.

MATHIEU WEILL: I'm conscious of time. Roelof?

ROELOF MEIJER: I agree with Chris that it might... Steve?

STEVE: Chris asked the question, and his question was simple, "Are you happy with this idea that you could have a second-layer review, if indeed PDP resulted in a Bylaw change of some sort?" and my answer to Chris is, "No." It's a showstopper for me. I agree with him completely. I really have an issue with having a community tip a PDP that they had an opportunity to weigh in on earlier in the process by objecting to a Bylaw change – either fundamental, which I think is very unlikely, or a standard Bylaw change. I just want to put that out there, that this is a showstopper, for me at least.

ROELOF MEIJER: I'll do what Steven did, and I'll first answer Chris's question. Yes, I'm comfortable with that. I agree with Chris that the situation might happen, or there's a theoretical possibility that a PDP run by the ccNSO will end up needing a Bylaw change to be implemented. If it's a fundamental Bylaw, this is a fundamental change. If we develop policy that means a fundamental change on the core ways that ICANN operates, then I think it's no more

than logic that we do not have a monopoly as a community or constituency on such a kind of decision.

By the way, we don't have it now. Because if we want to have a Bylaw change now, there will be a PCP. The Board will decide. If we decide something that fundamentally changes the way ICANN operates, and there is a community process, and the outcome of the PCP is, "Board, please don't do this," I am sure that even in the present situation, the Board will not implement it.

MATHIEU WEILL:

Thank you very much Roelof. I think what's interesting on this aspect... It's good that we're discussing this. I think we need to apply the principle that we've had so far, about sharing Members' views. My personal view is very similar to Roelof; that I am not in favor of ASO policies being able to be outside of the scope of the ICANN community veto, so as a reciprocity principle, I would not be in favor of enforcing this as something that is a red flag for us, because I think ICANN as a whole, if we went there, then that means why not separate ICANN, and have everyone really on their own side?

That's not what I see for the future of ICANN. But I recognize at the same time that it's an important matter for ccTLDs, and honestly, that's not the fight I will fight, or battle I will be taking

over. If this room has a strong view on the fact that it needs to be considered and taken into account by the CCWG, I will certainly convey that to the room. While we remember, Eberhard, and then maybe Giovanni.

EBERHARD LISSE: I'm totally not in favor of any SO or AC making policy for others, so I would never be happy with the ccNSO making time to make policy for the ASO on something else. For me also, it's a showstopper if anybody else, any other SO, makes policy for us. So however we manage to prevent this from happening, I'll go with it.

MATHIEU WEILL: Giovanni? He's in line with Roelof. He's more in support of the current way, where it's not that they're making policy instead of us, but they have the ability to veto that policy, and it's not redoing. Yes. Jordan's right, it's not the policy, it's the Bylaw change, but it can block the policy.

GIOVANNI SEPPIA: Just to confirm that I understand Chris's point of view, but I'm in line with Roelof's thinking, and also I say that at some point we should keep the level of the discussion high-level, because again we're getting really into details. Let's try to keep it high-level.

There are millions of details, which are still to be discussed, which are still to be clear by the different legal companies involved in this process. It could be that what we're discussing at some point is not legally implementable or whatever. So let's keep it high-level. I agree with Roelof, against this view. Keep it high.

MATHIEU WEILL: Nigel?

NIGEL ROBERTS: I was hoping to be helpful, but there you go. Chris has left the room now. I don't disagree with what Roelof said just now, in a qualified way. The point is it's all about trust and what the word "fundamental" means. If somebody, at some time in the future, could redefine the word and say, "Hang on, this is a fundamental Bylaw," or, "This isn't a fundamental Bylaw," and use the boundaries of that definition.

So before we vote on something saying, "We approve of this," to say, "Community right to approve the approve the change of fundamental Bylaws," which sounds very reasonable to me, we have to know how you know which is a fundamental Bylaw and which one's a standard Bylaw.

MATHIEU WEILL: Just what Jordan described.

JORDAN CARTER: They would be listed in the Bylaws, and they are the things that are set out on the list on the screen in front of you. That's it. It isn't about the definition. It's what's in and out of the list, and to change what's in and out of that list is the same process. So it requires the same community-wide decision.

MATHIEU WEILL: Mike, and then we'll close for lunch.

MIKE SILBER: I think it's a question here of nuance, and I don't know if there's a word in French for nuance... But it's really a question of onus and split, and I think we're reaching some degree of consensus that we don't want policy imposed on us, but we should also not be restricted in our ability to make our own policy. I think when it comes to fundamental Bylaws and the process that's being proposed for community approval of fundamental Bylaws, I think we run a risk.

I think what we need to do is we need to note the risk, and we need to note that in the drafting, whatever comes up doesn't create the possibility of PDP-developed policy being blocked by

third parties trying to get a second bite of the cherry and raising the threshold, or changing the onus. That's where I am, is in terms of process, no issue. But I think that's a risk. I think that risk needs to be highlighted from our side; that it is a concern, and that the drafting needs to address that concern. Other than that, I'm inclined to agree with Giovanni.

We've got people being paid by the hour. They've got families to feed, children to send through college. Let's give them an opportunity to earn some more fees.

MATHIEU WEILL:

Thank you Mike. I'm very appreciative of your overall comment. Jay?

JAY DALEY:

Given that we have clearly established that there will be two types of Bylaws – fundamental Bylaws and not fundamental Bylaws – I cannot think of a single example where we would require a PDP that would require a change to a fundamental Bylaw. We are in no danger whatsoever from that; from anybody else needing to be involved, because our policy changes will, in 99.9 per cent, not require a change to a Bylaw. If they will require a change to a Bylaw, it will be the ordinary Bylaw, not the fundamental Bylaw. I really would challenge somebody to give

me an example that goes against what I've just said. I think that this is straightforward. We can agree, we can go ahead, we are not at risk.

MATHIEU WEILL: Thank you Jay. Do you want to add something, Jordan?

JORDAN CARTER: Just to say that we should raise that concern – both with fundamental Bylaws and standard Bylaws. I also can't think of an example, but there's no harm in putting our concern on the record and properly raising it. That would be a good thing to do and a good thing to get consensus about.

MATHIEU WEILL: That's what I think should be the takeaway on this item; to raise the concern, and check whether there are, on the process high-level approach, any further objections in the room. No. So the process is okay. We have this concern to address and find a way forward, and lunch to have. We'll resume and arrange the afternoon session so we can go through all of this. I think it was a bit painful at the beginning, but we are finding our pace. We are back at 13:30 sharp.

[Audio part 2]

BYRON HOLLAND: Hello everybody. Thanks for coming back after a very abbreviated lunch. We are going to do a little bit of an adjustment to the Agenda, because the session we had just before lunch, we didn't get through a couple of the key items that our Members need some guidance on, and also some issues we make to make sure the community is aware of. So we're going to go back to that session for a few minutes, to start, and then we will move onto the currently scheduled sessions, block four and block five.

I would just like to acknowledge that, as you can tell by the discussion in the previous session, it is a very detailed set of topics and very easy to quickly drill down into the detail. So I would ask certainly for the presenters, and those who are very knowledgeable about this subject to remember this session is for the people in the room who are sure to have less knowledge than the folks who are deep in the process.

Please bear in mind that this is a conversation on the room, that we should try to focus it more on high-level and principles, so we can provide guidance to the people who have to think about this, as opposed to debate the details amongst yourselves. As soon as

this is done, we'll return to the currently scheduled program.
With that, Mathieu?

MATHIEU WEILL:

Thank you very much Byron. Thank you everyone for their flexibility. We haven't frightened everyone out of the room, apparently, and maybe some others will join. To finish off these questions about the key consensus items, I think what was very fruitful in this first session was the process that was outlined by Roelof about introducing in a few words the different aspects, then having the different Members say if they had something to clarify about it, or a different opinion, and then going to the room for comments, and then ensuring we have agreement.

The next was the standard Bylaw change. We've already discussed that a bit, but maybe Jordan can recap a little bit, in high-level terms?

JORDAN CARTER:

Thank you Mathieu. The standard Bylaw changes powers a rejection of changes. So any process that leads to a Bylaw change, if the Bylaw change causes concern, there could be a community discussion, and then the Bylaw change could be rejected by the community working together. Remember, later

this afternoon we're talking about the decision thresholds to make that decision.

MATHIEU WEILL: Any Members wanting to provide any clarification or different view? [Jogg 00:11:00]?

[JOGG SWEIGER]: This is [Jogg Sweiger] with [DE NIC, .de]. Just to understand it correctly, so if there would be a PDP, and that would be in favor of changing a non-fundamental Bylaw, this would be completely under the power of the very community that has raised the issue? Or could that be blocked by some other part of other communities as well?

JORDAN CARTER: It's the same situation as for the fundamental Bylaws, yes. So that's why that same objection that Chris raised before needs to be raised in this context as well. Mathieu has raised that as an issue to raise with the CCWG. So it wouldn't be the policy that could be rejected or questioned. If there were Bylaw changes required to implement that consensus policy, then those ones would be up for debate and potentially for rejection.

MATHIEU WEILL: With that same concern being raised to the CCWG, does the process raise any other strong concern or any objection? No, okay. Moving onto the next then – the Board recall, which means also known as “spilling the Board”...

JORDAN CARTER: I don’t know if it needs any more explanation. Through the same deliberative community discussion if it were suggested that the whole ICANN Board should be removed, the power to that would be there, and that’s the power that’s attracted general support in the public comments the CCWG received.

MATHIEU WEILL: Including from the Board, on the principle. Any questions, comments on that? Demi?

DEMI GETSCHKO: Just a clarification. Also I remember Bertrand de la Chapelle questioned the difference between the two categories of Board Members; those elected by the communities, and appointed by the NomCom. It seems first of all that there are different processes in each of them, and the NomCom appointees are more stable in some way, because the process is to move towards the whole community, not just the SOs. Just to make this clear. Because maybe it creates two categories of the Board.

MATHIEU WEILL: So the power we're discussing here is the ability to remove the whole Board, in one shot. Later today on the Agenda we'll go into how to remove one's particular Director – whether it's a NomCom appointee, or appointed by SOs or ACs. But that's really the nuclear weapon where there is absolute total disagreement, and so what we're discussing here is the recall of the whole Board. Obviously, that has the highest threshold possible in the decision-making, so it doesn't have two categories, it's both, because everyone [goes down 00:14:35].
Mary?

MARY UDUMA: Thank you. I still have difficulties with the question of removing the whole Board. The ICANN Bylaws names one seat to 15 seats, and there must have been a thinking behind that; to have the stability, to have experience, to make sure that ICANN continues to function. If you remove all the Board, that would be going against the Bylaw. I know that is something that you are saying would be remotely done, but there could be the possibility that one is insisting that it would be done, the high threshold notwithstanding. So I'm still finding it difficult to appropriate it, comparing it with what the Bylaw says as of today. Why do you want to go that route?

MATHIEU WEILL: Jordan, would you like to explain how we guarantee continuity in that case?

JORDAN CARTER: It's a really good point to raise, Mary, because it's important that ICANN always has a Board that can govern that company. To trigger this power and to make a decision to do it, the SOs and ACs that appoint Directors have to name the person who would serve as an Interim Director before a decision is taken, and the NomCom would be asked to have two people in reserve who could serve on such an Interim Board. So if the Board is removed, first of all, along with the President and CEO, they would form an Interim Board.

Secondly, an appointment process within 120 days would see the SOs and the NomCom and the AC that appoints Directors, appointing replacement Directors. They would re-join the same seats, 1 to 15. They would be appointed back to those, and the pattern of replacement would continue as if it hadn't been interrupted. That's the steps the CCWG has taken. I hope that's not too much detail.

MATHIEU WEILL: I think it goes to show that there has been a lot of design about how to guarantee the continuity of ICANN’s governance in this extreme case. Any other questions? Anyone who would object or have strong concerns about this particular power? Okay. We are all very careful about it. We feel a certain uneasiness, and of course that’s going to be probably, if the question ever arises, I expect it’s not going to be solved in this session or anything.

That’s going to be the biggest crisis that ICANN can live with, and it probably will come after a certain number of events that would trigger very strong community decisions. I have no doubt that the community itself... Even in the other part of the community, no one is going to use that lightly. Mary?

MARY UDUMA: I’m sorry I’m coming back. I don’t know whether the CCWG considered the issue of the Bylaw on the tenure and the three years, three times... Instead of going to removing the Board, why don’t we look at shortening the tenure of Board Members? By the time you have two years and there’s a new election, we’d have been able to evaluate whether you can go on or not, instead of going through this route. I strongly believe that this route of removing all the Board Members in one go doesn’t sit well with me.

But I'm just a person. But I want to know whether this was considered: instead of removing them, shortening the number of years they stayed there. Shorten it. A decade is too much. Nine years is a decade.

MATHIEU WEILL: These are very good points. Do you want to answer directly?

JAY DALEY: I think that having good Board Members do up to nine years is a good thing. Shortening it just in advance because there may be a problem at some point we don't need to do. I think that if you do get a bad Board then they will do their best to remain, which will include lengthening terms, will include other things. We all know of Presidents in countries that have two-term limits, that have the constitution change that they can have longer than a two-term limit. It's not uncommon. Having this reserve power as the very, very fallback position I think is absolutely vital – otherwise there will be simply too much of a long, long struggle to do anything else.

MATHIEU WEILL: Thank you very much Jay. Roelof, would you add something? I think we need to move onto the other topics? Demi, a last short word?

DEMI GETSCHKO: The Board has [colored 00:20:20] Mandates then. You have just elected a Board Member and [unclear] three-year term, then you will remove also the [unclear] just elected.

MATHIEU WEILL: To answer directly Mary's question, that has been given some consideration in the CCWG, the balance was struck as is, but the point is very valid. It was an alternative that was to be considered. I'm conscious of time. Is there any strong objection, strong concern on this? No, so we're moving to the last Item from this morning, which is the discussion that's taking place in the group regarding the human rights. For that, I'd like to call upon Nigel to introduce, very briefly, before the Members can offer their perspective.

NIGEL ROBERTS: Thank you Chair. Hopefully this is going to be quick and be something on which we can all agree. This is a little bit of an overview of where program four in the CCWG has got, which I've been working together with Leon and quite a long list of characters on, some of which have been move active than others, but that's the nature of things. ICANN and human rights. A few of you may remember a few years ago I raised the issue of

ICANN’s obligation of lack of it to respect human rights with the then CEO Rod Beckstrom, and got a flea in my ear for my trouble. I was told to take it back to the ccNSO by Twitter message.

This started out for me by looking at the .xxx IRP decision, which the learned judge actually addressed the issue of whether or not ICANN was bound by international law – international law of course being normally binding on governments and not private companies. There’s something in ICANN’s articles called Article 4, which gives, under California Law, a binding commitment to ICANN to follow quote “applicable international law”. But it’s very vague, and it leaves open the question of which laws?

So now we come forward to transition and particularly accountability. The ultimate accountability, as far as I’m concerned, is that the organization that we all work with should respect internationally accepted standards of human rights, which normally as I say, relate between human beings and governments. Private corporations, which is what ICANN will become entirely, if there’s no government involvement, have no human rights obligations in law, except the Article 4 vague thing that we talked about, but ICANN is also, in California, a public benefit corporation.

It seems to us that it’s necessary to entrench, before the transition, a really basic, universally agreed, accepted base level,

before the US Government should let go. How would you do it? Fundamental Bylaw and there are three possibilities that we seem to have address – very simple statement: ICANN will respect human rights, ICANN will respect international human rights as per the universal declaration on human rights, or even ICANN will exceed to the UN principles on human rights for business.

The latter is designed for private corporations, which have human rights issues to address. Is there agreement? Yes and no. The Board rather politely rejected the idea as being premature. Our idea is if not now, when? If we don't do it now, there will never be another opportunity. Certain people made concerns about what the human rights principles for business might mean, in the context of ccTLDs. There were some rather fantastic and far-fetched scenarios put forward.

But there's a consensus in favor of in Work Stream 1, that is before the transition is allowed, having a high-level status, committing the corporation to respect international recognized standards of human rights, and to do detailed work on that, perhaps the business stuff, in Work Stream 2. What next? ICANN doesn't have much credibility if it rejects human rights irrelevant to what we do, and multistakeholderism has to mean shouldering some of the obligations that would otherwise be borne by governments, and that's actually in ICANN's Mission, in

Article 3. “Lessening the burden of government” was the phrase that was used. That’s basically where we are. Chair?

MATHIEU WEILL:

Thank you very much Nigel for a fact-based presentation. Anyone with questions? Any strong objection, concern in the room about the proposal as described by Nigel, which is about inserting at this point, in Work Stream 1, a general mention of the respect of human rights within ICANN’s Mission and operations? No. Good. I think Byron, that’s where I can hand it over to you, since we’ve now reached a point where it’s time for lunch. It was time for lunch. I’m sure we’ll make up for this useful time that we spent discussing this. I hope it was useful for us. As guideline, it’s going to be very useful to us as Members. Thank you very much.

BYRON HOLLAND:

Thank you everybody. We are now going to move onto the Agenda Item that was scheduled for this time period. We had a relatively long session planned, so we’ll have to tighten up each of the segments. I believe everybody for this Panel is already here. Thank you very much. We are covering a number of the more contentious subjects now, or those that don’t have clear consensus at this point. In the Agenda you’ll see all the specific Items. Before we get going, in the spirit of continuous

improvement, I thought there was a lot of good dialogue in the previous session, although it took us a little bit to get going.

I'd like to try to follow the same basic principle as we were following through the latter stages of the previous session, and again, just remind all our Panelists, who have deep expertise on this subject, that the real focus of this session is for those in the room who don't share your deep expertise just yet, but need to become educated and informed enough to be able to provide guidance, and to be comfortable with where we, as the ccNSO, are going.

If we can keep it at high-level, principle-based level as opposed to the nitty-gritty detail. I'd also encourage everyone from the room, where there's lack of understanding or clarity, please, this is our opportunity as a community to ask these questions of the Panelists, who've spent a lot of time digging into the issues and the detail. You'll note that Lesley was supposed to be moderator here. Unfortunately, Lesley has fallen ill, and Roelof has graciously stepped up to be moderator, with very little notice and very short time to prepare, but he's certainly well-versed in the subject matter. Thank you very much Roelof for doing that.

He will be the moderator; asking the questions and moving the dialogue forward. I will be acting as Chair, primarily in time-keeper role during the session, and then try to wrap up the

points as I've heard them over the course of the next 90 minutes, or thereabouts. With that, our first topic is around the IRP and exclusion of ccTLD delegations and re-delegations. The key Panelists on this particular topic are Becky, Jordan, and Martin.

ROELOF MEIJER:

Byron, maybe I can have half a minute before we start? Is there a possibility that we use the mics as roaming mics? My second point is to the room. I think we've already noticed this morning that sometimes these subjects are almost incomprehensible, if you haven't been spending as much time on it as we, the Members of the CCWG have been doing. The other side is that this is probably one of the most important subjects we've ever been dealing with, so it would be so nice if we could make this so interesting that you'll all stop watching your laptops and contribute.

What we need from you is guidance in the subjects we're now going to deal with. We've had some flak from people from other communities, accusing us of not being connected enough with our constituency. I don't think that's right, but I think there's always room for doing it better. We need your input, and you can only give that in a good way if you follow the discussion, tell us when you cannot understand what we're talking about, and keep telling us that until you understand what we're talking

about, or we have explained it in such a way that now it's comprehensible, and then give us your input. Please bear with us and try to actively participate.

Now, the first subject is going to be introduced by Becky. I think most of us know what the IRP is, the Independent Review Process. It's going to be changed in the course of all this, and Becky will explain how that might affect us.

BECKY BURR:

Could we get the slide from this morning's presentation? There's one page on the IRP enhancements. The IRP has been a long-standing process at ICANN. It has a long and somewhat sullied history. It's only been used three times in ICANN's history. In some ways, the uses have been controversial. There have been many complaints it was very expensive and not particularly accessible. For the enhanced IRP, we've made some recommendations. First of all, rather than picking up three Panelists anywhere for each individual dispute, as it arises, what we've proposed is there be a standing panel of at least seven members from geographical diversity, and in terms of language and diversity in terms of legal and cultural diversity as well.

The notion of having a standing panel is that you'd have panelists who were familiar with and understood ICANN, and the DNS itself, and so the decisions would be based more on an

intimate understanding of this organization, its unique aspects, and the community that it serves, and would not be such a straightforward and random application of commercial law.

The notion would be that the job of the standing panel would be to enforce the community's exercise of the powers that we discussed; the power to spill the Board, or approve or reject Bylaws, et cetera. It also would be available for anybody who's been materially harmed by action or inaction on ICANN's part in violation of the Bylaws. It's also available to resolve disputes related to the IANA transition; so SLAs and the like.

There's a specific exception, at the request of the ccNSO, and the cc participants in the CWG collectively – so that would be the ccTLD community – disputes regarding delegations and revocations of ccTLDs are not covered by the IR Panel. That would be available in the event that the cc community got together, undertook a PDP, decided it was desirable to have some dispute mechanism available. It does not prejudge, but the thinking and working of this community with respect to that.

The enhancements provide for a community IRP, which would be funded by ICANN, so that in the event that the community collectively working through the Community Forum felt like some action or inaction that ICANN took violated its Bylaws, there would be a way for the community to bring and IR

complaint that would be funded by ICANN. Then there are some changes to the standard of review, and also the decisions of an IRP would be available to guide future ICANN actions.

So lawyers would say decisions of the panel would have presidential value in the sense that they could be taken into account by panelists in the future, and they also would be able to provide guidance to the ICANN Board as to how a panel might react to something they're planning to do. The purpose of this obviously is to reduce the need to resort to the IR dispute resolution processes in the future, by providing guidance.

Then finally – and this is the biggest thing that we will be launching here in Dublin, with respect to the IR Panel – we will be constituting a sub group to work on the enormous number of details regarding the operational roles that would be applied, the changes to the Bylaws that would be needed to implement this. In some ways, the IR, because it's a constitutional court for ICANN, and it has the ability to decide whether ICANN has acted in a way that violates its Bylaws, it has been called the crown jewels, the guardian of accountability, but obviously the details must be carefully thought through. That is the work that will be commencing as we go forward.

ROELOF MEIJER: Thank you Becky. Am I correct if I say that another aspect of the change is that the outcome of the IRP will be binding and legally enforceable?

BECKY BURR: It will be binding and legally enforceable. I want to clarify that when we say binding, what we mean is the panel will have the power to say, “ICANN, you violated your Bylaws in doing that.” It will not have the power to direct ICANN how to fix that. It will still be up to ICANN to figure out a way to fix what it’s done. It’s not determining, awarding damages or telling ICANN what to do in the way a normal court would.

ROELOF MEIJER: Thank you Becky. Any questions? Jay?

JAY DALEY: Can I check on the enforceability point at the end of this, that that’s very much determinate on whether we’re looking at the member model, the designator model, or anything else there?

BECKY BURR: It is the degree to which an IR Panel decision is enforceable, is along the same spectrum that we’ve discussed with respect to enforceability, that in the membership model, the community

powers are most clearly enforceable. In the designator there is enforceability; it's enforceable although the ultimate backstop is spilling the Board. It goes from there, as you go along. ICANN has said it intends to agree to be bound by decisions of the IR Panel in any case, and it's also said it feels there are significant constraints on it to behave in a way that would be contrary to a decision of the panel. Yes, the closer to the membership model you are, the more comfort you have with respect to enforceability.

JAY DALEY:

Okay, because we all know they could say they're implementing a decision of this, and not do it at all. So what we can't do is trust this alone as enough. It has to come together with one of those other powers.

BECKY BURR:

Yes, I think that's correct.

SPEAKER:

Becky, right now there's an IR mechanism that exists within the ICANN Bylaws, and as you noted it's costly, not very accessible, only been used three times, but it is available to the cc community right now. If you go forward with the enhanced IR

Panel, would that existing mechanism still be available to the cc community?

BECKY BARR: The communication from the CWG was that the enhanced IRP, which would replace the existing IRP, would not be available for delegations and revocations of ccTLDs, subject to any policy development by this Board. To the extent that that access was theoretically available to a ccTLD right now, I suppose you could say it would not be, going forward. Having said that, this is a serious double-edged sword...

ROELOF MEIJER: may I interrupt you for a moment? You were specifically talking about ccTLD delegations, or revocations? You're not talking about other ccTLD matters?

BECKY BARR: Nothing other than delegations or revocations, to the extent a ccTLD has... The exclusion is very specific and very limited.

ROELOF MEIJER: Have you finished your point?

BECKY BURR: I just want to say it sounds like a good thing, but this is a double-edged sword, because to the extent a ccTLD could claim that ICANN’s Bylaws have been violated by revocation of a delegation, a country could claim that ICANN’s Bylaws have been violated by failure to revoke a delegation. I don’t pretend to know all of the thinking behind the ccNSO’s views on this, but I think the view was that there was need for further thought about this particular issue, particularly in light of the implementation of the FOI.

ROELOF MEIJER: Okay. I seem to remember that in an earlier phase we asked the community, “Do you want this particular subject to be part of the stewardship transition process?” and I think we all agreed no, it will have to come later. So we’re anticipating a PDP to come up with something, if this succeeds?

BECKY BURR: Correct.

ROELOF MEIJER: Jordan?

JORDAN CARTER:

The reason I'm on this Panel is to raise exactly this issue. Today, if the IRP... Here's my fear scenario. We're an independent ccTLD in .nz. we're not run by the government, we're not a government department. At the moment, if something broke and failed in ICANN, and there was a redelegation effort by ICANN – if ICANN didn't like what we were doing or saying and decided to redelegate .nz to someone else, we could use the existing IRP to try for that, but if it [unclear 00:45:03] Bylaws, it would be a substantive matter, and the NTIA, observing it was acting inappropriately, would stop it. The NTIA wouldn't agree to that redelegation. It would use its reserve powers, the stewardship thing, to protect us.

Now, my fear is that after the transition, after the NTIA no longer has that right, so it's directly relevant to now, we're saying we're going to run a PDP in the ccNSO to work out how to deal with disputes about delegation/redelegation/revocation issues. What I'm concerned about is the gap in-between those two things. The transition next September, all going well according to the timetable. PDP, you tell me. I haven't been here for a PDP, but I was told it takes more than nine months. That sounds reasonable.

So the question we asked the ICG was, "Does there need to be something else?" Not for every Tom, Dick and Harry. Not for some random participant in ICANN to query a redelegation that

we've asked for, but for us as ccTLD Managers to have some route of appeal or correction if things inside the ICANN environment break down. I don't know if the IRP is the right way to do that. I don't know if a moratorium, where the Board cannot do a redelegation and revocation before our PDP is ready is the answer. I also almost don't mind if we say, "Yes, we're happy with that gap. We'll trust the ICANN Board for that period." But I want us to be clear about the answer, whatever it is.

ROELOF MEIJER:

Okay. The question is also is there really a gap? Because is there something that we have now that might actually work? I don't think we can answer that question, because we've never used it. After the stewardship transition, we will have these five powers, so as a cc community we'll not be able to stop the Board from doing something wrong, but the whole community can, if I'm not mistaken. Sir?

MARTIN:

Thanks Roelof. I think I'd go back to the work of the CWG, because when the CWG started we did have a very clear message from the ccNSO community that we did need to have some form of review process, and that condition of reviewing was built into the principles that the CWG wrote, and was a part of its proposal,

so Annex C, and appeals appears twice under 5.6 and under 7.5. So those are things you can go and look at and see that there was a request.

Our problem then became that as soon as we started looking at what would be the grounds for doing the appeal, it became very difficult, because as we all know, our RFC 1591 makes a specific requirement for us serving the local community, and the local community being the people who should be deciding on the delegation and revocation of ccTLDs.

I'm simplifying the language, just to try and make the point that we have got something that for some countries becomes a national sovereignty issue, and certainly one of the concerns I think I would have is when we get to a seven-member IRP, then we probably, if there were to be a contested redelegation of .uk, there probably wouldn't be a British panelist on that.

There probably wouldn't be an understanding of UK law on that, and that would lead me to a serious problem on extra-territoriality, where ICANN is the almost nation state with its own legal structure. I think that was where the CWG, backed away from trying to come up with it, and then came out with, "This is something that needs to be looked at later on." Thank you.

ROELOF MEIJER: Thank you Martin. I'll have to close the queue after Eberhard. I think we have to go onto the next subject.

SPEAKER: It's incredibly tempting to start re-litigating the work in the FOI Working Group. The fact is this is about whether or not we, as ccTLD Managers, would want to give an opportunity to other gTLDs, ALAC, anybody, to have something to say about our business. I don't think we do. There's an argument that we don't, as Alan seemed to think we did, have access to the IRP for delegation and redelegation decisions. Somebody point to me where ICANN, the corporation, has anything in law to say about how I run my TLD, how he runs his TLD, or how anyone in this room runs their TLDs.

ICANN was a corporation that was formed in 1999 or 2000, after we came into being, there's no legal path or even understanding of what it is that's being transferred. So how we can guess at what the hell is going on is beyond me.

ROELOF MEIJER: Is this okay, or is it not okay? I know when ICANN was created and I know what we want, but we're now talking about this specific thing. Does it pass your scrutiny, or does it have to be something else?

SPEAKER: I have to look to the fundamental policy that we all accept, which is RFC 1591. In RFC 1591 there is something called the IDNB. It would have to be called into being if there was such a call. Whether or not ICANN was the person you go to do that with is another matter, because at the moment it's the US Government. The US Government has the purported authority for these delegations. Whether it has that in law and reality or not..

ROELOF MEIJER: I'm going to cut you short. I think you've made your point. Your point is it should not be here and it's not there. It's good, and we should have a PDP afterwards to get this other thing implemented. Thank you.

EBERHARD LISSE: Roelof, please explain to me what I'm seeing just now. What Jordan says is important. It's wrong, but it also doesn't affect the ccTLD Members who are not ccNSO Members, and it only affects the ccNSO Members as long as they are ccNSO Members. So if I don't like this, I just leave the ccNSO and then none of this affects me anymore. It's clearly so that only the ccNSO Members are affected by ICANN policies. It's clearly in the Bylaws.

What Martin says, it's clearly also not so that it says in the RFC 1591 that the local community has a decision. We have had a large Working Group FOI that interpreted it. Basically, we have to serve the local community. That's what it says. That's what everybody agrees with, even me, who registered .na before RFC 1591 was registered. But to say that somebody who does this, that the local community, however it's defined, now decides what to do? No.

In short, I cannot live with anything where anybody takes action on my property. I cannot live with it. The question is whether one should maybe, before one goes to the legal sense, exhaust the remedies inside the system is another question. We had cases in Namibia where cases were lost in court, because the court says, "You may be right in what you did, but you didn't exhaust the system yet." So that's another question. I don't want to have an external entity dealing with ccNSO issues at all, in particular I don't want anybody dealing with my property.

ROELOF MEIJER:

Okay, so in short, Eberhard is in favor of this. He's against the PDP afterwards that will deal with delegations and redelegations, unless you can decide for yourself. That's more or less it, yes?

EBERHARD LISSE: Now you've managed to confuse me...

ROELOF MEIJER: That was the intention. Back to Byron.

BYRON HOLLAND: Just to get a sense of the room on this, the IR Panel has a specific exclusion related to ccTLD delegations and revocations. It would appear to me, from what I have heard, and just watching the room, that we are okay with that. We are satisfied with that. Is there any objection to that? Is there any objection to what you see here on the screen, which says specifically that IR Panel actions or decisions would not apply to ccTLD delegations or redelegations? So we are okay with what's on the screen right now, and there are no objections to that?

I think one of the key issues is assuming a proposal comes out and the ICANN community moves forward, there will be a window of time where we don't have policies in place, because a PDP has not yet happened that would address these issues, and that there would be a window of time between the transition taking place, and the successful resolution of PDP at some point in the future. We have to acknowledge that there is potentially a gap there, where there is no guidance for the Board, per se.

SPEAKER: There is a guidance. There's the FOI.

BYRON HOLLAND: But there's no policy in place. None of that changes, but the difference is there's no NTIA to appeal to.

ROELOF MEIJER: There's no formal specific system to correct the Board, if we have the impression that they're taking the wrong decision, apart from the powers that we get through the stewardship transition process, in which I think getting rid of the Board might be a very effective way of dealing with this, or firing a few of them... I wanted the Chair to close this whole thing.

BYRON HOLLAND: I do want to close it, but I also want to make sure that in closing it that our Members on the CCWG also have a sense of where the room is.

PATRICIO POBLETE: I really don't know what this notion that the NTIA could be today's instance of appeal for revocations comes from. That's never happened, and I don't see any intention that it's going to behave in such a role, even if it was the status quo.

BYRON HOLLAND: I agree, but there’s always been a potential for that, that there is an oversight function carried out by the NTIA, which will definitely be gone, and it will only be the Board, and thus from when the transition happens, until such time as we define our own PDP on these subjects, there will be nowhere to appeal, and action taken by the Board on this, other than the fact we have potentially the five new powers...

ROELOF MEIJER: The reconsideration request process. Byron, I’m going to give the floor to Keith.

KEITH DAVIDSON: Thank you. The NTIA have asserted that they will not enter into any decision relating to delegations and redelegations, and that their authorization role is utterly restricted to ensuring that ICANN has followed the process, and their authorization is automatic at that point. They have, on the record, through the FOI and the Delegation/Redelegation Working Group advocated that they would not ever be in the position of making a decision over another country’s ccTLD. So I think that’s quite cut and dried, that there isn’t a mechanism now, and there never has been. There was contemplated to be one under RFC 1591, and it’s up to us to do the PDP to create that. Thank you.

ROELOF MEIJER: There never was good guidance, and now there is, with the work of the FOI Working Group, right?

KEITH DAVIDSON: There's better guidance on some aspects, but there's still PDPs, including what the appeals mechanism for delegations and revocations should look like. That's why I was urging yesterday that we, as a community, need to address those policies with urgency.

BYRON HOLLAND: Thank you very much. I think to some degree we're probably in violent agreement, in that there's no particular meaningful change in a post-transition world in terms of the rights that we have, other than there will be the five new empowerment mechanisms that we'd have at our disposal. We have to acknowledge that, which is fundamentally what I was getting at. That's a situation we'll be in, from the time the transition happens to the time we complete a PDP, which we generally acknowledge has to be done, and will be done.

The community just has to be comfortable with that. Any objection to that? We understand that to be the position that we

will be in, and the requirement for us to do a follow on PDP on these subjects. Onto the next topic.

ROELOF MEIJER:

Shall I introduce it? The next topic is the internal accountability of the existing SOs and ACs, with the introduction of those new powers that the community will get, and we also started a discussion on if we increase the accountability of ICANN and give these powers to the constituencies, how do we also make sure the constituencies are working in a transparent and accountable way? If I'm not mistaken, Mathieu is going to give a short introduction on this subject.

MATHIEU WEILL:

Roelof, I think you've already provided the core introduction. There's been a lot of concerns and discussions at some point where some, essentially in the technical community, express concerns about whether those SOs and ACs that we were empowering, were actually acting for, could really be held into account by the people, the companies, the organizations that they were designed to represent.

I think it was strong in the first public comment, stronger in the second, and so the group has designed this very literal but important proposal for Work Stream 1, and it's also a Work

Stream 2 Item. As I've already spoken too much, I think it's best if Giovanni can introduce the proposal. It's only one sentence. It's in the Google Doc you were looking at. Giovanni is going to explain exactly what that is.

GIOVANNI SEPPIA:

Regarding the SO and AC accountability, the proposed text review for the Work Stream 1 is that frequent structural reviews will assess the ccNSO accountability, and therefore most of the work regarding enhancing the accountability of the SOs and ACs is postponed to the Work Stream 2. This is the reasoning that we have followed at present. That said, I understand – and I don't know if we're meant to discuss it – but I would like to stop first on this point; that the purpose is to have the structural review included in the accountability. Let's say, having structural reviews for the accountability of the SOs and ACs, at this stage, and then a further accountability mechanism will be investigated in Work Stream 2.

MATHIEU WEILL:

The idea is to plant a continuous improvement system on SO/AC accountability that is a little stronger than it is now, where it's only for efficiency, for purpose, and to really clearly state that SO/ACs need to be accountable. I think the ccNSO has done so

much in terms of diversity, outreach, including the non-Members into the decisions. That wouldn't be my first target...

ROELOF MEIJER: A bit on the point that Eberhard was making, more than ever it's important that the ccNSO also includes in its discussions the non-Members.

BYRON HOLLAND: for the benefit of the room, I do want to take one step back. The reason that SO/AC heightened accountability is so important is because with all of these new powers comes certain responsibilities and accountability ourselves. Each of these SO/ACs now has significantly more power to impact ICANN, the organization, and the broader community as a result. So we must all make sure that each of those SOs and ACs is also more accountable than they are today, hence the requirement for this.

ROELOF MEIJER: Anybody in the room with a question on this? Clarification, follow up? Anybody who has a strong objection against this particular phrasing?

MATHIEU WEILL: The future structural reviews that are conducted under Board supervision on a regular basis – I think it’s every three to five years – will assess ccNSO accountability, while currently they only assess ccNSO efficiency for purpose, they will, in addition for efficiency for purpose, they will look into accountability.

GIOVANNI SEPPIA: Again, it will be very important to interact with the Accountability Working Group during the Work Stream 2 phase. So in the future, after we deliver the final proposal, this stage, that is the moment when the accountability mechanism, how to announce them, what kind of mechanisms are going to be discussed within the group. So that’s going to be crucial for this community to interact a lot with the Accountability Working Group for Work Stream 2.

ROELOF MEIJER: Thank you Giovanni for volunteering for this work. So I repeat my question: are there any strong objections to this particular phrasing change in the review? Okay. I think we have a full consensus on this one. Now, moving on, the third subject. As most of you will have heard at any particular phase, the CWG transferred some of the things that they came up with as conditions, to the work of the CCWG.

What we're going to discuss now is the question of whether those conditions have been met. We're not talking about the conditions of the NTIA yet. This is about the work of the CWG coming up with certain conditions that were for the CWG to resolve. Lise's going to explain to us in more detail what this is about.

LISE FUHR:

Yes. When we started working as the CWG on the IANA Stewardship Transition, we actually realized that there were issues that would be not efficient if we took care of them, because it was dealt with in the Accountability Group, but in order to have this linkage we made our proposal conditional on that the Accountability Group would meet those requirements that were set. You can see on this slide, it's six areas. One is the ICANN Budget. Another one is the ability to recall the Board. Number three is the IANA Function Review.

Four is Customer Standing Committee. Five is the appeal mechanism, and that was what Becky talked about earlier. The last was that we needed to have some of our requirements into fundamental Bylaws. If we go quickly through each of them, only superficial, but the ICANN Budget was a request for an ability to veto the PTI Budget. We needed this possibility if the new IANA

didn't get enough funding, or if the funding was used in a way that was not the focus on the actual core business, et cetera.

That's actually as it looks now it's in the proposal. The ICANN Board is also something that's been touched upon earlier, and it also looks like that's being dealt with. Regarding the IFR and the Customer Standing Committee, our group is working on drafting those Bylaws with the lawyers. These requirements are being taken care of within the CWG, but it's still going to be a part of the Bylaw set that the Accountability Working Group is going to put forward.

Then we have the appeal mechanism, where it has also been incorporated. As Becky said, there were the IANA decisions or non-decisions that could be appealed to the IR Panel, and then we also have the question regarding the revocation of the ccTLDs. This has been left out to be not included in the proposal, and that was because we made a small questionnaire and asked the community if they wanted this to be included, and they answer was no.

All in all, I think most of things are already in the proposal, and what's not there I'm surely confident will be there. What's not completely clear yet is the actual enforceability of some of our requests, or requirements. But I'm certain that both models that

Mathieu has been talking about can accommodate the enforceability that we need.

ROELOF MEIJER: Just to make that clear, if you say enforceability you mean legal enforceability; so it can be a power, it can be in the Bylaws, it can be agreed upon, it can be in the proposal. But then if the Board still doesn't do what it's promised to do, we can take the Board to court and get that particular issue resolved by a judge and enforced on the Board, right?

LISE FUHR: Yes, but it's also that you can build some of the enforceability into the actual Bylaws. You can build in the process, so it becomes very clear what they should have done. But I agree.

ROELOF MEIJER: Any questions in the room before I check if there's anything in the Panel? Are you all still there? Okay! Anybody in the Panel who wants to comment on this? The short version, as Lise says, we're doing fine. Anybody who has strong objections to the notion that on this particular subject, the CCWG is doing fine? Mathieu, we have consensus. You would prefer we're doing what we can? Okay, anyway, it's still quite a powerful consensus here.

Now, we have some small problem, because for the next subject we were going to have Mike and Chris, and they're not here. Maybe I can negotiate with the Chair that we... Who? Shall we skip this one and do the next one?

BYRON HOLLAND: Yes. I think there's some irony in skipping this and moving straight to the next topic, which is the removal of individual Board Members. Maybe we should do it without Chris and Mike in the room! We'll move on from the models, which we absolutely must cover, because it's essential, but we'll skip ahead for the moment to removal of individual Board Members and the community Budget veto, for which we have about ten minutes for.

ROELOF MEIJER: Mathieu, I think you were going to introduce the subject of removal of an individual Board Member? Are you also going to touch on this thing that was discussed; that if you remove enough Board Members individually, you can also still remove...

MATHIEU WEILL: We can go into that level of detail if that's what you like. I think it's a little bit of detail, because it will be one of the protection measures that we'll set up, but I think the core of the discussion

of Board Member removal is captured in one of the slides that was on Jordan's initial presentation. The concept is there's a CWG requirement, and there was agreement very initially on this, on the CCWG, that having the ability to remove individual Board Members was a specific community power that was necessary to enhance ICANN's accountability.

There has been a lot of discussion about this, and we've only found a consensus position within the CCWG on Friday on how to do that. Why has there been a lot of discussion? Because on the one side, the ccNSO appoints Board Members and we want them to be accountable to us. On the other side – and that was expressed yesterday in the discussion with Mike and Chris... Chris, welcome.

ROELOF MEIJER:

You've come just in time, because I was just going to check if we have consensus on the notion to move to remove our individual Board Member on the documented reason for coming too late into the crucial discussion on the IANA stewardship transition – I think the most important discussion we've had since the creation of the ccNSO.

MATHIEU WEILL:

Let me recap. On the one hand, there is a view that the appointing SO or AC, because ALAC appoints a Board Member, should be the one to decide whether or not to remove the Board Member, because after all, we seat them, we should un-seat them. On the other side, Board Members are not only serving a particular community, they join a Board and the Board is the Board of the corporation, and through collegial decisions they are here to serve the purpose of the organization. Note I'm not speaking about serving the corporation – I'm talking about serving the purpose of the corporation. It's a completely different thing, although they obviously overlap a lot.

There's no contradiction, per se, between being appointed by the ccNSO and serving ICANN as a corporation and its purpose, because we are part of ICANN because we have overlapping interest. We want ICANN. We want ICANN to maintain the IANA function as performing and so on. We want ICANN to make sure that the policy scope of the ccNSO is what we want it to be, and no more. That's perfectly clear. Those two views about how to remove a Board Member, we've tried to combine them. Do you have the slides from Jordan?

It's physical removal. Bodyguards come and remove. We usually have rivers close to the convention centers...! The key is this is for Chris or Mike, the ccNSO appointed Members. The ccNSO would say, "We want to initiate a process through a Council

resolution upon regular Council decision-making.” That would trigger a discussion of the whole community through this Community Forum so that the ccNSO, but also the Board Member, could have the ability to discuss the matter and explain their views.

Then the ccNSO would collect comments from all parts of the community. Maybe the GAC would say, “No, we want to keep Chris,” and the GNSO would say, “We’re fully with you.”

ROELOF MEIJER:

Let’s make it an unknown individual.

MATHIEU WEILL:

All right. Only after this phase could the ccNSO be entitled to make a decision about the removal of this particular Board Member, upon a 75 per cent threshold of decision – so a super-majority type of decision. So that’s the balance that’s been found, where it’s still the last word for the appointing body, but this appointing body has to go public, exchange, discuss about the reasons for that, and listen to the input, before it comes to a super-majority decision. That’s the intent. The minutia of the process might be tweaked, but I think what matters is whether we are globally in agreement with this intent.

ROELOF MEIJER: I don't know the first bit, because I think it's not a Council decision. There has to be a simple majority within the SO or the AC to kick off the process towards the Community Forum, I think.

MATHIEU WEILL: I think we're not prescribing anything on the decision process from the SO or AC, because it's a subsidiary thing, and obviously in ALAC or the GNSO it doesn't work the same as the ccNSO, because there are stakeholder groups and things like this. To me, the highlights are here. Chris?

CHRIS DISSPAIN: I sent an email to the Member list and Council list, which sets out a slightly more detailed step-by-step version of it, which is what the CCWG Accountability coalesced around the other day. It goes into a little more detail than Mathieu used, so it might be helpful to see that. But basically everything that Mathieu said is right.

ROELOF MEIJER: Okay, so in the new proposal, in short, for the removal of a particular Board Member of ICANN, it is the constituency that appointed or elected the Board Member that starts the process. It has to move into full community process, and in the end it is still that particular constituency that takes a decision. That's the proposed approach. Anybody from the Panel wants to add to

that? We move to checking the room. Do we have any violent objections to this proposal? None at all.

BYRON HOLLAND: Thank you very much. Now, given that Chris is here, we will move back to the subject of which he will be a Panelist, and that is on the potential models and mechanisms, more commonly known as the sole member model or the sole designator model. Jordan is going to kick that off and describe it to us, set the stage, and then we have a Panel discussion with Chris, Jordan and Becky.

ROELOF MEIJER: I think here particularly the danger of getting too much into the details is looming, so I'll ask both the Panelists and the people in the room, if you have a question, let's try to keep it to the most important aspects of these proposals and not go too much into detail, because we'll get dogged down if we're not careful. Jordan?

JORDAN CARTER: Am I just doing the model of decision-making as well?

BYRON HOLLAND: The model and decision-making.

JORDAN CARTER:

My job is to introduce and present this. The bad news is that the slides that explain this are only partly in that pack, but I can start with them, and I can send you guys the ones I just finished that help explain the rest of it. This is a nice summary slide to start on, in terms of the decision-making. Off to the left is the engagement process, the normal discussion of ICANN work, which shouldn't make it onto this slide. For the kind of decision-making in this model, we're coming down to a point of very narrow disagreement. All of these steps here are steps that will be available in all of these models.

So someone can raise the desire to use one of the community powers. There's a pre-call to discuss that. If it's seen as a serious problem that needs to be fixed, the Community Forum we talked about will get together and have a discussion. After that, the SOs and the ACs, acting by their normal processes – you all know how the ccNSO makes decisions – will decide whether to add their voice to exercising a community power or not.

Then the Board has to respond to that. There might be a further resolutions step if the community feels that the Board isn't following the Bylaws. There can be the use of the IRP, and at the end of many, many steps of disagreement to attempts at resolution, there's the enforcement line that's on the right there,

which involves potentially court action. That's not where I want to start.

On the model, that stuff is all pretty similar. To be at the core of this, the community needs to be organized in some way. There needs to be a decision-making process, and that needs to be in some kind of vehicle. What we've heard from the community is...

ROELOF MEIJER: Sorry to interrupt. You mean not the decision-making within the SO or the AC, but the decision-making between the SOs and ACs together.

JORDAN CARTER: Yes. So it's almost like a vote counting mechanism – a decision aggregating mechanism. It pulls the decisions that we make in our SOs and ACs together, to test whether the relevant thresholds to exercise the power or not has been reached. So there needs to be something to do that, and that's what the CCWG has called a community mechanism. It's been called that a number of times. Bart, I'm going to send you the updated slides. I realize it isn't ideal to be doing these things at the same time.

Now, it's a community mechanism. It's not another body, it's not another committee, it's not another group of people. It's just counting the decisions that the SOs and ACs have made. We heard you on that. That was big feedback from the first draft proposal, significant improvement in the second draft. But there are two versions of this floating around. One of them is the community mechanism as sole member, and that's what was in the second draft proposal, and that's what got a fair amount of positive feedback, but some important and persistent negative feedback on a few issues.

The other one is the community mechanism as sole designator. There are some important differences between designators and members. Now, I want to talk about the sole bit first, and then about the designator versus member. Back in May or whenever it was, the first draft proposal said, "Each SO and AC will be a member," but there could be a designator as well. We heard lots of concerns about that. You would have to turn each of us into a thing called an unincorporated association. People were like, "What's that? How do we keep it under control? How is it accountable to the SOs and ACs?"

So a lot of these issues came up and were raised as concerns. In developing the second draft proposal, what the "sole" means is that there's just one legal vehicle here through which these powers are exercised and added up. That means that the ccNSO

doesn't have to turn itself into a corporation or an unincorporated association. Importantly, it meant that if the GAC is going to have any role, it isn't going to be demanding governments to join something, which they were very clear they were allergic to.

So the “sole” does not mean our right as a ccNSO to make decisions about our Board Members gets taken away from us and given to the community. It doesn't mean that the decision-making goes away out of the SOs and ACs and goes into some committee of the great and the good. I'm saying that, because some people say that's what they get when they hear this word “sole member” or “sole designator”. I just want you to be clear that that's not the case. Think of it is as the legal packaging around the exercise of these community powers. That's all it is.

ROELOF MEIJER:

Jordan, when you say a sole member or a sole designator, in effect it's a kind of very transparent box that you put around the whole of the community, isn't it? And the only reason why we have to put that around that whole community is to make it into a legal entity, and the only reason why we need that is that we can then legally enforce those powers, because we need the legal entity to take the ICANN Board to court.

JORDAN CARTER: Exactly. One thing that entity can be is a party that has standing to be part of the IRP, and the other thing is that if it needs to become even more Draconian, to go to court, it's a thing that can go to court. It's an object that can go to court. It's undoubted. You know it's there. It will be in the ICANN Bylaws, there will be no confusion or uncertainty, and remember, we want as little confusion or uncertainty as possible on this.

ROELOF MEIJER: I stress that, because it also makes it clear that the only reason when we formally need this sole member or sole designator is when we go to court, which if all goes well, we'll never need to do.

SPEAKER: In the case of the designator. Well, in both cases actually. In both cases, it is in effect the enforcer. It is the thing that does the enforcing. It's the thing that gives you the standing to bring the action, be it in arbitration or be it in court. It has the personality, the personhood, to be able to sue. So it is solely and only the enforcer.

JORDAN CARTER: So designator member. This is apparently the elephant in some people's living rooms. Member and designator – what are these

things? These are legal terms in California. They're roles given to this mechanism. If it's a designator, it has two powers. It can appoint a Board Member to a Board, and remove a Board Member to a Board. That's very clear that this body has that power, and that's the only directly clear power that it has in the law. A member has that power, and some other powers.

ROELOF MEIJER: I'm going to come back to this again, just to make sure that the room gets this. When you say it's the only power it has, do you mean it's the only power it can legally enforce?

SPEAKER: Yes. Well, it's a very fine distinction, but it's the only rights it has, unless you give it other ones.

ROELOF MEIJER: Okay. We can put all the powers in the Bylaws... We give the powers to both models, but the only power that we can actually legally enforce with the designator model is the power to remove Board Members?

SPEAKER: Unless you give it some other ones, in which case you could legally enforce them too.

SPEAKER: I'll suggest the difference. A member has a large range of powers, and you may be able to limit some of those in the Bylaws, though it's unclear if you actually can. The member has all powers. A designator is born with two powers; appoint, and remove. However, it's clear that you can give them some additional powers in terms of Bylaws. The question is what powers can be given by the Bylaws, and is that sufficient. That's a more detailed answer. They are born with one power, but can be given additional ones.

ROELOF MEIJER: Okay. Clear enough, I think.

JORDAN CARTER: The reason I'm 'umming' is because we're getting into areas of serious contention and disagreement between lawyers, among other things. I'm trying to stay as far away from those things as I can.

ROELOF MEIJER: We won't go any deeper than this. I think this is enough.

JORDAN CARTER:

All of the powers that we've talked about will be put in the Bylaws. ICANN is obliged, either way, to follow the Bylaws. The Board has to follow the Bylaws. If the company isn't following the Bylaws, you can take an independent dispute to deal with them. Understand that in the distinction between these two models, we're talking about the ends of the end of the end of the end of a process. To me, as a participant, that's why which one we choose has gotten to the point of being a little bit academic.

If we call this thing a designator, then in the law it has the power to do the Board Member removal. The member has that power as well, and a set of other rights. For all of those five community powers we talked about before, the Budget power, the fundamental Bylaws approval, the rejection of standard Bylaw changes – it has those powers inherently in itself, and can be given them in the Bylaws, and no one can question them. If it makes a decision along those lines, the Board has to do it.

The designator model can be given those powers in the Bylaws, and the Board has to follow the Bylaws, but if it tried to test them in court, just on its own authority, it would be in a weaker position. That's the critical difference here. One thing to take into mind of course is that to get anything resolved in the courts, which is where these differences apply, two years, three years, four years, five years. We're not talking about a speedy process.

So that's all I can actually say in terms of the model. This is a new set of descriptions. I ask Mathieu, the Co Chair, who's as horribly and deeply buried in this as I am, to say if I'm missed any point about the model? We haven't talked about the decision-making process very much yet.

MATHIEU WEILL:

I think about the model, you've captured it. It's really a small legal difference. We're very much deep into the weeds of how this is implemented. The only point is to capture the feedback we've had on the sole member model, which is the one that was present in the second report. Within the set of other rights of a member, some were not part of the requirements of the CCWG, such as the right to initiate a Bylaw change for the Member, or the right to initiate derivative actions against the Board as a whole, against the company.

Those were flagged as concerns, although it's been further analyzed, and it was part of the report that it could have been constrained by very strong consensus rules. That has been the concern that has been received about the sole member model.

JORDAN CARTER:

Or to put it another way, with the member, you'd have to tie its hands in some ways, and there's a bit of uncertainty about how

strong the rope could be. There would be some things it would have the right to do that you don't want it to do. With the designator, you have to beef it up a bit. You have to strengthen a few things around the edges, and there's a little bit of uncertainty about that strengthening process.

ROELOF MEIJER: Jordan, we're running out of time, more or less. Is it okay if I now go to the room, ask if this is clear, and then you can explain a bit more how the process runs? Then we can test the room for model and process? Because I think... Am I correct that the CCWG is moving towards sole designator model?

MATHIEU WEILL: Well, that might be your sense of the room, but it hasn't been confirmed yet.

ROELOF MEIJER: It was a question! I wasn't suggesting anything.

MATHIEU WEILL: There was certainly some traction on the mailing list, and within some of the discussions that the Co Chairs had with the various constituencies yesterday, but it hasn't been confirmed by the CCWG. That's on our Agenda for later today.

ROELOF MEIJER: Okay, so do you want us to test the room on both models?

MATHIEU WEILL: I think what would be most appropriate are whether there are any strong objections to either model?

ROELOF MEIJER: Is it a question?

NIGEL ROBERTS: It really is a question. I'm really keen to understand whether everybody in the room, who's going to be asked for their opinion on this in a minute, understands the difference between the two mechanisms you're proposing – as in whether or not you want to be a designator, or a sole designator, or a sole member, and how that affects ccTLD Managers. How many people really understand this? I'm sure half the CCWG don't.

MATHIEU WEILL: I understand more or less what you mean, but...

NIGEL ROBERTS: Let's ask the question.

MATHIEU WEILL: Yes, but try to qualify that.

NIGEL ROBERTS: All right. Understand it.

MATHIEU WEILL: I'll do it the other way around, if you'll permit me. Is there anybody who doesn't understand what this has been about, and who doesn't understand the most important difference between the two models? Annabeth first.

ANNABETH LANGE: For me that's actually not the question. Even if I understand what the difference is here, which affect will it have, the two different models, on us in the end? That's what I'd like to know more about before I raise my hand for any of them.

JAY DALEY: It's not a question. I don't think we need to answer Nigel's question at all.

MATHIEU WEILL: Anybody who objects to that?

JAY DALEY: This is still a work in progress, this particular bit, and what we need to know is do we think you're going down entirely the wrong track or not? Otherwise, it is a "please carry on, and you resolve this for us, and come back and tell us what is the best way to do this". For us to direct you down into the weeds about which one of these... It's entirely inappropriate.

MATHIEU WEILL: Thank you. Yes?

KEITH DAVIDSON: Jay, can I disagree with you? I can understand if you don't want to debate finer detail of Bylaw discussions, but I really think this is a pretty fundamental issue. If you say, "No-no, we'll just give you the Mandate," I'm sorry, there are a lot of people on the CCWG who claim Mandates without clear direction from their constituencies, and I really think that in deference to those people from the ccNSO who are involved in those discussions, if they're going to go in there, let's give them a clear Mandate as to what is or isn't acceptable.

I have a particular view, but if they want to compromise, for example, on sole designator, and this community doesn't think it's acceptable, and it insists that the rights attributed to

member are required, then they at least deserve that Mandate before going into the room. Similarly, if this community feels that the member has potential unintended consequences and they should not push for it, let's give that instruction as well. But let's not go through wishy-washy, "No-no, they'll represent us well enough."

ROELOF MEIJER: Maybe just for the record, is that a statement on members, or participants, or people in the CCWG? I think that was an opinion, not a fact?

KEITH DAVIDSON: Yes, it was.

ROELOF MEIJER: Okay. Somebody was going to answer...

CHRIS DISSPAIN: I'm going to try and answer Annabeth's question. Look, Annabeth, the answer is to some extent that you can argue both ways. I can make an argument, as a lawyer, in favor of the membership model, and I can make an argument in favor of the designator model. The attraction of the membership model to most of us is that a lot of us understand what membership-based

organizations are about, and the designator is a new thing for us, right? But my problem with the membership model – and I do have a problem with it – is the last line there that says, “A set of other rights.”

The challenge with that is that there is a right to wind the corporation up, there is a right to sue the corporation, there is a right to demand all documentation. There are a number of those. It is possible that you can stop those from happening, but there’s no clarity around it; whether you actually can or you can’t. Some of them you know you can, some of them you don’t. I would rather go for the designator and build up, than go for the member and try to knock out.

Because these are statutory rights. In other words, they are rights of law. It’s very difficult to ensure that you can’t fight in court. If you say you don’t have that right, you then might end up in court with someone arguing that they do in fact have that right. That’s just my personal view, speaking as a ccTLD Manager, and speaking as somebody who runs a membership organization. I view it slightly differently because of the way that ICANN is structured. That’s just my view.

EBERHARD LISSE: Mike, you just said that you [unclear 01:47:48] give a Mandate to the Members of the CCWG. Wuld you feel the same with regards to the ccNSO appointed Members to the Board?

MIKE SILBER: I was suggesting exactly that.

EBERHARD LISSE: Do I understand you that you are willing to accept instructions from the ccNSO with regards to your Membership decision-making process on the Board?

MIKE SILBER: Yes, absolutely. As I expressed yesterday, I'm more than happy to carry instructions from my community. When it comes to voting, I will vote my conscience, but I'm more than happy to carry instructions.

ROELOF MEIJER: Since we don't vote on the CCWG, I am more than willing to carry instructions, but as far as consensus goes, I will go with my conscience there.

JORDAN CARTER: Interesting discussion, but whatever. I think Chris has brought some of the very core disputes at the heart of this project into the room, and as some you may have detected from time-to-time, I have a slightly different view from Chris on some of this stuff. But in the end, I have a strong preference, personally, for the membership model. But my recommendation to the CCWG today will be that we go for the designator model. The reason for that is not about which one is better – I think that’s utterly obvious; it’s the membership one, in my opinion, for a wide range of reasons – but we are tasked with making the least possible change and the least disruption in pursuit of going down the track of a consensus.

It’s a consensus process that we’re in here, and we developed a set of requirements in the CCWG. This is about what can fulfill the requirements. As should be obvious in what I said to you before, I think that the differences between these models, in substance, about what they can do in court, at the end of these processes, are so remote and so archaic, that I’m willing to give away the improved prospects I see with membership, in order to get to the consensus that might emerge around the sole designator model.

ROELOF MEIJER: [Jurg 01:50:13] and then Stephen.

[JURG]: I think I understand what Chris's fears are with respect to the set of other rights in the membership model. I would like to ask what we feel we would not get by the designator model. What is missing?

ROELOF MEIJER: Okay, but maybe I can make that question a bit more specific, because the CCWG formulated criteria. Can I rephrase your question into which criteria will not be met? Because we can all think of things that will be missing, but the question is: are they really relevant? The criteria were the things that we had to tick off for this accountability to cover the level we think is necessary. Is that okay?

[JURG]: More or less, yes, because I think for me they are right to the point. It's just minimal.

JORDAN CARTER: Really briefly, talking about the five community powers that we set up in our report, which is what we're trying to give criteria to, you can involve the designator in binding roles and changing the Bylaws. So the fundamental Bylaws and the standard Bylaws

powers are guaranteed, and the removal of Directors and the removal of the whole Board are guaranteed. In the case of the Budget Strategic Plan/Operating Plan, a Member has a right to make binding decisions about those.

If you don't have a Member, if you have a designator, only the Board can make final decisions about those things. But in both cases, either case, the Board is obliged to follow a process set in the Bylaws to arrive at these things. If you choose designator, you don't get the statutory right to enforce a decision from the Member about Budget, and you don't get the statutory financial transparency stuff, and a range of other things that a Member comes with, that the CCWG never discussed and said that it needed. Some Members of the group really want them, but they aren't arising out of the community requirements process that led us to this point.

ROELOF MEIJER: Thank you Jordan. Stephen?

STEPHEN: Thank you. Stephen [unclear 01:52:35] for the record. There's something really curious going on here, because for months it's been the drum-beat of the single member model over and over again on the list, certainly through the face-to-face in LA.

Suddenly, here in the twelfth hour, it seems the designator model is coming from way far behind and will in fact cross the finish line before the single member model.

My question is: why is this happening? Perhaps because the Board has indicated off-list they're willing to live with the designator model? Or is it because Jones Day may have given it their blessing along the lines? I find this really curious.

JORDAN CARTER:

This is not a comfortable discussion necessarily, but that's fine. In LA the Board said it would not accept a single member model. Shortly after LA the Board said it wouldn't accept a designator model either. Early this week, a clarification of the Board's position, based on new information and analysis, was made...

CHRIS DISSPAIN:

That's known as a change of position.

JORDAN CARTER:

A change. I was being nicer than that. A change was made, and the designator model was back on the table. For me, based on the hundreds of hours and time and analysis I've put into this, one of those two models was necessary. So I was in despair about this process when the Board said the only two options that

provide some enforceability are off the table. It was a terrible thing to have done. It was undone. That's a great thing, so we can move on.

CHRIS DISSPAIN: Also, Steve and I don't know whether you know or not, but At-Large passed a resolution on whatever day, Monday, Sunday, saying that their current position is that they won't buy into the member model. That's also caused a shift.

ROELOF MEIJER: But I think it will take some time to get proper legal positions on this.

CHRIS DISSPAIN: Absolutely correct.

ROELOF MEIJER: It's not only us fighting with the Board and the Board fighting with us, but it was us fighting with each other. The only thing they shared was the height of their bills, but...

JORDAN CARTER: The CCWG session on Monday, there was a long, tedious debate, and questions and answers with the lawyers, and that kept the

information developing and cooking. That's where I concluded what I just told you before; that the designator model would work. I didn't have all the information I needed to get to that position until Monday.

CHRIS DISSPAIN:

I think that's also true for the Board. I think that the original saying no to the designator model was based on information that basically wasn't... Something was incorrect; it was just that it was incomplete, and there was a misunderstanding about what the designator model would end up doing. So I think we've actually all come for all sorts of different reasons to the same place eventually.

ROELOF MEIJER:

Thank you Chris. Pierre, you have a question?

PIERRE DANDJINO:

Thank you. I have a question about the timetable implication of this choice. Because I understand that the designator model is closer to the consensus than the sole member, but the sole member was the main proposal done by the CCWG during the last call for comments. It looks like if we go to another model, it will take more time. I just want to recall that.

ROELOF MEIJER: Good question. Let me ask the Panel. Do we deal with it now or at the end?

MATHIEU WEILL: Let's deal with it at the end.

ROELOF MEIJER: Are you happy with the answers? It was a good question, I think it's good to create some clarity on what happened. Becky?

BECKY BURR: I want to follow up on Jordan's comment, because I too have been a strong supporter of the single member model, and I continue to prefer that over this, and I'll tell you the reason why. As Mary got up and asked this question, ultimately in the enforcement, at the sole designator model, it comes back to the ability to record the Board. I sometimes worry that that is too big a stick for the community to lift, and that was what was compelling my support for the single member model. I think that partly because of all of the processes that we have put into place, I think that we have enhanced the moral suasion that will go into having the Board and community come together, and so making use of that stick less necessary. That's why I'm also

prepared to go with the sole designator, although I do think from a legal simplicity model, actually the membership model is easier.

ROELOF MEIJER: I think if we do right to history, we started with the multiple member model, then we moved to the multiple designator model. We went then for the single member model. We had something unclear in-between, which I can't even recall what it was called, and now we're at ICANN't Next Top Model, I think! Are we ready to sense the room? Are there any strong objections against any of these two models? Thank you. Well done. You must have been extremely clear. Nobody completely puzzled?

BYRON HOLLAND: Just to be clear, there are no strong objections from the room on either model?

ROELOF MEIJER: Is that a strong objection at the back? We will deal with the question first and then I'll get back to you. In fact, there is full consensus. Anyway, there are no strong objections.

SPEAKER: Sorry, that's not right. I have an objection to the membership model. I put my hand up. It went up with my arm, and Eberhard has his hand up. Eberhard I expect objects to everything.

ANNABETH LANGE: I think that the question is more: do we have a preference for one of them, even if you don't object really hard? So we try and find a way to go forward here, and to have a consensus. We try to do that. That doesn't mean that we wouldn't prefer one of the models if we could have a choice. If I understand the difference here, if we choose the designator we give them one power; to appoint and remove Directors, and as a member model they have that power and, as you say, a set of other rights.

On the screen it says, "Right to appoint..." Both of them have that power. In addition, a membership model will have a lot of other powers as well. So if we choose the designator model, you can take it gradually. We give them the first power through this process, and then we can always get something new into the Bylaws later?

JORDAN CARTER: Not quite. Remember that we're talking about the enforcement stage, right at the end of the process. So whichever model we choose – the Budget power, the Bylaws power, the Director

powers, they'll still be there. The separation review will still be there, the IRP will still be there. It's only at, right at the very end of the chain, there needs to be a legal action to enforce one of those powers, designator, no argument, appointment removal, 100 per cent guaranteed. Member, all of them, 100 per cent guaranteed.

CHRIS DISSPAIN:

Absolutely, or arbitration. My point simply, Annabeth, was that with the member model there are some other powers as well, which I find troubling, which is why I don't want to have them in the model.

ROELOF MEIJER:

I'm sorry Annabeth, but I'm not going to rephrase the first question, but I'm going to ask it again, but it's going to the same question. Are there any strong objections against either of the two models?

EBERHARD LISSE:

I think I need to say something before you ask the question. I don't particularly care either way. I care a little about the process that's being used. If I had been the Board and I didn't want a member model, and I wanted something in-between, I would have said, "I don't want a member model, I don't want a

designator model,” and then let them negotiate me back to the designator model. That’s exactly what happened. That’s not really a big drama for me, because that’s just good negotiations and I have a little bit of admiration for that.

What I’m really upset about is about the mess of how the ALAC deals with this. Their Chair and their Members voting for one, and then the same people, five minutes later, voting against it. I don’t know how we can deal with any of this, when the people in the group are in no way reliable. They say yes and mean no, they say no and mean yes. I don’t know how this is supposed to work, and how can we go now to a particular model when we don’t know what their motivation for their sudden change of mind is?

ROELOF MEIJER:

Eberhard, I don’t think that we can really influence the way any of the other SOs or ACs is working. Let’s set the floor and do it the way it should be done.

NIGEL ROBERTS:

My turn, at last. Can I just suggest, before I say what I want to say, that we try and not get into this thing where the Chair is making as much an intervention as the people from the floor? You’ve done a good job in chairing this, but as a member you are engaging in the process through the...

ROELOF MEIJER: I'm not the Chair. Byron is the Chair.

NIGEL ROBERTS: Moderator, if you prefer, but there you go. Irrespective of what Eberhard said about good negotiation, it's pretty clear what's happened here, and the reason for the last-minute change of heart is the opposition by the Board and withdrawing to a position that enhances their position. We have here "designator, right to appoint and remove Directors". That's it. We have "right to appoint and remove Directors" and a set of other rights. But that doesn't matter until we might go to court five years later?

That's not the case, because as you know, those of you who run membership model organizations, if you have the power there, a threat to use it in the background, people will behave more correctly, and they'll behave differently. The situation is this: the rights that you're giving up by not insisting on the membership model, which was in the text, even this morning. You put up on the board today something about being asked to approve single member model. I saw you take it out. I saw you edit it.

We must know that we are giving up the rights to financial transparency. Those are the rights that I hear that belong to the member that we're going to be giving up.

MATHIEU WEILL:

Nigel, it's good that you point it out. Once again, the CCWG deliberations on that matter are not over. They're not complete. We have a follow-up session, where transparency... On Monday I said we haven't looked at all the criteria, we haven't been discussing the differences on transparency, and it's still very much possible that we actually tweak, as Chris was saying, one or the other of the models, to increase one parameter in one or another.

Maybe this transparency issue will come up. I would be very surprised if it did not come up, because some have been very vocal about it, and the right to inspect corporate records, for instance, is something that maybe can be provided in a designator model if we put it into the Bylaws. So I think we're working on something that is still in progress. There is serious documentation going underway in the CCWG.

It is something that we are taking on the basis of the comments we received, but also a thorough analysis of what are the real and concrete differences. Because it's not about a power struggle. It's about looking at the facts and the requirements, and indeed the difference between the two. In terms of level of enforcement, it is very, very small. Some of the differences can be breached, so I'm confident we can find something that

everybody can live with. But once again, we're in a consensus-building environment. It's not about the best approach. It's about the approach that everybody can live with.

NIGEL ROBERTS: What I'm hearing in that case is that the mood music is going to have flipped from being the membership model, that was so much on the table only two or three weeks ago in Santa Monica, where I was, and has flipped to be the designator model, in a couple of weeks. The mood music is because it's possible, it's what the Board will accept. That's what I'm hearing. Now, we can choose that, but knowing that we're giving up the rights, whatever they are...

MATHIEU WEILL: Nigel, you're rewriting the history, and we don't care about the history. It's about what we need for the future of ICANN.

NIGEL ROBERTS: If by "history" you mean two weeks, then I'm rewriting two weeks.

ROELOF MEIJER: This is not on content, Nigel, but I'm failing to understand why, if you stick with something for even five years, and at a certain

point you come to the conclusion “this won’t work”, are you then going to say, “We’ve been on this for five years. Let’s continue another five years”?

NIGEL ROBERTS: Are you asking me a question?

ROELOF MEIJER: No, I’m not. Thank you. Jordan?

JORDAN CARTER: I see where you’re coming from in one sense. The only thing I want to say is that there’s been a lot of pressure applied in this process. I don’t particularly like that, but no matter how much pressure had been applied to me, personally, if I thought the designator model wouldn’t work, I would say so. I would stick with that and I would fight to the bitter end, but I don’t. So there is a complication. If we’re changing the model, it does have some consequences for the timeline and the need for public comment, and that is a downside.

But it wasn’t me who made the situation happen that that was what we had to do. We’re all responsible for the decisions that we make. What I’m saying to you is that the single designator model can do what we need it to do, and no matter what it looks

like, no matter what happens in getting to that point – I was at that point before – we have to do what we need to do to get the minimum requirements through. If both models can do it, and if one is a real stick in the throat...

CHRIS DISSPAIN: I need to respond to Nigel. I have to.

ROELOF MEIJER: Are you going to clarify something or give an opinion?

CHRIS DISSPAIN: I'm going to respond specifically to Nigel, because I want to make it very, very clear that I have, at no point in this process, supported any model or said anything that I don't believe is in the best interests of the ccTLDs. So when you say it's changed because the Board said so, or, "The Board do this," or, "The Board do that," maybe, but from my personal point of view, not once have I ever said anything that I didn't believe was the best thing for ccTLDs. I continue to say that. I just have to respond for that reason. Thank you.

ROELOF MEIJER: Okay, now, final exercise on this subject. I'm going to ask two questions, one on the designator model and one on the single

member model. Can those who have a preference for the sole designator model, on the information that's been given now – and I understand that's not the details – but just your feeling, those who have a preference for the sole designator model, raise your green card. Okay. Those who have preference for the sole member model, show a green card. Slightly less, but not a lot. Okay, thank you. Shall we move to the next subject?

BYRON HOLLAND: Just to be clear, we're taking a temperature of the room, not voting, but I would say there were substantively more for sole designator than for sole member.

ROELOF MEIJER: There is no consensus, otherwise you must count them.

BYRON HOLLAND: I didn't say there was a consensus. I said what was shown was materially more supportive of the sole designator than the sole member. That's all I said. Come on!

ROELOF MEIJER: Thank you for your constructive contribution.

BYRON HOLLAND: I, as the Chair of this session – sorry, Jay – we have spent a significant amount of time in this single session. I think that calls for a break at this point. I recognize there is still one more Item outstanding from this session’s Agenda, which is the community Budget veto. We will come back to that after a 15-minute break, and then we will carry on with the next session immediately after the Budget community veto discussion. It’s now 15:45. Let’s come back at 16:00 sharp for the discussion on the Budget veto, and then we’ll carry on with the next Agenda Item. Thank you.

[Coffee break]

BYRON HOLLAND: If I could ask everybody to take their seats? Thank you everybody. We will start back up again. Thank you everybody for your attention in the last session. I know it was long, and I know we let it run long, but it was my sense that the dialogue had to happen, and that it was of value to the community to let it run that long, particularly in the final topic. With that, we’re going to finish up the previous Agenda Item, which is an overview of the community Budget veto, and then we’ll move into the final Agenda Item, which is really about the process and next steps. With that, I’ll turn it over to Mathieu to provide an overview of the community Budget veto.

MATHIEU WEILL:

The high-level overview on the Budget veto. The Budget veto power is one of the requirements from the CCWG from the start, and we've had it identified as a condition for the CWG requirements. There are actually different levels. ICANN has Five-Year Strategic Plans and Budgets. These would be subject to the veto process, exactly like the standard Bylaws that we discussed earlier.

There is the PTI Budget, per requirement of the CWG Stewardship, this would be a separate Budget with its own consultation process that would be held earlier than the current yearly Budget from ICANN so that the community, as requested by the CWG, can veto a particular PTI Budget, if for instance it is under-investing or not doing what is expected by the community. If it's not properly funded, for instance. So those are two different types of vetoes.

Then there is the annual Operating Plan and annual Budget for ICANN. This one is more time-critical, because if you add the potential for a veto of two to three months, then it was felt by some that it would disrupt the organization, and the option that's currently investigated, and which I think is very promising, and everyone is now relying on Xavier Calvez's expertise for that, is to separate the yearly Budget and Operating Plan into two

parts; one being the part that's absolutely needed for continuity of operations, to be able to keep paying staff, to be able to keep paying what is absolutely needed.

Then there would be one part about the new initiatives and the things where there is some level of discretion. So there will be what Xavier calls a “caretaker budget” and the rest of the Budget. The veto of the community would only be on the rest of the Budget and not on the caretaker, which would go on. That is currently the highlights on the Budget community power, which we want to get a sense of whether you're comfortable with it, whether it's addressing the comments we've received, which were sometimes expressing concerns about potential disruption of day-to-day operations for ICANN. Thank you Roelof.

ROELOF MEIJER: Thank you Mathieu. Any questions of clarification on this issue? Perfectly clear? Good. Okay.

MATHIEU WEILL: What I forgot to mention, Roelof, was that the Budget process at ICANN goes through very, very long interactions with the community, during the ICANN Meetings, public comments... That's still ongoing, and it's actually getting stronger and stronger, thanks to the tireless efforts of our friend, Giovanni. He

is always working with Xavier to improve that, and he's not the only one. That's still in place, and only if this doesn't work out, and ICANN keeps not hearing the comments, then would this thing be taken into account. Once again, in the escalation ladder, we're very far on the right. It's only for exceptional cases.

ROELOF MEIJER: There's a special Budget and Operational Plan-making clinic for legal people. It's called the SOP Working Group!

SPEAKER: Thank you. I just have a quick comment, because actually the Budget has improved because of Giovanni's SOP, but also because of the ATRT II, who made some really strong requirements regarding the Budget that are being carried through now. To Annabeth, what I find is important regarding the Budget community power is that the IANA Budget, if that's vetoed, it's not supposed to stop the ICANN Budget, as such. So that's going to be another, separate part.

MATHIEU WEILL: I'm so sorry. I forgot to mention ATRT II. I feel so bad.

NIGEL ROBERTS: Just a quick comment, which is this: did you consider that not having this reserve operating five per cent, or whatever it was planned to be, might actually act as a break on the community to not use this veto power, like in the shut-down of the US Government? It might be a positive thing not to have it.

MATHIEU WEILL: It was considered. It was amply discussed within the CCWG, and I think what I'm describing here is a result of the balance that was trying to be struck between the continuity concerns and this necessity for this ICANN Budget community power to be a credible threat that in turn would provide incentive for the engagement process to be perfectly successful. So we're definitely speaking of a compromise here between those two aspects. I see your green card, so I want to put it on the record.

NIGEL ROBERTS: Okay, thank you.

ROELOF MEIJER: No further questions? Okay, so that's then the end of the first part of this afternoon's session. Byron, you're going to do the wrap-up and then we'll move to process and decision-making?

BYRON HOLLAND:

I'm going to wrap up this session, which is extended, and then we'll move into the process and next steps session. It was certainly a good and vigorous debate, and a lot of very interesting points were raised for consideration, and I would say the goal of this session was two-fold. One for our CCWG Members and participants to educate us on the current state of play and some of the issues, and also for our Members in particular, and also participants, to listen to us as the community so that they can represent us to the best of their ability in the CCWG.

In terms of what I heard, in regards to the first topic around the IRP, is that the community was definitely comfortable with the current exclusion of delegation and revocation, and also understands that there will be a time gap between – assuming the transition happens – from that point, to the point that we, as a community, successfully complete a PDP on a number of outstanding questions or issues that have been raised by the FOI and others, and that we are comfortable with that but recognize that there are at least a couple of PDPs in our very near future.

There was a question or discussion around SO and AC accountability – so for us, internal ccNSO accountability, and that the fact is that the work of internal accountability will be postponed to Work Stream 2, so after the transition has effectively happened, and as part of that there was support or

acknowledgement and non-objection to the future of structural reviews will assess ccNSO accountability beyond what they already review, and that the room was okay with that.

In terms of their conditional requirements requested or required by the CWG, we heard from Lise and had some discussion there, and the CWG is content right now with where the CCWG is at and the process to this point. So no flags there. In terms of the next item, removing Board Members, it appears that there is recent consensus around this topic, and that the room was satisfied or at least there were no objections with the current proposals for removing Board Members. There was certainly a fulsome discussion on the current models in play – sole member versus sole designator.

There was reasonable clarity on some of the key differences, particularly around sole member coming built in with a package of rights, versus the sole designator having a built-in single right, and additional rights would be added a la carte, as required, and presumably through the work of the CCWG. It was highlighted by some that to a certain degree there are so many steps before we would get to the end point of enforcement, that we heard from a number that in a sense this may be academic in terms of a discussion, and how much is enough was really one of the issues that I heard coming out of that discussion, in the sense of the old legal example of belts and suspenders.

There's no doubt my pants are held up better if I have a belt and suspenders, but quite frankly, a belt will hold my pants up just fine, and perhaps that was the final take on... Belt and suspenders, yes. Belt and braces. As a result, all of these processes allowed even some, who were quite convinced on the sole member model, to at least have enough confidence to allow them to accept the sole designator model. While that is not unanimous in the room, there seem to be significant support for that.

In terms of the Budget, certainly what we just heard right here is that there seem to be significant safeguards around our ability to veto the Budget, but also it's enough of a process that it's unlikely to be hijacked just for political ends. That is what I heard the room saying, and based on watching the room as I've just recounted this, I didn't see any material objections there. So I think this is a reasonable appraisal of the overall conversation that we've had over the last two to two and a half hours.

We'll now move onto the next, and I don't want to jinx it by saying we'll try to recover some time, but we'll take the time is needed, and that is really a discussion around what is the process the CCWG will be following, and the next steps. We'll make it into one discussion. We have Board Members and a representative from one of the RALOs involved in this conversation. Roelof, over to you.

ROELOF MEIJER: Maybe as a brief introduction, I think we've all heard this discussion about if there's going to be a third round of public comments, if it's going to be the same length if we need it, or is it going to be shorter? Can we do without a third round of comments because the plan didn't change that much? I think we've heard that there are quite a few changes here, so over to Mathieu, and he'll explain to us what the discussion is about.

MATHIEU WEILL: Thank you Roelof. The first thing must not be underestimated. It's that the CCWG Accountability has to finalize a report, and that might be quite important to make sure we get the messaging right. Because one of the comments we've received was that it was confusing, so there's a little bit of work on that. There's also quite a bit of work into refining some of the proposals, and previously taking into account the latest developments. That's our best guess scenario right now – to have a proposal ready around the 20th of November, a report.

Then comes the question of whether we need a third public comment or not. That is not a question that the group has considered at this point, so for me it's pretty much to hear what the sense of the room is; whether the level of change requires a new public comment. It's certainly going to be an issue that we'll

discuss in the group later today. Then a reminder of the process itself. Once the CCWG has reached consensus on a draft final report, it is to be provided to the SOs and ACs for endorsement.

There are six chartering organizations in the CCWG. So it would come to the ccNSO, and we'd have to endorse, just like you did with the CWG Stewardship. If it was not endorsed by one or more of the SOs or ACs, or if one of them was not to accept one of the recommendations, we'd have to go back, look at a supplemental draft report to address the concerns, and then send it back for another round of endorsement. Hopefully that would be good.

Then, and only then, once we have approval from all the SOs or ACs, or we've found these two rounds, we'll submit something to the ICANN Board, which will transmit to the NTIA, and has the possibility upon a super-majority decision, to put a comment next to the report, if it thinks that parts of the recommendations would adversely affect the global public interest. That's the whole process. How much time do we need? If we don't go for [enough 02:47:56] of the public comment, that means we would submit to the chartering organization end of November, and maybe if all goes well, or went well, we might consider mid-January approval by the Board.

Here in this graph you see we're already on the second line, very tight. If we go for third public comment, that means that we are probably speaking, depending on whether we can fine-tune the process, of a transmission to the ICANN Board probably around February, at the soonest, or Marrakech, if we follow maybe a slightly more relaxed timeframe. The facts are here, and I wanted to hear the sense of the room on that, because that's one of the key discussions that we have to make this week in the CCWG. That's it for me, Roelof.

ROELOF MEIJER: Thank you Mathieu. The first one is off already, if I understand correctly?

MATHIEU WEILL: Yes, and the blue things on this chart are the times of transmission to NTIA. I think the first one is definitely off.

ROELOF MEIJER: Yes, so we're considering the second, the third, and the fourth. So there's only one that still brings us within the appropriate timeline.

MATHIEU WEILL: Yes.

ROELOF MEIJER: So the question for the room is: can you give us your sentiment? We aren't going to vote. This is just go give us an impression. I'll finish, because otherwise I have to do the rephrasing afterwards. The problem is that to be really clear on that, you have to know what the difference is between the present proposal and the adjusted proposal. You've had some information on that, so I think we all understand that this a guesstimate. You cannot be exact on this, because you can only really judge if you need a third round of comments, if you've seen the finalized third proposal. Before we do that, Keith?

KEITH DAVIDSON: I'd like to make some personal observations, but from my perspective as an IANA Transition Group Member, that to me, we have to measure whether the proposal has met community support, and that's not ICANN community, that's the entire Internet community support. It's vital to me to satisfy myself on that group that whatever happens that is substantially different in the names proposal going forwards has met that community support, which means to me that the value of a full public consultation is very high, otherwise the ICG may well have to do its own further round of consultations. So taking that as a proviso in the discussions...

ROELOF MEIJER: That’s clear, but the key word is “substantial”.

KEITH DAVIDSON: Yes, and there is no doubt that the accountability recommendations are going to be substantial, in terms of a change from the current proposal. Because there is nothing too much about accountability in the current proposal.

ROELOF MEIJER: Okay. I thought you meant the change between the second and the third proposal of the CCWG being substantial or not, but you were talking about the change in what you have now and what you will get. Okay. Mike?

MIKE SILBER: Thank you. Notwithstanding timelines, I’m of the view it’s always preferential to have additional opportunity for comment. At the same time, I think Mathieu... Sorry, this is going to tax everybody’s brains, because at the moment I suspect people have gotten into a pattern of working, but I think we need to try and be creative; to find out how we can abbreviate timelines without impacting on the ability of people to comment. For

example, I would suggest – and this is just a thought – for example putting out a changed document.

What’s changed between the previous proposal and the current proposal out as a document for comment really quickly, possibly even while the final wording of the proposal three years being written might be one of those ways? But really giving people multiple opportunities to engage with the specifics, as well as a very limited but still an opportunity once you’ve got a single picture. Because yes, one chapter may not have changed, but the fact that you’ve changed the previous chapter, which has dependencies, may cause an impact.

I think that we need to be creative, we need to see how we can contract time periods so that it doesn’t drag us beyond Marrakech, but I think it would be really useful if we did give people an opportunity to engage with it, but in a very focused and abbreviated way. Keith, I don’t know if you would think that would be acceptable from what you’re saying?

KEITH DAVIDSON: Yes.

ROELOF MEIJER: Okay. So we’re going to turn to the room. Stephen?

STEPHEN: Roelof, I don't understand how you can condition the public review process on whether there's a substantive change in this report. You're changing models, for goodness sake, and if that isn't a substantial change, I don't know what is. I see no way this can go forward without a public comment period.

ROELOF MEIJER: If I gave the impression that I was passing an opinion on this, that was not the idea, because I haven't formed an opinion yet. That's not the case. I just want to hear what the room feels about this, and your opinion is there has to be a third round of comments. Anybody else?

MATHIEU WEILL: I'm suggesting that maybe we could test whether anyone is of another view than the one that's been suggested so far, which is that a next round of public comments is needed?

ROELOF MEIJER: I'm a bit reluctant to do that, because I'm not sure if it's a fair question, but if you want me to do it, we can try. You would phrase it...

MATHIEU WEILL: I just wanted to check to the temperature... We've heard three interventions in favor of an extra public comment. If someone feels strongly that no public comment should be made because we need to get done with it, then it's time to say it. Because otherwise I'm going to take an input from the ccNSO to the CCWG saying there's a rather large sense of the room that an extra public comment is needed.

ROELOF MEIJER: Let me phrase it: is there anybody who has a different opinion and who is willing to argument it? Pierre?

PIERRE DANDJINOU: Yes. That's not exactly being against a new call for comment, but I'd like to be sure that taking this time is not going to put us into rife too late. So what? Yes, you're right. We can say that – and I'm of the opinion that I don't care that the Congress is impatient or not to look at our paper – so to me, we could take two years more. That's not a problem. But I think Mathieu would not agree with that. But I think this is something...

ROELOF MEIJER: You just want to remain in command of AFRINIC for the next two years!

PIERRE DANDJINOU: I think this is something we have to think about. That's not exactly the case. Just to point out that the question is also whether we are ready to take the risk to be late. To me, the answer is yes, but this is a question we have to have I mind, I think.

ROELOF MEIJER: Yes, and we're not sure about the consequences. Peter?

PETER VEGOTE: Thank you Roelof. I think it's very hard to tell at this point whether that will be necessary or not – a third public comment. I disagree that the change in model is fundamental to argue in favor or against the need for public comment, because as we've discussed in detail, the essence of both models is what is of relevance to us. The difference between the models is not large enough for this room, for the large majority of people in this room, to have a strong opinion either way. There's much more to the new proposal than just the model.

I think the people on the CCWG will have the responsibility to judge whether they, in all fairness, took on board the comments that came in and that suggested conscripted changes to the document. At that point, when they've done that, they will be

able to say whether these inclusions might conflict whether they have chosen one way or another, if two conflicting comments came in. I'm not arguing either way, but I think it's just too early to tell. We've selected highly-skilled individuals, who've been working on this for a year. I would value their opinion very much rather than my own at this stage.

ROELOF MEIJER:

Peter, can you shed some light on what would change the balance for you? What would really change it in such a way that you'd say, "No-no, this is such a difference from the previous proposal..."? What would tip the balance? Or is that an unfair question?

PETER VEGOTE:

I think in general the balance would be tipped if people on the CCWG, through their internal discussions, and we know they're outspoken in their thoughts, that they would realize that the new proposal creates a friction with a position that has been taken by previous input from their group or from additional comments in the second round. They are in a position to judge best of all whether the new proposal will – to put it bluntly – annoy someone, because they've felt that their voice hasn't been heard.

ROELOF MEIJER: Okay. That’s interesting. I think I might formulate a question out of that later. Nigel?

NIGEL ROBERTS: I’m going to echo Keith’s words, which were very precisely put, and very sage. The value of a public comment, when you’ve made a significant change to the community, including the non-ccNSO Members of our community, is very high. I’m not making a specific say at this point that I will die in a ditch over anything. What Pierre said, we want to be careful we don’t make the risk of missing the deadline, fine, but we don’t want to make the risk of making the deadline with a half-baked proposal.

If, in our rush, we go with a half-baked proposal, which either the ICG sees as obviously insufficient for going forward, or, worse still, we manage to bully and persuade the ICG to let it out, and then the US Governmental Congress or I don’t know who turns around and says, “That’s a half-baked proposal,” and the value of a public comment period is, as Keith said, extremely high.

ROELOF MEIJER: Nigel, I wouldn’t be surprised if you had full consensus in this room on what you just said. The thing is...

NIGEL ROBERTS: That's good, because we can leave it there and catch up some time.

ROELOF MEIJER: Well, the thing is what we are trying to do is get the sense from the room on do you think the changes are so significant – because that's the word you used too...

SPEAKER: You asked me a question! I heard a question. If you don't want me to come back to the microphone, don't ask me a question.

ROELOF MEIJER: Okay. I'll never make that mistake again.

SPEAKER: Do you want me to answer whatever question it what you were posing?

ROELOF MEIJER: No. Thank you. What we are trying to discover is do you think the changes you've heard this afternoon, are they so substantial that we have to have another round of comments? The opinions vary on that. I go back to Byron.

BYRON HOLLAND:

I just want to make a comment as a Member of the ccNSO, not as Chair here. That's to pick up on Pierre's point. I take a different view of that. I think we must take into consideration the risk associated with missing the dates. Not hitting material milestones significantly puts at risk the success of a proposal making it through the US Congress and allowing the contract to lapse in September of 2016. We shouldn't kid ourselves that we can just take whatever time we want, if we want to get this done now, because as we had in the US election period, all bets are off that this would get accepted.

In fact, I think we have to assume that after September 2016, if we're not ready and done, the likelihood is this window is closed, and it is unclear when the next window to go through a transition process would be, but it would strike me as a number of years. We shouldn't discount that serious risk, and that should factor into the process and next steps. I'm not saying it's determinate. I'm not advocating for half-baked proposals – absolutely not – but we should not just dismiss the material risks associated with missing key milestones here.

ROELOF MEIJER:

Thank you Byron. Martin?

MARTIN BOYLE:

Thanks Roelof. I must admit I'm very much of Byron's mind that if we go into that red zone then we are at serious risk of having to start all this again in perhaps two or four years' time, perhaps never. I would think certainly for this community to lose that opportunity is something we'd have to ask ourselves very carefully whether that was something that we could accept, and I don't think it is.

I wonder, because certainly I am conscious that there is a substantial change that has come in with the where consensus seems to be developing, and I wonder whether there's a nice halfway house, which allows us to look at a very precise consultation, which is just looking at the changes, with a very clear question to the community, with a very clear explanation to go with that question to the community, that would allow us to go for a shorter consultation.

Perhaps it would be only 30 days, perhaps even marginally less, if ICANN rules allow that, rather than going for a 40-day consultation, which then jeopardizes our position between the second and third line. I'm putting that forward as is this the area where it might be worth looking at a direction forward. Thanks.

ROELOF MEIJER:

Mathieu, as Co Chair, how do you feel about that? I think in one of your previous comments there was slightly [unclear 03:03:22]

as a Working Group we got feedback on the clarity of the second proposal, and I think you mentioned that we had to do some work on that as well. What Martin suggested, and I think it was Mike’s suggestion too, more or less, was to be creative, come up with a changed document. Could you tackle those two?

BYRON HOLLAND: I’m going to jump in here for a minute, because I know there’s a CCWG Meeting starting shortly, and there is a ccNSO Council Meeting, so we have about five more minutes to wrap this up.

MATHIEU WEILL: At this point I would say what I’m hearing is useful, something I will convey in the discussion that we’ll have in the CCWG, very, very aware of the political risk with the timeline. We’re very aware of the need to get community buy-in and to be able to document it, which is part of the criteria from the NTIA. We’re facing yet another interesting decision to make. No pressure. Fun.

ROELOF MEIJER: Okay. It’s not so difficult to come up with a conclusion from this discussion, and I think we probably all agree that if possible, a third round of comments on an improved document would be best, but there are some arguments against the delay that that

would provoke. I think Mike's input that we have to be creative and to try to combine the two into something that still works is going to be a challenge for us, but I think I'll hand it back to you, Mr. Chair, so you can do that winding up.

BYRON HOLLAND:

Thank you. That was a slightly abbreviated version of that session. But I think it was probably very helpful for the Members to hear the general feedback that we had. There was some clarity in terms of expecting the next report on November 20th, or thereabouts. Certainly there is no clarity at this point on whether there will be a third round of comments, though that is a topic for discussion even later today, at the meeting just mentioned. Whatever comes out of the next iteration of the CCWG's proposal will be coming back to the six chartering organizations for their approval, and the CWG, in terms of its contingencies, absolutely.

What I heard was potentially the transmission to the Board in the February timeframe, maybe as late as Marrakech, which, as we can see from the slide presents some significant potential logistical challenges, to put it mildly. I'll leave it at significant challenges. I do want to reiterate one of the points made; that the value of public comment is very high, and we heard that from more than one person. Certainly, what we heard by and large is not knowing what's in a next iteration of the proposal. that it

would be likely highly desirable to have another PCP. I think that sums up what I heard over the past 45 minutes.

I want to say thank you very much. I know it was a long afternoon. Absolutely critical topics to be discussed, and I think we, as a community, or we in this room, have provided significant inputs, thoughts, ideas, to the Members and participants of the CCWG, and obviously the CCWG Members have provided substantive comment back to us, to help us think about these very complicated issues.

I'd like to thank all the Panelists, and certainly Mathieu for being in a friendly audience, but on the firing line here, and without a doubt Roelof, who stepped in to be the moderator, because unfortunately Lesley was sick. Roelof stepped in at the last minute and shouldered a significant load. For anybody who's moderated a session like this, it's not a trivial task. So thank you. Again, thank you all the CCWG Members, and the CWG Members before them, for all the work that's gone into getting us to a place like this.

[Audio part 3]

KATRINA SATAKI: Dear colleagues. Are we ready to start our Council Meeting? We start our ccNSO Council Meeting here in Dublin, 21st October 2015. I would like to ask the Secretariat to list apologies we have received so far.

SECRETARIAT: We have received, in addition to the ones on the screen, Vika, Byron, Lesley sent her apologies, and Celia.

KATRINA SATAKI: Thank you. Are we quorate?

SECRETARIAT: Yes, we are. We have nine Councilors and at least one from every region.

KATRINA SATAKI: Very good, then let's proceed. Since the CCWG Working Group Meeting at this moment is already running in another room, we have a proposal to slightly change our Agenda at the day, and address only administrative issues, leaving substantial issues for the next Council Meeting that we'll have on a call. Any objections to that? No objections, therefore let's proceed.

Agenda Item #2 – minutes and actions. As you can see, all actions are completed. Agenda Item #3 – ccNSO Membership

application for .tk, Tokelau. I think that all the Councilors have received Jordi's email on October 8th in which he noted that there are no outstanding issues regarding this application, and therefore we need a formal approval of the Membership application of Telecommunications Tokelau Corporation, or TeleTok, the ccTLD Manager for .tk, Tokelau.

We have a draft resolution for that. The ccNSO Council approves the application of the ccTLD Manager of .tk and welcomes Telecommunications Tokelau Corporation, TeleTok, the ccTLD Manager for .tk Tokelau as 157th Member of the ccNSO. May I have a notion?

KEITH DAVIDSON: Since it's in my region, I'd like to move the resolution. Thank you.

KATRINA SATAKI: Thank you, and seconded by... Okay, people second it. Resolution passed. Sorry? Anyone wants to comment? No, then we vote. Who votes against? Anyone against? Anyone abstains? In favor? Unanimous. Thank you, the motion is passed. Welcome .tk, our 157th Member.

Agenda Item #4 – appointment Member of ccNSO Travel Funding Committee. As you know, the Travel Funding Committee is the

ccNSO's Committee, and Jordi will leave us at some point. This is Jordi's last ccNSO Council Meeting, and Jordi helped us by stepping in on Viktor's behalf on this Committee, but now he has to leave as well. We had a call for volunteers, and we got one volunteer, Celia Lerman Friedman. So we have a draft resolution.

The ccNSO Council appoints Celia Lerman Friedman as Member of the ccNSO Travel Funding Committee. Can I have a motion on that? Nigel, and Becky seconded. Thank you. Anyone would like to comment? Apparently not. May I ask for a vote. Who is against? Who abstains? Nobody. Who is in favor? Unanimous.

NIGEL ROBERTS:

Point of order. As a matter of interest, if you've asked for everybody who's against, everybody who's abstained, and not seen anyone, it's unanimous. You don't need to count it.

KATRINA SATAKI:

That is true, mathematically correct, but we still have our procedure. I really love to see you moving, otherwise you might fall asleep. Agenda Item #4.2. Unfortunately, as we learned a couple of days ago, Dotty also steps down as a Councilor, and she also served on the Travel Funding Committee, perhaps since the Committee started its work, and apparently we will need to

replace Dotty on the Travel Funding Committee as well. Therefore, I'd like to ask the Secretariat to send out a call for volunteers to the Councilor's mailing list at the end of this meeting, to see who would like to take this responsibility. Thank you.

Agenda Item #5 – appointment of Abibu Ntahigiye – Abibu Rashid – to oversee ccNSO Membership application. Again, Jordi did that for some time and Jordi's leaving. Abibu has volunteered to oversee the ccNSO Membership application process, and the draft resolution of the Council says, "The ccNSO Council appoints Abibu Rashid as Councilor to oversee the ccNSO Membership application process." Can I ask for motion? Demi, second? Jordi? Thank you. Anyone wants to comment? No, then I ask for a vote. Who is against? Who abstains? I don't see any. Another exercise – who is in favor? Unanimous. Thank you very much.

Agenda Item #6 – selection of IDN ccTLD representatives for ICANN's IDN Guideline Review Team. As you may remember, we had a call for volunteers, and we have two volunteers. [Martin Doveberry] from Sweden, .se, and Pablo Rodriguez from Puerto Rico, .pr. We have the draft resolution: "The ccNSO Council appoints the following persons as ccNSO Members on the IDN Guideline Review Working Group, [Martin Doveberry], .se, and Pablo Rodriguez, .pr. The Secretariat is requested to inform the

candidates and relevant ICANN staff.” Motion? Hiro. Second? Margarita. Thank you. Any comments on this resolution? Yes, please?

CHING CHIAO: Thank you Chair. Out of my curiosity about the participation from the “CJK” – the Chinese, Japanese and Korean – sees this IDN guidelines have impacted them the most. Historically they put efforts on previous versions of the IDN guideline, which they have been involved in. I’m just trying to see if this Working Group is still open for membership? Or is it closed for the opportunity? Maybe they are still trying to figure out a way to be involved, but I’m just trying to capture what’s happened, and how can we maybe involve them more in terms of an ongoing voice?

KATRINA SATAKI: These are the volunteers who stepped forward. Bart, could you comment if there’s a possibility to be observers on the Working Group?

BART BOSWINKLE: I don’t know. I think for the CJK people they should get in direct contact with [Sarmad Hussain], who is the convener of this Working Group. They have a limited number on the Working Group and they’ve assigned two seats to the ccNSO. We sent out

a call for volunteers, and I think even we extended the call for volunteers, and these were the two who responded. It was sent to the ccTLD community, the ccNSO Members' list, and also consulted with former Members on the previous Working Group.

KATRINA SATAKI:

Thank you Bart. Any more comments? If not, then I'll call for a vote. Anyone against? Anyone abstains? Who is in favor? Unanimous. Thank you very much. Let's move to Agenda Item #7 – update on ccNSO Council elections. First, as you remember, we have an extended period for nominations in the Latin American region, but with the recent developments, following Dotty's announcement to resign from the ccNSO Council, we will need another Councilor to fill in her place on the Council, for the remaining period of Dotty's term – that is until March of 2017.

We really need to seek a replacement as soon as possible, and therefore we need to appoint an election manager for this task, and set the timeline. Agenda Item #7.1 is approval of timeline special Council elections in North American region. We need to set the timeline for the election of a new Councilor from this region. As I already mentioned, the call for nominations has to go out as soon as possible. In the North American region we don't have many Members – only five of them.

Even though all of them are present here in Dublin, we still need a nomination period, but we propose to have it not as long as we probably usually have, and align this nomination period with the extended nomination period we have in the LAC region. That is until the 30th of October 2015. So a call for nominations [second 18:25] nominations will start from 22nd October until the end of October, and elections Thursday 5th November, 00.01 UTC, until Thursday, 19th November 23:59 UTC. In case we need a run-off of elections, it's going to be the 1st until 8th December.

We have a draft resolution on that: “The ccNSO Council adopts the timeline for the special ccNSO Council election for the North American region, for the remainder of the seat term March 2017.” That’s the resolution. Motion? Yes? Keith? Secondment? Nigel, thank you. Any comments, suggestions, questions? If not, I’d like to call for a vote. Anyone is against? Anyone abstains? Anyone in favor? Unanimous. The timeline has been approved.

Agenda Item #7.2 – appointment Election Manager ccNSO Council election to replace Dotty Sparks de Blanc. Draft resolution: “The ccNSO Council appoints Gabriella Schittek as Election Manager for the ccNSO Council election process 2016. I assume that Gabby has agreed. She’s doing that for the European and Latin American regions anyway, so maybe we decided not to ask for her approval. Anyway, anyone want to move?”

KEITH DAVIDSON: I'd like to move that, and I suggest we don't go through comments and someone seconds, and we go straight to voting.

KATRINA SATAKI: Okay. Gabby will second. Anyone is against? Who abstains? Who is in favor? Unanimous. Thank you. #7.3 – progress to date and next step. I already touched upon that. The election process for the LAC region has been extended until the end of October. After the closure of this period, there will be at least an election in the European region, because we have two candidates from that region, and if we have another candidate from the LAC region, we will have elections there as well. There is a proposal that we have an election wherever is necessary in the region where we need elections, starting from 5th November, and closing on 19th November.

We don't have any resolutions for that, but technically I think we need to vote. I'd say that we have a draft resolution that the ccNSO Council... We don't need...?

SECRETARIAT: There's no need for a vote. You have already determined the timeline.

KATRINA SATAKI: Okay, even better. Thank you. Everybody feels informed. Thank you. Now we have substantive Agenda Items that we agreed to move to the next Meeting, therefore let's move to Agenda Item #14, which is the date of next meetings. We have currently scheduled two meetings this year, for November and December; that's 19th November and 10th December, but apparently we will need to have another call approximately in two weeks' time, as we decided during the Council Workshop. I'd like to ask the Secretariat to send out a Doodle poll to find out the best date and time for this call. Agenda Item #15 – Any Other Business. Anyone? Jordi, please?

JORDI IPARRAGUIRRE: Thank you. As you know, this is my last Council Meeting, the term for being the Councilor nominated by the NomCom is over. I've known quite a lot of you since long ago, so I really thank you for all your friendship and help during all those years. I hope that we will continue seeing each other somehow, somewhere, who knows? But anyway, thank you very much for everything. Thanks.

KATRINA SATAKI:

Thank you very much Jordi. Any Other Business? If not, then following Jordi's note, and moving to Agenda Item #16, that's thank you and welcome. First of all, I think we'll start with welcomes. No, we end with welcomes, apparently. First, we thank. Okay. I'll read all the things, because there are too many, and we can't forget anyone. The ccNSO Council wholeheartedly thanks the local host for its hospitality and assistance during this historic event in Dublin. The Council also wants to thank the sponsors of the very successful ccNSO Cocktail. Those sponsors are .au, .ca, .kr, .nl, .pr, .tw, and Verisign, .cc. .verisign!

The ccNSO Council thanks Jordi Iparraguirre, who has come to the end of his term as NomCom appointed Councilor for all his hard work and contributions to the Council, ccNSO and broader ccTLD community, and hopes he will remain to be involved in the community, just as Jordi hoped. The Council wants to thank Dotty Sparks de Blanc, who has been on the ccNSO Council since 2004, and is one of the founders of the ccNSO. During all these years Dotty has been involved, she participated in the work of the ccNSO Council in her own unique way, and the Council is grateful for all the hard work she has put into serving the community.

The Council hopes she will remain to be active in the community, and we definitely hope to see you in Marrakech, just to properly thank you for everything you've done. [applause]

DOTTY SPARKS DE BLANC: I just want to say I'm not moving away. I'm just moving aside for younger blood to have a chance to demonstrate their energy and incisive ideas. I want to just tell all of you that it has been an extraordinary pleasure to work with you here, and I've never been in a job that is more stimulating and rewarding and where I had a chance to rub shoulders with nicer people. Thank you very much for enlarging my life.

KATRINA SATAKI: Thank you very much Dotty. On behalf of the whole ccTLD community, the ccNSO Council wants to thank Kristina Nordstrom for all her years of hard work --and as we learned yesterday, instead of six months, six years – support for the community, and wishes her the best in her new endeavors. Thank you Kristina. I hope that if you will run out of patience one day, you will come back treat our community. Further, also on behalf of the whole ccTLD community, the ccNSO Council wants to thank Martin Boyle for all the years of hard work, heavy lifting and contributions he has made into the work and quality of work of the community. The Council is sure that he will enjoy the next phase of his life. Nigel?

NIGEL ROBERTS: I think I have to bring Martin’s apologies for not being here for this item. He’s continuing to do the heavy lifting in the CCWG.

KATRINA SATAKI: Finally, the ccNSO Council welcomes its new Members. There’s Christelle Vaval, our NomCom appointee, and Alejandra Reynoso from Guatamala, .gt. Welcome. I hope we didn’t scare you away.

SECRETARIAT: As usual, for the departing Councilors, because by now we have a whole stack of them, this is for your further life. I hope you enjoy. For you as well, Jordi, and knowing Keith, this was your last face-to-face meeting as a Councilor, for you as well. Not pre-empting...

KATRINA SATAKI: Again, thank you very much, and welcome. With that, I would like to close the ccNSO Council Meeting. Thank you very much for participating, and those of you who haven’t had enough of accountability stuff during these two days, please hurry to the next meeting room. Thank you very much. Goodbye.

[END OF TRANSCRIPTION]