

## Adobe Connect Chat Transcript-16 October 2015

### CCWG ACCT Face 2 Face Meeting-ICANN54 Dublin

>> Brenda Brewer2: (10/1/2015 07:16) Hllo, my name is Brenda and I will  
>>be monitoring this chat roo. In this ole, I am the voice for the remote  
>>participants, ensuring tht they ae heard equally with those who are  
>>³n-room² participants. When submitting a questio that you want me to  
>>read out loud on the mic, please provide your name and affiliationif you  
>>have one, start you sentence with <QUESTION> and end it with <QUESTION>.  
>>When submitting comment that you want me to read out loud of the mc,  
>>once again provid your name and affiliation if you have one then start  
>>your sentene with a <COMMENT> and end it with <OMMENT>. Text outside  
>>these quotes will be consiered as part of ³chat and will not be read  
>>out loud on the mic.Any questins or comments provided outside of the  
>>ssion time will not be read aoud.All chat sessions are being archived  
>>and follow the ICANN Expected Standardsof Behavior:  
>><http://www.icann.org/en/nes/in-focus/accountability/expecte-standards>  
>> Alice Jansen 2: 7:40) We ave not started yet - thank for your  
>>patience.  
>> Josh: (07:42) For direct access to the scribing text:  
>><https://www.streamtext.nt/player?event=LiffeyH216Ot2015>  
>> Brenda Brewer2: (07:43) see new email with updated Adobe link  
>> Cheryl Langdon-Orr - ALAC PRegiona Member: (07:45) morning all :-)  
>> Sabine Meyer (GAC - Germany): (07:45) Hell everyone!  
>> Robin Gross [GNSO - NCSG]: (07:45) Good morning, Dublin!  
> Jordan Carter (.nz, WP1 Rapporteur): (07:45) ia ora ano  
>> Kavouss.arasteh: (07:49) Dear Faithful and determined CCWHG colleagues.  
>> Kavouss.arasteh: (07:49) Dear Devoted and tirelss Co Chairs  
>> Kavouss.arasteh: (07:49) Dear IICANN ALSO DEVOITED STAFF  
>> Kavoussarasteh: (07:50) Good morning to all  
>> Kavouss.arasteh: (07:52) MATHIEU,  
>> Kavouss.araste: (07:52) For me the most important and top criteria is  
>>discussio on the Community Mechanism and its associated empowerment

>> Robin Gross [GNSO - NCSG]:(07:53) Is there a handy link to the "score  
>>card" under discussion?  
> Bruce Tonkin: (07:54) Good morning Kavouss  
>> Gangesh Varma: (07:54)  
>>[https://docs.google.com/spreadsheets/d/1HcUUDn5DHSVo7ILo-FWU\\_QMa8PGgfZWTP](https://docs.google.com/spreadsheets/d/1HcUUDn5DHSVo7ILo-FWU_QMa8PGgfZWTP)  
>>\_  
>>kGo1EXNQs/edit#gid=1327274628 - score card.  
>> Robi Gross [GNSO - NCSG]: (07:55) Thank you!  
>> Hillary Jett: (07:56) @Robi, the scorecard is also located in he  
>>Chairs Statement and is downloadable in PDF from there as well:  
>><https://www.icann.org/news/blog/ccwg-accountability-co-chairs-tatement-l>  
>>e  
>>ading-into-icann54-in-dublin  
>> Robin Gross [GNSO - NCSG]: (07:57) Thanks, Hillary.  
> Kavouss.arasteh: (08:01) We ,or at least overwhelming super majority of  
>>us are determined to to continue to use what we have built .I  
>> Hillary Jett: (08:03) The document Jordan is running through is from  
>>the Reading List and can also be found here:  
>>2015-10-12-CCWG-WP1-SecondPC-OPTIONS-PAPER.pdf  
>> Hillary Jett: (08:03) \*Oops! Updated link:  
>><https://community.icann.org/download/attachments/52888421/2015-10-12-CCWG>  
>>-  
>>WP1-SecondPC-OPTIONS-PAPER.pdf?version=1&modificationDate=1444644861000&a  
>>p  
>>i=v2  
>> Suzanne Woolf: (08:05) URL for the document Jordan is discussing?  
>> Gangesh Varma: (08:06) Thank you Hillary  
>> Alice Jansen 2: (08:06)  
>><https://community.icann.org/download/attachments/56142506/2015-10-12-CCWG>  
>>-  
>>WP1-SecondPC-FullAnalysis.pdf?version=1&modificationDate=1444644438000&ap  
>>i  
>>=v2 - p25  
>> Suzanne Woolf: (08:06) thx

>> Jordan Carter (.nz, WP1 Rapporteur): (08:15) it's a Mac meltdown

>> Hillary Jett: (08:16) @All thank you for your patience while we fix  
>>this technical problem

>> Cheryl Langdon-Orr - ALAC APRegional Member: (08:18) gremlins? we  
>>hould have Leprachauns rather than gremlin surely ;-)

>> Theo Geurts: (08:18) :)

>> Mathieu Weill, ccNSO, co-chair: (08:18) Cheryl, I will report you to  
>>Michele for mentioning Leprechauns 1st

>> Jordan Carter (.nz, WP1 Rapporteur): (08:20) it's in the room, but not  
>>on the screen in the physical room

>> James Bladel: (08:21) Q: If it requires 2 SO/ACs to continue the  
>>process beyond a Community Forum, could a different 2 SO/ACs object to  
>>"kill" the process? It seems that this would indicate a divided  
>>community position, and we should get off the track as early as  
>>possible.

>> Keith Drazek: (08:22) Thanks to Jonathan for this very helpful review  
>>of the Los Angeles breakout sessions, which were themselves constructive.

>> Kavouss.arasteh: (08:23) Are we modifying the three steps that we have  
>>had

>> Kavouss.arasteh: (08:23) Peition, Forum and Decision, if yes why

>> Bruce Tonkin: (08:24) Yes - good to set out clearly the process for  
>>building up to a formal community objection.

>> Martin Boyle, Nominet: (08:24) @James: that's a useful point. Save a  
>>lot of inter-community division

>> Mathieu Weill, ccNSO, co-chair: (08:24) No Kavouss, that is a different  
>>way to see the same process (with more details)

>> Kavouss.arasteh: (08:24) Or it is a expansion of those three steps ?

>> Bruce Tonkin: (08:24) Note that a next step could be for the community  
>>then formally meet wit the Board in some form to resolve prior to kicking  
>>off an IRP armed with lawyers on both sides.

>> James Bladel: (08:24) @Martin - exactly, we don't want this process to  
>>be driven by a "vocal minority" if the ultimate outcome is that it won't  
>>have community consensus.

>> Bruce Tonkin: (08:25) ie similar to the process at the moment for the

>>Baord to meet with the GAC to attempt to resolve a difference.

>> Cheryl Langdon-Orr - ALAC APRegional Member: (08:25) I agree Bruce....

>>

>> Keith Drazek: (08:26) +1 James and +1 Bruce

>> Martin Boyle, Nominet: (08:26) @James: or entrench mutually opposing

>>views

>> Kavouss.arasteh: (08:27) I have difficulties to refer to VOT

>> Kavouss.arasteh: (08:28) inconsistency between the titiole " Consensus

>>" Voting

>> Cheryl Langdon-Orr - ALAC APRegional Member: (08:28) we note that

>>Kavous

>> Robin Gross [GNSO - NCSG]: (08:29) what about the argument that a GNSO

>>or other policy decision violates the bylaws or misssion of ICANN?

>>Wouldn't the powers then be triggered?

>> Bruce Tonkin: (08:30) Hopefully there is a wireless mike in the room.

>> Mathieu Weill, ccNSO, co-chair: (08:30) @Robin: that would be a subject

>>matter for the IRP

>> Hillary Jett: (08:30) @Bruce yes we have a wireless microphone in the

>>room

>> Julia Wolman, GAC Denmark: (08:30) +1 Jorge

>> Kavouss.arasteh: (08:30) Pls avoid the use of the term " VOTE and

>>Voting" as much as possible

>> Robin Gross [GNSO - NCSG]: (08:30) thanks for the clarification,

>>Mathieu

>> Jordan Carter (.nz, WP1 Rapporteur): (08:31) an IRP might

>> Bruce Tonkin: (08:32) Hopefully there are roving microphones for use in

>>this room.

>> Wolfgang: (08:32) My understanding is that the final (consensus)

>>"community objection" is indeed something like the "consensus GAC

>>advice". The difference is that a rejected consensus GAC advice leads to

>>"consultations" and the publication of rationales.. A rejected

>>(Consensus) community objection would lead also to consultations but

>>could be further escalated to arbitration, right?

>> Hillary Jett: (08:33) @Bruce yes we have a roaming microphone in the

>>room.

>> Jordan Carter (.nz, WP1 Rapporteur): (08:34) I don't support a  
>>"unanimity" consensus level for the exercise of community powers. It's  
>>too high a threshold.

>> jorge cancio (GAC Switzerland): (08:34) Dear Thomas: I agree with the  
>>escalation approach, but please note: we cannot define consensus as a "no  
>>objection"-standard. We have to define it as a process and as a level of  
>>positive support

>> Robin Gross [GNSO - NCSG]: (08:34) Agreed, Jordan.

>> Bruce Tonkin: (08:35) Agreed @Jordan.

>> Gangesh Varma: (08:35) Is it possible to enable individual scroll on  
>>the transcript? it was enabled earlier

>> avri doria (atrt, participant): (08:38) my question is one of  
>>clarification as to what this process applies to.

>> Grace Abuhamad: (08:38) @Gangesh --

>><https://www.streamtext.net/player?event=LiffeyH216Oct2015>

>> jorge cancio (GAC Switzerland): (08:38) Dear co-chairs and staff:  
>>please note for the record that I agree with the escalation approach, but  
>>please note: we cannot define consensus as a "no objection"-standard. We  
>>have to define it as a process and as a level of positive support

>> Gangesh Varma: (08:38) @Grace - Thank you

>> avri doria (atrt, participant): (08:38) i sclarification question  
>>allowed?

>> Keith Drazek: (08:41) To Bruce's point, add a bullet under the last  
>>Ladder Step for "Community-Board Dialogue"

>> Steve DelBianco [GNSO - CSG]: (08:41) @Bruce -- our LA breakout  
>>required the Board to be part of the Comm Forum discussion.

>> Robin Gross [GNSO - NCSG]: (08:43) key question, Avri.

>> Bruce Tonkin: (08:43) @Jonathan 0 thanks for clarifying the last step.

>> I think it would be useful to think through the actual process for how  
>>the community objection is presented to the Board and how a dialogue  
>>might happen. The Board in general will want to resolve a community  
>>obejction as efficiently as possible. This usually requires a dialogue.

>> So how would he "dialogue" happen. e.g is thare some selected group

>>of community memebtrs that would meet across the table with Board members  
>>in a public forum of some sort. ie much how the Board meets with an SO  
>>or AC during teh ICANn week today?

>> avri doria (atrt, participant): (08:45) Steve, i agree, i thought the  
>>Board was invovled in the Community forum part. though they were not part  
>>of the decision making.

>> Bruce Tonkin: (08:45) @Steve - do you mean that the Baord would  
>>participate in teh community forum and make a change to its deicsion  
>>before the forum reaches a decision? I am not clear how that works.  
>>I would edeptct the Baord would use the foun to perhaps clarify its  
>>reasoning, but an actual change to a Baord decision would presumably  
>>happen in teh last step once it is clear whaqt the community as a whole  
>>would like to see happen.

>> Becky Burr: (08:46) @Bruce - isn't that really up to the Board?

>> Bruce Tonkin: (08:46) Changes to Board decisions are not made o teh fly  
>>- but generally woudl result from a Board meeting scheduled 7 days in the  
>>future with Board papers etc prepared in advance.

>> Keith Drazek: (08:46) +1 Kavouss, we need to allow for the ACs to  
>>remain advisory if they choose to do so.

>> Ken Salaets: (08:47) if board engagement is during the third step, is  
>>there a risk that the process may bog down? if the engagement in step 3  
>>is informal or as a community member, it could make for a more efficient  
>>process, but it seems having the "formal" engagement durng the last step  
>>would be more definitive.

>> Cheryl Langdon-Orr - ALAC APRegional Member: (08:47) of course we do!

>> Keith Drazek: (08:47) No objection. I support this approach for further  
>>work in the break-out sessions.

>> Jonathan Zuck (IPC) 2: (08:48) We welcome all comers in the subteam  
>>discussion to flesh this out for each power tomorrow

>> Bruce Tonkin: (08:48) @Becky - I certainly think the Baord would want  
>>to partipate in a communtiy forum. I am just wanted to clarify the more  
>>formal process of how the Board changes its decision. In the byalws  
>>the GAC and each of the supporting Orgs has a formal process for  
>>resolving a difference with the Board. IT is not particularly defined -

>>but basically the Board meets with the relevant committee or SO Council.

>> Just wanted to understand how the Board meets with the Community

>>formally at the end of the process described by @Jonathan.

>> Kavouss.arasteh: (08:50) Mathieu, Pls add in two areas after the term "

>>Objection " the following ? or AC Advice to the contrary" to maintain the

>>more straight forward Advice status of some ACs

>> Mathieu Weill, ccNSO, co-chair: (08:51) Avri : answer to your question

>>is at §101 of 2nd report : it is currently conceived through an IRP

>>challenge of the Board decision not to implement separation. There was a

>>CWG comment to that question

>> Kavouss.arasteh: (08:52) then the text would read " Try No Objection/

>>from SOs and No Advice to the contrary from ACs

>> Mathieu Weill, ccNSO, co-chair: (08:53) Thanks Kavouss, valuable indeed

>> Guru Acharya: (08:54) request the secretariat to ensure that the

>>breakout sessions remain friendly for remote participants. the breakout

>>sessions couldnt be followed by remote participants in the last face to

>>face.

>> Grace Abuhamad: (08:54) Noted @Guru. Thank you

>> Kavouss.arasteh: (08:54) Mathieu, thank you are always positive and

>>constructive

>> Mathieu Weill, ccNSO, co-chair: (08:55) It's only the beginning of the

>>week Kavouss, I can't commit to that standard for the future ;-)

>> avri doria (atrt, participant): (08:56) I do not accept that we should

>>walk away from the SM model at this point as there still is no direct

>>method for enforcing separability . one of our major requirements.

>> Kavouss.arasteh: (08:56) I am suggesting many obstacle put before us

>>and one of them was not to change the status of the ACs from advisory

>>capacity to decision making capacity

>> Guru Acharya 2: (08:57) +1 avri

>> Jordan Carter (.nz, WP1 Rapporteur): (08:58) Avri, tease that out in

>>the discussion if possible?

>> Jordan Carter (.nz, WP1 Rapporteur): (08:58) we have to be confident

>>the requirements can be met

>> Robin Gross [GNSO - NCSG]: (08:58) we must be able to have separability

>> Mathieu Weill, ccNSO, co-chair: (08:59) +1 Jordan, Avri this is a topic  
>>to raise for clarity

>> Keith Drazek: (09:00) If the community can spill the Board, can't it  
>>replace it with a Board that would permit/implement separability?

>> Bruce Tonkin: (09:00) @Avri - I assume separability is built into the  
>>bylaws. AS long as the bylaws are clear the resolution of separability  
>>should be clear. A panel is then used to determine if the board is  
>>adhering to bylaws.

>> Robin Gross [GNSO - NCSG]: (09:00) but individual SO's and AC's must  
>>still be able to remove their director without approval of the other  
>>SOACs.

>> Athina Fragkouli (ASO): (09:01) +1 Robin

>> Jordan Carter (.nz, WP1 Rapporteur): (09:01) Robin, I don't think that  
>>that's connected to the enforcement model

>> Mathieu Weill, ccNSO, co-chair: (09:02) +1 Jordan, that can be  
>>accommodated (although comments show diverging views on that)

>> Bruce Tonkin: (09:02) For enforcement lots of ways to add that. For  
>>example gTLD registry and ccTLD agreements could build in the separation  
>>and arbitration into their agreements, same with RIRs and also ISOC/IETF.

>> Robin Gross [GNSO - NCSG]: (09:02) Keith, I don't see the community  
>>realistically spilling the board. if community empowerment is dependent  
>>on spilling the board, I don't think it is enough.

>> Jordan Carter (.nz, WP1 Rapporteur): (09:02) Avri: I asked our counsel  
>>whether without membership it would be impossible for separation to  
>>happen. They were very firm that that wasn't a problem.

>> Keith Drazek: (09:02) +1 Thomas. Evolution and refinement in response  
>>to public comments is necessary to legitimize our process and the end  
>>result. Doing so leads to success.

>> Robin Gross [GNSO - NCSG]: (09:02) Jordan, I was referring to the  
>>comment the entire community would make decisions. So I was saying this  
>>particular decision would be individual SOAC.

>> Jordan Carter (.nz, WP1 Rapporteur): (09:02) So can you / we tease out  
>>what you mean by "direct enforcement"?

>> Becky Burr: (09:03) I agree this is a possible way forward, but we



>>need to take care that the stick isn't so big that the community cannot  
>>lift it.

>> Kavouss.arasteh: (09:03) Our Legal Counsel ,Holly and Rosemary have  
>>kindly worked hard and produced a vefry valuable documents responding to  
>>the Plan B ,in a more structured context

>> Bruce Tonkin: (09:03) @Robin - I thin if the Board decides to reject an  
>>independent panel that finds find the Baord has breached its bylaws -  
>>that would seem to be to be a very legitiamte reason to remove the Board.

>> Stephen Deerhake (.as): (09:04) +1 for Jordan's comment.

>> Robin Gross [GNSO - NCSG]: (09:04) I'd like to hear from our lawyers  
>>about enforcement under designators.

>> Jordan Carter (.nz, WP1 Rapporteur): (09:04) me too

>> Bruce Tonkin: (09:05) @Robin - my understanding that designators can  
>>appoint and remove directors under California law. The rest of a  
>>matter of our bylaws.

>> Robin Gross [GNSO - NCSG]: (09:05) what if the board says "seperation  
>>is against the global public interest". how do we get around that?

>> Bruce Tonkin: (09:06) @Avri - I think enforcement is probably a  
>>combination fo what we put in our contracts with users of the IANA  
>>functions, and the powers for removing Board directors or Baord as a  
>>whole.

>> Julia Wolman, GAC Denmark: (09:07) It is of great concern if the  
>>separability process could not be triggered effectively

>> Sabine Meyer (GAC - Germany): (09:08) +1 Julia

>> Robin Gross [GNSO - NCSG]: (09:08) did I just hear recalling the board  
>>is the way of enforcement for separability? That doesn't sound good.

>> Julia Wolman, GAC Denmark: (09:08) +1 Robin

>> Guru Acharya: (09:08) the designator model strongly weakens the  
>>dependency envisioned by the cwg. indirect enforcement will become a long  
>>drawn process in which there is no way to ensure the subsequent board  
>>will also not invoke fiduciary responsibility

>> Bruce Tonkin: (09:10) @Robin - it is one way but not the only way.

>> Robin Gross [GNSO - NCSG]: (09:11) the other way is an IRP decision and  
>>hoping the board adopts the decision?

>> Guru Acharya: (09:11) how do we ensure the subsequent board wouldn't  
>>again invoke fiduciary responsibility given it's a statutory requirement.

>> Leon Sanchez (Co-chair ALAC): (09:11) @Robin the IRP award could be  
>>enforced in Court as far as I understand

>> Bruce Tonkin: (09:11) @Avri - I am not sure how a member gives you  
>>direct enforcement of separation of the PTI either - but maybe you can  
>>explain that to me in the break

>> jorge cancio (GAC Switzerland): (09:12) absolutely agree with Roelof

>> Bruce Tonkin: (09:13) @Robin - one process flow is bylaws, independent  
>>panel to review bylaws decision, and then removal of Board if Board  
>>doesn't follow that decision. To get to that point the Board is  
>>clearly acting irresponsibly. You can simply not re-appoint the current  
>>directors (on average a third gets replaced every year) and then use a  
>>mechanism to remove the whole Board if you wish.

>> jorge cancio (GAC Switzerland): (09:13) recalling the Board is peanuts  
>>so to say, compared to relinquishing the IANA functions

>> Guru Acharya: (09:13) is it an assumption that the subsequent board  
>>will violate its fiduciary responsibilities?

>> Athina Fragkouli (ASO): (09:13) Agree with Roelof

>> Cheryl Langdon-Orr - ALAC APRegional Member: (09:14) agree with  
>>Roelof's points

>> Robin Gross [GNSO - NCSG]: (09:14) Leon, can we get that confirmed from  
>>our lawyers?

>> avri doria (atrt, participant): (09:14) separation is just for names,  
>>PTI could still keep doing Protocols and Numbers.

>> Bruce Tonkin: (09:14) @Jorge - exactly - if the community through the  
>>bylaws decided to remove the IAN function - there is already a major  
>>issue to resolve. A Board should never let the org get to that point  
>>and should be removed almost at that point alone.

>> Pär Brumark (GAC Niue): (09:14) Agree totally with Roelof

>> Steve DelBianco [GNSO - CSG]: (09:14) @Roelof -- the board's fiduciary  
>>duty to the Corporation might lead some directors to ignore the  
>>community's consensus recommendation. Member model would allow SM to  
>>override fiduciary duty to the corporation

>> Pär Brumark (GAC Niue): (09:15) Agree totally with Roelof

>> avri doria (atrt, participant): (09:15) I do not agree. movig names away  
>>frm PTI is not nuclear.

>> Leon Sanchez (Co-chair ALAC): (09:15) @Robin, yes I will ask them to  
>>either confirm that is possible or clarify if it isn't

>> avri doria (atrt, participant): (09:15) compounding that with Board  
>>removal would be.

>> Bruce Tonkin: (09:15) @Steve - i waht way can a memebr override teh  
>>Board on removable of a function. Do you mean that the member would  
>>change the bylaws to remove the IANA function in thebylaws?

>> Jordan Carter (.nz, WP1 Rapporteur): (09:16) Holly - Rosemary: Can't  
>>reserve the decision about separation to a designator. But - in a  
>>designator model the single designator is a legal person could it have  
>>standing to enforce bylaws?

>> Jordan Carter (.nz, WP1 Rapporteur): (09:16) (I feel like I shold know  
>>the answer to that question)

>> jorge cancio (GAC Switzerland): (09:17) @Holly If I remember well, you  
>>made an example in your memo on fiduciary duties that such a decision  
>>(relinquishing the exercise of core functions of a non-profit) could be  
>>made legally without conflict with the fiduciary duties

>> Steve DelBianco [GNSO - CSG]: (09:17) @Bruce -- my understanding is  
>>that Member rights override a board's interpretation of its fiduciary  
>>duties. Like Rosemary just said.

>> Kavouss.arasteh: (09:17) May be a flowchart will further clarify the  
>>matter

>> Jordan Carter (.nz, WP1 Rapporteur): (09:17) Absolutely Jorge.

>> avri doria (atrt, participant): (09:17) separabilty is not divestiture  
>>of the PTI, is is moving the names function elsewhere.

>> Jordan Carter (.nz, WP1 Rapporteur): (09:17) "Fiduciary" duties don't  
>>require the ICANN Board to decide against separation, either

>> Bruce Tonkin: (09:18) @Steve - I think it is notq quite right. The  
>>memebr can make a decision - e.g around bylaws and a Board is not held  
>>responsibile under fiduciary duties under law. I don;t think it is a  
>>matter of a member "overriding" a Board fiduciary duty.

>> Steve DelBianco [GNSO - CSG]: (09:18) @Rosemary -- can you help Bruce  
>>and I with out dialogue?

>> Steve DelBianco [GNSO - CSG]: (09:18) with our dialog, I meant

>> Keith Drazek: (09:19) Cherine's question is a good one and it is still  
>>open.

>> Kavouss.arasteh: (09:19) Steve, Member rights to override a board's  
>>interpretation of its fiduciary duties. is a complex process

>> Bruce Tonkin: (09:19) My understanding from what Holly said - is that  
>>hte bylaws can create a right for a member, and that the decision of that  
>>member can be independent of the Board's fiduciary responsibility. If  
>>the bylaws gave that power to an independent third party - then the Board  
>>can't rely on the decision of that party in a law suite that the Board was  
>>not acting in its fiduciary responsibility

>> Malcolm Hutty: (09:20) @Steve: The fiduciary duty of the directors is  
>>to act in the best interests of the corporation in all the things they do  
>>as directors (nb: directors individually, not Board collectively). If a  
>>power is given to the Member, then the director hasn't done the thing,  
>>the Member did it. Accordingly, the director's fiduciary duty isn't so  
>>much "overridden" as simply inapplicable

>> Jordan Carter (.nz, WP1 Rapporteur): (09:20) nobody can say the Board  
>>was in breach of its fiduciary duties by working to implement a decision  
>>of the member, is the point.

>> Holly J. Gregory (Sidley): (09:20) +1 @Malcolm

>> Megan Richards European Commission: (09:21) Rights Malcolm. well put

>> Holly J. Gregory (Sidley): (09:21) and @Jordan, that is correct

>> Guru Acharya 2: (09:21) if the first board objectively determines that  
>>separation violates fiduciary duty; why would a second board come to a  
>>different conclusion from the first board. as a result, the power of  
>>recalling doesn't help. members on the other hand can directly overcome  
>>this responsibility of the board.

>> Jordan Carter (.nz, WP1 Rapporteur): (09:22) ccTLDs will generally not  
>>have contracts with ICANN

>> Cheryl Langdon-Orr - ALAC APRegional Member: (09:22) good point Bruce  
>>... Agree

>> Martin Boyle, Nominet: (09:23) @Joran: +1

>> Jordan Carter (.nz, WP1 Rapporteur): (09:23) and if you try and make  
>>us, all hell will break loose :-)

>> Jordan Carter (.nz, WP1 Rapporteur): (09:24) holly did you see my  
>>question above?

>> Niels ten Oever: (09:24) The microphone is not working in the browser

>> Leon Sanchez (Co-chair ALAC): (09:24) Don't be shy ;-)

>> Chris Disspain: (09:24) I can be aloof Thomas but I'm not remote!

>> Leon Sanchez (Co-chair ALAC): (09:24) we won't bite (too hard)

>> Niels ten Oever: (09:24) We can raise hand, but not connect audio

>> Kavouss.arasteh: (09:24) Thomas, There may be a need to further clarify  
>>the process as currently stands to remobve these types of  
>>misinterpretation or misunderstanding

>> Thomas Rickert, CCWG Co-Chair: (09:25) I hope we can clarify this with  
>>Xplane support.

>> Leon Sanchez (Co-chair ALAC): (09:25) @Niels you can post questions in  
>>the chat with labels <QUESTION> or <COMMENT>

>> Niels ten Oever: (09:25) oks, thanks!

>> jorge cancio (GAC Switzerland): (09:26) when will we receive our  
>>well-earned certificate in Californian Corporate Law?

>> Mathieu Weill, ccNSO, co-chair: (09:26) +1 Jorge

>> Alan Greenberg: (09:26) Is there not a diali-in (and dial-out) bridge  
>>for this meeting as well?

>> Kavouss.arasteh: (09:26) We should not over emphasize the advantages of  
>>Sole Designator as there are some shortcomings .That has not nothing to  
>>do if we opt for Sole designator model due to the prevailing  
>>circumstances

>> Bruce Tonkin: (09:27) @Jordan - taht is the current situation - but I  
>>can imagine that ccTLD might want to enter an agreement that ensures taht  
>>ICANN implements the decisions taht matter to them. ie a contract is  
>>the best form of enforcement - and then it is a matter of what is in and  
>>out of that contract. I would assume that a ccTLD would be wary for  
>>example of agreeing to release their ccTLD intheir contract - so don;t  
>>put that in the agreement.

>> Jordan Carter (.nz, WP1 Rapporteur): (09:27) "Global Public Interest"  
>>is served by ICANN being a solid steward and vehicle for the needs of the  
>>IANA customers at least in large part.

>> Jordan Carter (.nz, WP1 Rapporteur): (09:27) ICANN serves the global  
>>public interest by serving its customers.

>> Megan Richards European Commission: (09:27) @jorge. next CENTR/HLIG  
>>meeting :-)

>> Bruce Tonkin: (09:27) If a ccTLD has an agreement - then it has direct  
>>enforcement powers separate from the ccNSO or other community group.  
>>So if I was a ccTLD manager that is what I would be seeking.

>> Seun Ojedeji: (09:28) Jordan Carter (.nz, WP1 Rapporteur): nobody can  
>>say the Board was in breach of its fiduciary duties by working to  
>>implement a decision of the member, is the point. Me: If you consider  
>>that member decision is not to be implemented by members but by board  
>>then you will agree that its possible for member decision(lower case D)  
>>could indeed infringe on board fiduciary duties

>> Jordan Carter (.nz, WP1 Rapporteur): (09:28) anything else is simply a  
>>power grab.

>> Robin Gross [GNSO - NCSG]: (09:28) Jordan, perhaps some board members  
>>would feel that we THEY know the public interest, not the community. I  
>>think that is a problem.

>> Jordan Carter (.nz, WP1 Rapporteur): (09:28) seun, no, you're wrong on  
>>the law on that one i'm afraid.

>> Jordan Carter (.nz, WP1 Rapporteur): (09:28) the duties do apply to how  
>>they "implement" the decision, and that's a good thing

>> Jordan Carter (.nz, WP1 Rapporteur): (09:29) Robin: I agree it's a  
>>problem. It's a symptom of a problematic culture in the ICANN Board.

>> Malcolm Hutty: (09:30) @Robin: agree, which is why I have always been  
>>sceptical of including the phrase "public interest" in the Bylaws.  
>>Instead I prefer specifying where we think the public interest lies, and  
>>writing that in instead. Anything else gives the Board an unlimited and  
>>unchallengable discretion.

>> Kavouss.arasteh: (09:30) That circumstances occurred in WSIS is QUITE  
>>DIFFERENT ISSUE. We should not follow that approach AT ALL

>> Robin Gross [GNSO - NCSG]: (09:30) Malcolm, that is precisely my  
>>concern.

>> Leon Sanchez (Co-chair ALAC): (09:30) I would think that regardless of  
>>the Board or some members of it arguing public interest as a way of not  
>>complying with an IRP, that could be taken into Court and then it would  
>>be up to the Court to decide whether the Board is acting in line with its  
>>fiduciary duties, in which case it would dismiss the IRP, or if the Board  
>>is only arguing fiduciary duties as a matter of not willing to comply  
>>with the IRP award, in which case it would uphold the IRP award and  
>>oblige the Board to implement the IRP outcome

>> James Bladel: (09:32) Thanks, Mattieu. We need to continue to clarify  
>>that point, as it is a common criticism against SMM or Designator models.

>> Robin Gross [GNSO - NCSG]: (09:33) Leon, so we would be asking the  
>>court to 2nd guess what is in the public interest?

>> Leon Sanchez (Co-chair ALAC): (09:33) @Robin, no. We would be asking  
>>the Court to confirm whether the Board is acting on fiduciary duties or  
>>not

>> Robin Gross [GNSO - NCSG]: (09:33) Leon, I think the concepts are  
>>intertwined.

>> Leon Sanchez (Co-chair ALAC): (09:34) @Robin it could come down to that  
>>but I would be wary before jumping into that conclusion

>> Robin Gross [GNSO - NCSG]: (09:35) Leon, let's see if we can build  
>>something so we don't get to that point.

>> Seun Ojedeji: (09:35) @Jordan when you say the duties apply to how they  
>>implement then I wonder whether we are really disagreeing. If the  
>>community says this is what board needs to implement and board comes back  
>>explaining rationale on why they think it should not go this way, I  
>>expect that board at that point is considering the community decision  
>>(recommendation) inline with its fiduciary duties.

>> Leon Sanchez (Co-chair ALAC): (09:35) @Robin exactly! Escalation might  
>>be the solution to this

>> Jordan Carter (.nz, WP1 Rapporteur): (09:35) Seun yep

>> Malcolm Hutty: (09:36) @Leon, the fiduciary duty simply means that the  
>>directors must act in what they consider the best interests of the

>>corporation. If the Board is allowed to ignore an IRP merely because they  
>>think it best to do so, that's a problem.

>> Bruce Tonkin: (09:36) It seems weird that a California court would  
>>decide whether the Board is acting in the global public interest and is  
>>acting on behalf of the Internet community. I doubt it is a matter of  
>>arguing fiduciary rights. It is about should be about enforcing what we  
>>have agreement with the community in our bylaws and in our contracts  
>>with parts of the community

>> Jordan Carter (.nz, WP1 Rapporteur): (09:36) the difference between  
>>members and non-members is that without members, the Board always has to  
>>make the decision, and always has to apply its fiduciary duties. so you  
>>can't have anyone else make the "call".

>> Jordan Carter (.nz, WP1 Rapporteur): (09:36) (sorry that last comment  
>>@Seun)

>> Bruce Tonkin: (09:36) ie the courts should be focussing on enforcing  
>>our agreements, not trying to second guess decisions made by the Board or  
>>community.

>> Jordan Carter (.nz, WP1 Rapporteur): (09:37) and can I just say for the  
>>record -- fiduciary duties are a GOOD thing. :-) We WANT the Board  
>>members to have them.

>> Robin Gross [GNSO - NCSG]: (09:37) Rosemary, so it is the case that the  
>>board can just say "it is in the public interest to do X", and there is  
>>nothing we can do except spill the board?

>> Jordan Carter (.nz, WP1 Rapporteur): (09:38) Robin: and would the  
>>answer to that be different between designator and member?

>> Bruce Tonkin: (09:38) @Robin - well that is basically what you have  
>>with the NTIA today. if you don't like their stewardship of IANA then  
>>change the government. :-)

>> Robin Gross [GNSO - NCSG]: (09:38) It is my understanding they are  
>>different, Jordan. Members make the call, not the board. that is why  
>>this is key, I think.

>> Seun Ojedeji: (09:38) @Jordan and I think that is where we might be  
>>getting it wrong, its not the member status that makes that happen. Its  
>>the laid down process that matters, if the process says board should



>>engage the community in certain manner then it should irrespective of  
>>whether its a member community or otherwise  
>> avri doria (atrt, participant): (09:38) rows 6 & 7 look like die in the  
>>ditch columns to me  
>> Malcolm Hutty: (09:38) @Bruce my understanding of the advice is that  
>>Californian court would NOT "decide whether the Board is acting in the  
>>global public interest and is acting on behalf of the Internet  
>>community". They would uphold the Board's business judgement in doing  
>>what they think is the best interests of the corporation (absent some  
>>reason why they were not, such as corruption). The only way the Court  
>>comes out against the Board is if we set up a rule base to require it to  
>>do so, which is how we ended up with SMM  
>> Kavouss.arasteh: (09:39) Co\_Chairs  
>> avri doria (atrt, participant): (09:39) i mean die in the dirch rows.  
>>mixing my rows and columns  
>> Bruce Tonkin: (09:39) @Malcolm - I agree. We should focus on ensuring  
>>that the Court enforces our rule base, and ensure we have an appropriate  
>>mechanism to do so.  
>> Jordan Carter (.nz, WP1 Rapporteur): (09:40) Seun: that's where we  
>>seem  
>>to have different interpretations of the legal situation :-)  
>> Seun Ojedeji: (09:40) The CMSM is aa good way to ensure that there is  
>>a  
>>consensus and contrcutive way to get the view of the community (which is  
>>a good thing) and thats what I think has been lacking so far  
>> Kavouss.arasteh: (09:40) We need Coffiee  
>> Sabine Meyer (GAC - Germany): (09:40) Absolutely, Kavouss.  
>> avri doria (atrt, participant): (09:41) we have settled on a model  
>>twice. you are asking us to resettle on a different model  
>> Cheryl Langdon-Orr - ALAC APRegional Member: (09:41) I peronally Gsrre  
>>with th comment Seun  
>> Jordan Carter (.nz, WP1 Rapporteur): (09:41) yep it is, Seun. But as  
>>Jonathan Z pointed out, we're dealing with the "what happens after that"  
>>question in much of this work.

>> Bruce Tonkin: (09:41) @Malcolm - the big surprise for me in this whole  
>>process was that it was difficult to enforce the rules base of teh  
>>bylaws. There are ways to solve for this - I think it is a  
>>combination  
>>fo the contract path that Daivd Johnson and David Post have suggested,  
>>and some for of board removal process.

>> Robin Gross [GNSO - NCSG]: (09:41) why settle until we see details?  
>> avri doria (atrt, participant): (09:42) additonally we have no  
>>indication that the Board accepts that model, so why switch to it? We  
>>need to present a model we beleive works - and I agree we should stick  
>>woth the reference mode until we have a good reason to move.

>> Robin Gross [GNSO - NCSG]: (09:42) I'm just not comfortable with a  
>>model in which the board can say "public interest is x" and we can do  
>>nothing about it but spill the board.

>> Jordan Carter (.nz, WP1 Rapporteur): (09:43) Robin, but what else  
>>could  
>>we do, based on the suite of powers we have talked about?

>> avri doria (atrt, participant): (09:43) the Board cannot be a reason to  
>>shift to the SD model as they do not accept the SD model.

>> Jordan Carter (.nz, WP1 Rapporteur): (09:43) separate the quesiton of  
>>how to enforce these powers, with what they actually are- what would you  
>>like the power to "do" in such a case?

>> Robin Gross [GNSO - NCSG]: (09:43) we could stick with membership  
>>where  
>>the board can't dictate decisions by claiming public interest. (playing  
>>devil's advocate here)

>> Jordan Carter (.nz, WP1 Rapporteur): (09:44) I don't follow - I don't  
>>see how the Board's ability to do that changes between enforcement  
>>mechanism

>> Jordan Carter (.nz, WP1 Rapporteur): (09:44) based on the powers we've  
>>>wanted to let the community exercise

>> Rosemary Fei (Adler & Colvin): (09:45) Bruce, courts will enforce  
>>contracts UNLESS the terms of the contract violate the Board's  
>>fiduciary

>>duties by taking a key decision away from the Board. The Board does not  
>>have the power to contract away those duties. So you're right that  
>>courts defer to directors' judgment under the business judgment rule,  
>>including determining what is in the global public interest, but the  
>>business judgment rule will not prevent a court from determining that a  
>>contract obligated abdicating fiduciary duties and therefore refusing to  
>>enforce the contract..

>> avri doria (atrt, participant): (09:45) the SD does not give us the  
>>powers we need for separability and binding IRP

>> FIONA ASONGA (ASO): (09:45) @Mathew Weil I agree with your approach

>> Mathieu Weill, ccNSO, co-chair: (09:45) @Avri : those are the key  
>>discussions to have

>> avri doria (atrt, participant): (09:46) this is first and foremost  
>>about

>>replacing NTIA, we need row 7 for replacing NTIA.

>> Guru Acharya: (09:46) why cant we have both members and  
>>designators. the designator indirectly enforces powers 1-6 using board  
>>recall. the members directly enforces power 7 by exercising its rights  
>>to

>>overcome fiduciary responsibility. the sidley memo explains how the  
>>members powers can be constrained for powers 1-6

>> Kavouss.arasteh: (09:46) Avri, but it has other advantages

>> Robin Gross [GNSO - NCSG]: (09:46) if we have to rely on spilling the  
>>board for those two powers, it is a problem.

>> Athina Fragkouli (ASO): (09:46) +1 Roelof

>> Bruce Tonkin: (09:47) @Robin - agreed. SO add contract powers as  
>>well.

>> Steve DelBianco [GNSO - CSG]: (09:47) Right Roelof -- public comments  
>>were not specific about whether enforcement must be DIRECT (statutory  
>>and

>>court order) or INDIRECT (Spill Board)

>> Bruce Tonkin: (09:47) The courts will enforce a contract - it is  
>>fairly

>>straight forward.

>> Robin Gross [GNSO - NCSG]: (09:47) Bruce, but Rosemary just said you  
>>can't contract away fiduciary duties.

>> Kavouss.arasteh: (09:47) We may resolve the issue of separability in  
>>the designator model differently

>> Steve DelBianco [GNSO - CSG]: (09:47) For my part, I'd like to know  
>>whether the CCWG participants think INDIRECT is sufficient for WS1

>> Keith Drazek: (09:47) We should also be cognizant of NTIA's reminder  
>>to  
>>try to find the simplest / least complex way to achieve the goals and  
>>community powers. Which of SM or SD is less complex in the context of  
>>empowerment and implementation?

>> Kavouss.arasteh: (09:48) By the way the Plan B does address all these  
>>questions

>> Bruce Tonkin: (09:48) @riobin that sounds weird to me. I company A  
>>loses a contract with company B, then the court will enforce that  
>>contract process. Company A can't see that it is against their  
>>interest  
>>not to continue their contract etc.

>> Guru Acharya: (09:48) @steve: why can't we have both  
>>members  
>>and designators. the designator indirectly enforces powers 1-6 using  
>>board recall. the members directly enforces power 7 by exercising its  
>>rights to overcome fiduciary responsibility. the sidley memo explains  
>>how  
>>the members powers can be constrained for powers 1-6.

>> Steve DelBianco [GNSO - CSG]: (09:49) @Kavouss -- since you mention  
>>plan B, let me say that we ONLY need to talk about plan B if we (CCWG)  
>>decide to go with something other than Membership. Agree?

>> Kavouss.arasteh: (09:49) We have problems with CMSM ,We have problems  
>>with SD. We have problems with MEM.F

>> Steve DelBianco [GNSO - CSG]: (09:50) @Guru -- I don't know if that's  
>>legally possible. But I do think that is too complex for us to  
>>flesh-out  
>>the details in the next several days.

>> Kavouss.arasteh: (09:50) that is why the PlaB is proposed

>> Bruce Tonkin: (09:50) If ICANN loses its contract with NTIA - can  
>>ICANN

>>then go to court and say that it is against the Baord's fiduciary duty

>>to

>>lose the contract?

>> avri doria (atrt, participant): (09:51) i think the education i got in

>>Law was worth it, no matter what happens.

>> FIONA ASONGA (ASO): (09:51) Is it possible to discuss the merits of

>>the

>>principle and identify what we have concensus on that meets NTIA

>>requirements without first plugging it into a membership model?

>> FIONA ASONGA (ASO): (09:51) It may help us move forward with our

>>proposal

>> Sabine Meyer (GAC - Germany): (09:51) Avri, what about those of us who

>>are lawyers already?

>> Mathieu Weill, ccNSO, co-chair: (09:52) Continuous learning Sabine

>> Edward Morris: (09:52) Dictatorship is easy to explain if that is our

>>principle requirement

>> Steve DelBianco [GNSO - CSG]: (09:52) Jones Day and CCWG Counsel are

>>at

>>odds about whether we can use bylaws to constrain the Member's exercise

>>of statutory powers. I wonder if Holly and Rosemary can speak about

>>that?

>> avri doria (atrt, participant): (09:52) Fiona, the problem is that when

>>we searched for what could satisfy the separabilty capability for NAMES,

>>membership was the only direct pwoer to be had.

>> Kavouss.arasteh: (09:52) Plan B does not point toward any specific

>>Model at this point of time but concentrate on the powers and their

>>enforcemnet which could be used with any Model at this stage but at

>>later

>>stage through inclusion of necessary provisions in the Bylaws we could

>>comeback to resol;ve any encountered problems and perhaps opt for CMSM

>> Robin Gross [GNSO - NCSG]: (09:52) Steve, I'd like to know that

>>clarification as well.

>> Guru Acharya: (09:53) the sidley memo is very clear that members  
>>powers

>>can be constrained in phase 2

>> avri doria (atrt, participant): (09:54) we will never remove doubt as  
>>to

>>ICANN's, or any of our, stability. what else is new?

>> Kavouss.arasteh: (09:55) We need to concentrate on how to bring  
>>different views close to each other in order ,on one hand to save the  
>>process of transition and , on the other hand exercise all required  
>>powers and their enforcement and then having the possibility to review  
>>the governance mechanism at later stages

>> Bruce Tonkin: (09:55) @Kavouss - agree.

>> FIONA ASONGA (ASO): (09:57) @Avri we shall eventually end up with a  
>>membership model but I think starting from the reverse with the agreed  
>>and consensus then finalise with naming the model may help us at this  
>>point in time where some feel they have already put in so much to reach  
>>where we are and that effort should be appreciated as well.

>> FIONA ASONGA (ASO): (09:57) +1 Kavous

>> Edward Morris: (09:58) If we leave membership and lose the statutory  
>>rights of inspection and derivatives ICANN will be susceptible to the  
>>same sort of financial corruption that sank FIFA. without ultimate.  
>>access to the financial records provided by inspection through  
>>membership

>>the community will not have the ability to get the information needed to  
>>know about and prevent FIFA type corruption.

>> Keith Drazek: (09:59) I agree with Sebastien on the substance....a  
>>"single X model" has built-in protections in that it requires the  
>>community to work together and reach consensus on activating and  
>>enforcing the community powers. I think the only outlier on this is the  
>>process for removing individual directors, but that's a technicality  
>>within the Single X Model as discussed earlier.

>> Kavouss.arasteh: (09:59) We need to save transition .Several OCs are  
>>frustrated of the diversions on the method that may impact the

>>transition . some of them are not impacted by any model but are  
>>concerned  
>>that the transistyon happens  
>> Robin Gross [GNSO - NCSG]: (09:59) If we have to rely on board spill  
>>power to get powers in row 6 and 7, or perhaps any power when the board  
>>says "public interest", I'm not sure we meet requirements  
>> Kavouss.arasteh: (09:59) We need to think of them as well  
>> Edward Morris: (09:59) +1 Robin.  
>> Guru Acharya: (10:00) +1 robin  
>> Jordan Carter (.nz, WP1 Rapporteur): (10:00) rely on board spill if an  
>>IRP finding that the Board didn't follow the process was ignored...  
>> avri doria (atrt, participant): (10:00) so after all that we are still  
>>moving the the SD. talk about capture?  
>> Jordan Carter (.nz, WP1 Rapporteur): (10:00) (the process to exercise  
>>all of the other powers)  
>> Jordan Carter (.nz, WP1 Rapporteur): (10:00) no, Avri.  
>> Robin Gross [GNSO - NCSG]: (10:01) I've asked for some time to see  
>>what  
>>we can get with designator, but it is not looking adequate as we tease  
>>this out today.  
>> Cheryl Langdon-Orr - ALAC APRegional Member: (10:02) @Edward I believe  
>>we will look at th mttter yu raise when we get to the 'budget' part of  
>>the Agenda  
>> avri doria (atrt, participant): (10:02) i beleive this is capture by  
>>the  
>>dais  
>> Edward Morris: (10:03) We already considered this model. If we move to  
>>single designator will we be returning to single membership next month  
>>when members of Congress review the record of the "bottom up" process?  
>> avri doria (atrt, participant): (10:04) we have a model and we should  
>>focus on dealing with the cricisims and questions that were raised about  
>>. moving to a new model seems completely inappropriate to me as a focal  
>>item. that, if anything, should be a bar bof issue.  
>> Malcolm Hutty: (10:04) @Avri. Sadly, I agree.

>> Robin Gross [GNSO - NCSG]: (10:04) I definitely think Designator is  
>>worth exploring, but NOT shifting models until AFTER we do the  
>>exploration and determining it is adequate.

>> Jordan Carter (.nz, WP1 Rapporteur): (10:05) I don't know how to be  
>>plainer about my view: I'd only support us deciding to change model  
>>\*after\* an analysis, not before it.

>> Guru Acharya: (10:05) I agree with Avri and Robin

>> Avri Doria (atrt, participant): (10:05) Malcolm, when we agree, there  
>>is  
>>a fault in the fabric of the world.

>> Wolfgang2 2: (10:06) Kavous is right: Substance is the key. The  
>>"model  
>>war" is not helpful. Form follows function.

>> James Bladel: (10:06) I agree with those that switching models at this  
>>stage in the game is a significant change and must be only be considered  
>>after careful & compelling analysis. Thx.

>> Fiona Asonga (ASO): (10:06) +1 Wolfgang

>> Greg Shatan: (10:06) Hello, all. Sorry to be late.

>> Avri Doria (atrt, participant): (10:08) Wolfgang, this is not model  
>>war.

>> I wish people would stop characterizing it that way. We reviewed the  
>>requirements substantively and the SM model evolved. No one came into  
>>this process sporting a SM model. It is the only one that directly  
>>meets the CWG requirements for separability.

>> Malcolm Hutty: (10:08) Agree to all that Wolfgang, but what about all  
>>the analysis we have done in the past that caused us to pick SMM in the  
>>first place? If we adopt SD as reference model now, we are throwing that  
>>all away and reverting to where we were in May to re-prove why SD is not  
>>sufficient. We should instead be working through the criticisms of the  
>>current reference model, seeing what can be accommodated, what is mere  
>>failure to explain on our part, what is fundamental. This process avoids  
>>that vital work

>> Megan Richards European Commission: (10:09) +1 Avri

>> Guru Acharya: (10:10) +1 Avri



>> Keith Drazek: (10:11) One of the concerns raised during the public  
>>comments, by multiple commenters, is the proposed "change to the  
>>governance model." According to the lawyers, we are already acting as  
>>Designators, so that would be a smaller change to the so-called  
>>governance model relative to a member structure. I think a further  
>>analysis and comparison of both SM and SD is appropriate for the  
>>breakout  
>>group.

>> Greg Shatan: (10:11) If anything, it's a function war. And the  
>>question is, does the SD model bring the proper functionality, including  
>>the empowerment of the community and the CWG dependencies?

>> David McAuley (RySG): (10:13) This has been a good discussion, and to  
>>me one important bit was a chat comment by Bruce which, if I read  
>>correctly, suggested the possibility of sole designator PLUS contract  
>>perhaps a good way to move to designator model and get rows 6 and 7

>> avri doria (atrt, participant): (10:14) David, who would/could be the  
>>contracting party?

>> Robin Gross [GNSO - NCSG]: (10:14) David, let's ask our lawyers to  
>>clarify because what I thought I heard earlier was that they could NOT  
>>contract away fiduciary duties and those are invoked.

>> Greg Shatan: (10:15) +1 Robin. That was a critical memo from  
>>Sidley/Adler.

>> Bruce Tonkin: (10:15) @Jordan - I hear you say that that individual  
>>SOs

>>and ACs should be able to exercise the power to remove their directors.

>>

>>However would an intermediate step where there is at least an open forum  
>>where the broader community can comment be acceptable?

>> David McAuley (RySG): (10:15) The contracting party needs to be  
>>fleshed

>>out but the community in some form

>> avri doria (atrt, participant): (10:15) with a Ry or Rr, there is a  
>>person to contract. with the ICANN community, who does the Board make a  
>>contract with?

>> avri doria (atrt, participant): (10:15) the community as UA?

>> Bruce Tonkin: (10:16) ie let the SO and AC make the final deicision -

>>but ensuring that an appropraite process is used - where the relevant

>>Board member has a right of reply and others can provide feedback. e.g

>>

>>Individual Baord memebtrs may want to provide some comments as input to

>>the decision making process.

>> David McAuley (RySG): (10:16) @Avri, not sure now but UA or some

>>legal

>>form the legal advisors could help with

>> wolfgang2 2: (10:17) @ Avri: Yes the UA option was never removed fro

>>the taable, as far as I remember.

>> Robin Gross [GNSO - NCSG]: (10:17) Bruce, I believe that is in point 5

>>- the community forum, reply, etc.

>> Greg Shatan: (10:17) That threshold is a bit low.

>> Bruce Tonkin: (10:17) Thanks @Robin - so the community forum is used

>>for the removal of individual board members?

>> Bruce Tonkin: (10:18) ie a community form is used to help the SO make

>>a

>>decision?

>> Jordan Carter (.nz, WP1 Rapporteur): (10:18) Mike - do you recall

>>Christopher W's comments?

>> Robin Gross [GNSO - NCSG]: (10:18) right - look at point 5 on page 1

>>to

>>explain that process.

>> Robin Gross [GNSO - NCSG]: (10:18) that last comment was to Bruce.

>> Jordan Carter (.nz, WP1 Rapporteur): (10:20) Bruce: absolutely. That's

>>always been the case since second draft.

>> Jordan Carter (.nz, WP1 Rapporteur): (10:20) Community Forum has to be

>>used before exercising **any** of the powers.

>> Bruce Tonkin: (10:24) Thanks for clarifying @Jordan.

>> Robin Gross [GNSO - NCSG]: (10:24) how would removing a board member

>>create a concentration of power? these arguments against individual

>>removal don't make sense.

>> Guru Acharya: (10:25) if there is a sole designator then it alone has  
>>the right to select and remove. it can not be circumvented by bylaws. so  
>>having a so/ac to remove/select a director may not be permissible if we  
>>move to a sole designator where community is the sole designator  
>> Jordan Carter (.nz, WP1 Rapporteur): (10:25) Cherine - I only got two  
>>points there - about the parliamentary nature you see happening, and the  
>>two classes - did I miss the third?  
>> Bruce Tonkin: (10:25) @Robin 0 it is probabky worth you speaking with  
>>Cherine directly to hear his concerns and attempt to address them.  
>> Jordan Carter (.nz, WP1 Rapporteur): (10:25) Guru: in a legal sense it  
>>can be done with a sole designator same as it can with a sole member  
>> Jordan Carter (.nz, WP1 Rapporteur): (10:25) the sole x "validates"  
>>the  
>>decision of the SO or AC  
>> J: (10:26) +1 Jordan  
>> Jordan Carter (.nz, WP1 Rapporteur): (10:27) thanks J :-)  
>> Robin Gross [GNSO - NCSG]: (10:27) we've got a lot exaggerated  
>>ambiguous dangers ascertained about a common ordinary tool: removing your  
>>director  
>> Athina Fragkouli (ASO): (10:27) +1 Greg  
>> Robin Gross [GNSO - NCSG]: (10:28) Agree with Greg too.  
>> Guru Acharya: (10:28) the sidley memo was quite clear that bylaws can  
>>not restrict the statutory powers of a designator to select and remove  
>> Kavouss.arasteh: (10:28) There is a NEED to review and redress the  
>>process of removal of individual Boardd Mmembers  
>> Robin Gross [GNSO - NCSG]: (10:29) Great point, Athina.  
>> Greg Shatan: (10:30) Guru, this is a question of how the governance of  
>>the designator. by the entities that put it in place. It is not being  
>>restricted by an outside body.  
>> Robin Gross [GNSO - NCSG]: (10:30) why do we keep pretending this is  
>>an  
>>open issue?  
>> Rinalia Abdul Rahim: (10:30) On Greg's point about concentration of  
>>power in appointing a director: Point of appointment and removal is

>>different in the sense that once a director is appointed, s/he is  
>>required to look after the interest of the ICANN and the community as a  
>>whole + global public interest. With single So/AC with the power to  
>>remove the individual director, that is leverage/pressure on the  
>>director  
>>to veer from the public interest and all community focus.  
>> Malcolm Hutto: (10:31) We are moving backwards, re-opening questions  
>>that have been considered and addressed as if they are new. We should be  
>>refining our proposal, addressing new detailed criticisms through  
>>tweaks,  
>>not reverting to where we were in May  
>> Robin Gross [GNSO - NCSG]: (10:31) Rinalia, I just don't buy that  
>>argument. The legislature set up the designator system so the  
>>directors  
>>can be removed.  
>> Alan Greenberg: (10:32) @Rinalia. Perhaps we need an additional Bylaw  
>>requirement that a director owns a backbone.  
>> Robin Gross [GNSO - NCSG]: (10:33) we do, Alan.  
>> Jordan Carter (.nz, WP1 Rapporteur): (10:33) Rinalia, but that implies  
>>that that doesn't happen in \*all the other organisations\* that allow  
>>director removal.  
>> Seun Ojedeji: (10:33) @Robin I don't think its about whether directors  
>>should not be removed as I think most community supports that, I think  
>>its about who removed a director that is serving the entire community?  
>> Jordan Carter (.nz, WP1 Rapporteur): (10:33) It implies in other words  
>>that ICANN's currently unusual model is the only one that works.  
>> Jordan Carter (.nz, WP1 Rapporteur): (10:34) I don't think that the  
>>evidence supports such an argument  
>> Rinalia Abdul Rahim: (10:34) @Robin, sure. There are people who buy  
>>it  
>>and people who don't. One can also argue that ICANN is special and that  
>>it needs this special amendment to the designator power, specific to  
>>ICANN.  
>> Robin Gross [GNSO - NCSG]: (10:34) exactly, Jordan.

>> Jordan Carter (.nz, WP1 Rapporteur): (10:35) ICANN isn't special in a  
>>fundamental sense: it is a group of people trying to work together. Its  
>>subject matter is special, but that's it.

>> Robin Gross [GNSO - NCSG]: (10:35) I don't think anyone can credibly  
>>make the claim "ICANN is special, so designators shouldn't be allowed to  
>>remove their director".

>> J: (10:35) AGree

>> Greg Shatan: (10:36) Agree,

>> Kavouss.arasteh: (10:36) MathieuBoth versions are workable but we need  
>>a little bit of reflection which one is more in line with cooperation  
>>Law applicable in CA

>> Rinalia Abdul Rahim: (10:36) You can allow a designator to remove a  
>>director, but that decision should not be closed to a specific SO/AC.  
>>The community should be able to weigh in.

>> Jordan Carter (.nz, WP1 Rapporteur): (10:37) Rinalia: that just isn't  
>>what the community has been askign for, and it isn't what the weight of  
>>public comments supports.

>> Robin Gross [GNSO - NCSG]: (10:37) Rinalia, the community participates  
>>in the forum, the SOAC makes the DECISION, as was designed by statute.

>> Jordan Carter (.nz, WP1 Rapporteur): (10:37) I understand the  
>>perspective and I am hearing it loud and clear tho. :-)

>> Greg Shatan: (10:38) While I can see the point of having the community  
>>weigh in, the ultimate decision to remove a board member should stay  
>>with  
>>that SO/AC, just as it would at the end of that Board member's term.

>> Athina Fragkouli (ASO): (10:38) +1 Robin

>> Jordan Carter (.nz, WP1 Rapporteur): (10:38) I don't think there is  
>>any  
>>legal question that we can make any of these options work

>> Seun Ojedeji: (10:39) @Robin any community model that is based on  
>>"sole" implies that its a collective effort so on that basis alone  
>>should  
>>tell imply that an SO/AC should not solely remove board member. That  
>>said, even in member organisation 1member (1stakeholder) does not remove

>>board member, many stakeholder performs that role

>> Robin Gross [GNSO - NCSG]: (10:39) That is one interpretation, Seun,

>>just not the majority interpretation, or the law.

>> Leon Sanchez (Co-chair ALAC): (10:39) Indeed @Rinalia. As @Robin says

>>correctly, it would be the community who would, in the end, decide on

>>Board member removal. The designating SO/AC would initiate the process

>>but it would need the support of other SO/ACs

>> Jordan Carter (.nz, WP1 Rapporteur): (10:40) It's interesting that we

>>have debated this question at Frankfurt, Istanbul, Buenos Aires, Paris,

>>Los Angeles, and now at wherever we are now

>> Greg Shatan: (10:40) Leon, I did not think that was the case.

>> Robin Gross [GNSO - NCSG]: (10:40) and the conflict of interest is

>>glaring.....

>> Jordan Carter (.nz, WP1 Rapporteur): (10:40) Leon: that's not what our

>>second draft proposal says.

>> Guru Acharya: (10:40) @greg: my question was if we have a sole

>>designator model as our final model; then can we simultaneously have the

>>so/ac as the designators for individual board recall? how do we make a

>>sole designator model coherent with board recall by a so/ac.

>> cherine chalaby: (10:40) Roelof+1

>> Seun Ojedeji: (10:41) Saying its not majority can be assumptive and

>>saying its one interpretation of the law means that its legally correct.

>>Its just a matter of what we agree upon and not always about what the

>>law

>>says because there are serveral ways to legally make things work

>> Malcolm Huty: (10:41) Board members do not wish to be removed, so

>>increasing the level of consensus that is required to remove them to a

>>consensus in multiple SOACs helps make them more comfortable with the

>>proposal.

>> Jordan Carter (.nz, WP1 Rapporteur): (10:41) the law can make it work

>>any which way on this, we know that.

>> Robin Gross [GNSO - NCSG]: (10:42) And it would make the proposal

>>unacceptable to many of us, Malcolm.

>> Malcolm Huty: (10:43) Now if we limit the petition to support to the

>>SOAC appointing, then we have achieved the greatest possible limitation  
>>on removal - albeit at the cost of inconsistency with the argument that  
>>the director is supposed to serve the whole community. If that's so, why  
>>can't any part of the community petition for removal?

>> Athina Fragkouli (ASO): (10:43) @Malcolm, did the Board express  
>>concerns or preferences about this power?

>> Keith Drazek: (10:43) We need to find appropriate  
>>checks/balances/protections to prevent the parliamentization of the  
>>Board, but not unduly limit the ability of an appointing group to  
>>replace, per Athina's earlier comments. We need to find a balance on  
>>this  
>>one.

>> Jordan Carter (.nz, WP1 Rapporteur): (10:43) we have no mandate from  
>>the public feedback we have received on \*two\* proposals to change how  
>>this works

>> Malcolm Hutty: (10:43) @Athina, well Cherine has intervened, just now

>> Jordan Carter (.nz, WP1 Rapporteur): (10:43) we can make it work  
>>better, for sure.

>> Athina Fragkouli (ASO): (10:45) @Malcolm, was that on behalf of the  
>>Board?

>> Brenda Brewer2: (10:50) LUNCH BREAK until 1:00 Dublin time -- 12:00  
>>UTC.

>> tylercompton: (11:48) If ICANN's sole mission were <sup>3</sup>the coordination  
>>and oversight of the internet identifier registries so that each was  
>>administered in accordance with the policies established in an open and  
>>transparent manner by the respective affected community<sup>2</sup>, then one no  
>>longer has to have concern about Board judgement of best interests of  
>>the

>>corporation no amount of deferment to <sup>3</sup>reasonable business judgement<sup>2</sup>  
>>would overcome the stark clarity of the purpose of the corporation.

>> tylercompton: (11:48) Each step away from such clarity, via  
>>introduction of additional principles and goals or the Board to  
>>consider,

>>enables reasonable people to come to different decisions regarding the

>>primary interests applicable to any given decision.

>> John Curran: (11:53) you makes it everything to everyone, it can do

>>anything it wants.

>> Niels ten Oever: (11:53) Audio not working for me. It is just me?

>> Niels ten Oever: (11:54) Only hear faint sounds in the background.

>> Brenda Brewer2: (11:54) No audio yet.

>> Paul Rosenzweig (Heritage): (11:55) No audio for me either

>> Keith Drazek: (12:00) 2 minute warning....

>> Kavouss.arasteh: (12:01) All Options are on the table

>> Kavouss.arasteh: (12:01) Nothing agreed until every thing is agreed

>>but

>>we can take the step by step principle to build up consensus

>> Alice Jansen 2: (12:07) Document currently being discussed can be

>>found

>>at

>><https://community.icann.org/download/attachments/56142506/2015-10-12-CCWG>

>>-

>>WP1-SecondPC-FullAnalysis.pdf?version=1&modificationDate=1444644438000&ap

>>i

>>=v2

>> Steve DelBianco [GNSO - CSG]: (12:20) Are we now discussing these 7

>>Items as a block, or one at a time?

>> Keith Drazek: (12:22) The community powers around budget and strategic

>>plan veto/approval are focused on allocation of expenses, not revenues.

>>l

>>agree that any approach using a previous year +10% calculation has

>>issues

>>if revenues fall beneath expenses. The community veto can not be used to

>>indirectly increase fees/revenues.

>> avri doria (atrt, participant): (12:24) for once I agree with mathieu,

>>development budgets of new protocols are not affected by a 3 month

>>issue.

>>

>> Jordan Carter (.nz, WP1 rapporteur): (12:25) and there would still



>>need

>>to be a separate veto, and the idea that the community would veto a much  
>>needed development sort of defies reason, right?

>> Jonathan Zuck (IPC): (12:26) @Kavouss. it would be an extreme  
>>situation when a veto comes up.

>> Mathieu Weill, ccNSO, co-chair: (12:26) Thanks Avri

>> Alan Greenberg: (12:26) I'm not sure where "3 months" came into this  
>>discussion. All I said is that if we decide that a substantive IANA  
>>budget increase is necessary, it should not be blocked because of a  
>>dispute on some other issue.

>> Alan Greenberg: (12:27) Perhas my "dnssec-2" WAS A POOR EXAMPLE.

>> Keith Drazek: (12:29) Any carry-over budget allocation must be within  
>>existing revenues.

>> Asha Hemrajani: (12:29) @Jonathan, speaking in my personal capacity,  
>>the formalizing of the community involvement should not fall outside of  
>>our remit now because this process that we already have in place today  
>>(like we have done for FY16) is already being done and in practice - it  
>>should be fairly easy to enshrine that in words. We can do that now, no  
>>need to wait to WS2

>> jorge cancio (GAC Switzerland): (12:31) If it is helpful for reaching  
>>a

>>sensible solution I think Asha's point is worth considering very  
>>seriously

>> avri doria (atrt, participant): (12:32) what about items like funding  
>>NMI?

>> avri doria (atrt, participant): (12:32) or One Net

>> avri doria (atrt, participant): (12:33) not that the budget is my issue.

>> Malcolm Hutty: (12:33) How would people feel about changing this to a  
>>power to zero out line items for new initiatives?

>> Keith Drazek: (12:34) I can support the previous year +10% if the  
>>existing revenues cover the +10%, or if the +10% is drawn from reserves.  
>>I do NOT support if it is indirectly used to push for increased revenues  
>>from contracted parties and registrants.

>> Martin Boyle, Nominet: (12:34) surely it is about the fact that the

>>correct process has not been followed?

>> Jordan Carter (.nz, WP1 rapporteur): (12:34) We didn't even know about  
>>NetMundial being authorised or funds being committed for months after  
>>the  
>>decision was made. Not sure it is the best example?

>> avri doria (atrt, participant): (12:35) true, any budget veto would  
>>probably be reactive

>> Martin Boyle, Nominet: (12:36) and that bit covers Keith's point: did  
>>the process include an understanding of where the • revenue comes from

>> Seun Ojedeji: (12:36) @Jordan perhaps we should ask the board if they  
>>are aware of Netmundial and the corresponding funds authorised. Its for  
>>the board to keep staff accountable its for the community to ask board  
>>question when staff is not accountable

>> avri doria (atrt, participant): (12:36) and possibly even punitive.  
>>and  
>>it true, if we did freeze the budget, we can be sure that the expenses  
>>we wanted covered would not be on the list of necessary expenses that  
>>would be paid anyway. is this yet another of those powers we could  
>>never  
>>use.

>> Jordan Carter (.nz, WP1 rapporteur): (12:36) Seun: they passed  
>>resolutions and didn't make them public (!).

>> Martin Boyle, Nominet: (12:36) Particularly important as a way of  
>>ensuring that budget follows needs and not v-v

>> Cheryl Langdon-Orr - ALAC APRegional Member: (12:38) thanks for that  
>>clarification and suggestion re DT0 fro CWG Jonathn...

>> Jonathan Robinson: (12:40) All.. Probably a good idea to clarify  
>>whether you are referring to Jonathan R or Jonathan Z in this part of  
>>the  
>>conversation

>> Matthew Shears: (12:40) agree that here needs to be a more iterative  
>>and structured budget engagement

>> Greg Shatan: (12:42) Avoiding the probability of veto is a good thing,  
>>if it results from a satisfied community.. Eliminating the possibility

>>of veto is not a good thing.

>> Milton: (12:45) why not just limit the budget veto powers to IANA?

>> avri doria (atrt, participant): (12:45) maybe we should use the spill

>>the board ability for a bad budget?

>> Milton: (12:46) yeah

>> Kavouss.arasteh: (12:47) We need to follow the logic as exists else

>>where

>> Milton: (12:48) Budget vetos do not necessarily sow chaos and are

>>preferable as a disciplinary method to spilling the board, but battles

>>over budget priorities could become complex.

>> Milton: (12:48) They could become a proxy for policy debate

>> Robin Gross [GNSO - NCSG]: (12:48) Jordan, thanks for the reminder to

>>keep the FUD in check.

>> Kavouss.arasteh: (12:48) We need to distinguish between

>>Reconsideration

>>and Rejection. Many inconsistencies and problems will be solved through

>>reconsideration process thus rejection /Veto should have limited

>>application

>> Jim Prendergast: (12:49) In the last few years, didnt ICANN go a few

>>months without an approved budget to adjust for the IANA transition

>>work?

>> What were the rules governing that interim budget? might they apply

>>here?

>> Jonathan Zuck (IPC): (12:49) EXACTLY Jim P!

>> Kavouss.arasteh: (12:50) Why Veto on new initiative that was not

>>contained in the five years if the board could respond to that within

>>the

>>ceiling of the five years

>> Jordan Carter (.nz, WP1 rapporteur): (12:50) I don't know

>> Kavouss.arasteh: (12:50) We should not invent something never ever

>>practices else where???

>> Paul Rosenzweig (Heritage): (12:52) + EL -- fewer ICANN meetings would

>>be better!

Kavouss.arasteh: (12:52) If we put new initiative under Veto we will

>inject some degree of stagnation?i

> Christopher Wilkinson: (12:52) Umm ... Line vetos? Actually I think  
>the support for Net Mundial was a good thing. (I do not refer to  
>NMInitiative.)

> Kavouss.arasteh: (12:54) Moreobe covered with the mission and goals why  
>it should have such a high degree of sanctionver, if the new initiative  
>while

> Jonathan Zuck (IPC): (12:54) I think it's wrorth remembering that there  
>is a fairly involved process before we would ever get to a "veto" so the  
>notion that having that power "out there" won't cause stagnation @Kavouss

> Jordan Carter (.nz, WP1 rapporteur): (12:54) I think line item vetos  
>would be v problematic.

> Jordan Carter (.nz, WP1 rapporteur): (12:54) project budgets would be  
>more sensible but also very problematic

> Jordan Carter (.nz, WP1 rapporteur): (12:56) line item could be "no  
>staffing!" and that would be disturbing

> avri doria (atrt, participant): (12:56) there is value in the theme that  
>a budget veto just freezes the Board salary until the issue is resolved.

> Jordan Carter (.nz, WP1 rapporteur): (12:56) for the transcript, the  
>person called Thomas two speakers before, was actually Mathieu

> Kavouss.arasteh: (12:56) The issue of new initiative to be well  
>understood.

> jorge cancio (GAC Switzerland): (12:57) instead of a sledgehammer we  
>need a nutcracker...

> Robin Gross [GNSO - NCSG]: (12:57) I like that idea of freezing board  
>salary as the first cut

> Jordan Carter (.nz, WP1 rapporteur): (12:57) A line veto on new  
>initiatives is also complicated

> Jordan Carter (.nz, WP1 rapporteur): (12:57) **\*\*all\*\*** items IANA Needs  
>must be in the IANA budget

> Kavouss.arasteh: (12:58) If it is within the mission of the ICANN and  
>could be addressed within the ceuling of the five years why it should go  
>through the veto rather than reconsideration .

> Jordan Carter (.nz, WP1 rapporteur): (12:58) even if in practice they

>are delivered by ICANN shared services

> avri doria (atrt, participant): (12:58) causes no harm to the  
>organizations its good faith and creidt, but makes the point.

> James Bladel: (12:58) +1 Robin. How about canceling sopport trael?

> Keith Drazek: (12:58) Cancelling travel support will ensure that some  
>parts of the community won't ever support the veto.

> avri doria (atrt, participant): (12:58) James, so only the rich can  
>attend meetings?

> James Bladel: (12:59) Avri - how about everybody goes remote.

> Keith Drazek: (12:59) Remember this power will require community  
>consensus to invoke.

> Kavouss.arasteh: (12:59) Howebver ,if it is outside the mission, even  
>if it could be financed within the ceiling it may go through the veto  
>from that spect that it was not within the mission of ICANN

> avri doria (atrt, participant): (12:59) i ike that idea. though  
>evidence shows that you have to do face to face at least once a year for  
>remote to really work.

> Jordan Carter (.nz, WP1 rapporteur): (12:59) we have lots of positive  
>ways to make sure the community has a say, right?

> avri doria (atrt, participant): (12:59) read some studies a few years  
>back when i was advocating nothing but remote.

> Greg Shatan: (13:01) +1 JZ

> Robin Gross [GNSO - NCSG]: (13:02) +1 JZ also - they are indeed NOT  
>mutually exclusive paths - cooperation and a veto

> Asha Hemrajani: (13:03) @jordan, a veto is not a positive way

> Guru Acharya: (13:03) thats a lot of admissions this week - icann  
>community is not representative enough to be member; remote participation  
>doesnt help overcome barriers.

> Sivasubramanian M: (13:03) @Jothan The intention is not to use the  
>veto and merely have the veto. How would this be articulated so as to  
>ensure that veto is not even used on the negotiating table by any one  
>stakeholder group, be in Government, Business or even civil society?

> Steve DelBianco [GNSO - CSG]: (13:03) The positive makes the negative  
>less necessary, and the negative makes the positive more effective.

>Let's have them both

> Jordan Carter (.nz, WP1 rapporteur): (13:04) +10, Steve

> Asha Hemrajani: (13:04) @I know they are not mutually exclusive, but I

>still don't understand why veto is needed - Jonathan already said he did

>not feel the spirit of what CWG asked for was a veto on the ICANN budget

> mike chartier: (13:04) +1 steve

> Milton: (13:04) Correct, Guru, some of the arguments ICANN makes to

>save its own neck are actually undercutting the very legitimacy of the

>whole MSM

> Keith Drazek: (13:04) Everything up to the point of a veto is positive

>and required before the ultimate negative step, which would require

>community consensus, could ever be taken.

> Greg Shatan: (13:04) The veto is needed if all else fails.

> Jordan Carter (.nz, WP1 rapporteur): (13:04) Asha in the end it's about

>the sharing of power, I think. That's why the community asked for this

>power. It's a last resort.

> Jordan Carter (.nz, WP1 rapporteur): (13:04) it's the decentralisation

>and sharing of authority, looked at one way

> Asha Hemrajani: (13:04) @Greg, but that is my point, why not ensure all

>else does not fail?

> avri doria (atrt, participant): (13:05) i never cared about the budget

>veto until now because my US experience taught me it was a mess. but if

>it translated into blocking board salaries until the issue was taken care

>of it, i would be very supportive.

> Greg Shatan: (13:05) Holding an organization accountable isn't all

>sunshine and flowers.

> Jordan Carter (.nz, WP1 rapporteur): (13:05) Asha: wouldn't making sure

>all else does not fail involve human perfection? :-)

> Milton: (13:05) Asha, if one side of a negotiation can ignore the

>other, it is often hard to come to a mutually acceptable agreement

> Asha Hemrajani: (13:05) @Jordan, for the annual budget, it is not about

>power, it is about common sense and ensuring continuity

> Steve DelBianco [GNSO - CSG]: (13:05) I recall ICANN has had budget

>overruns AND delays in coming up with a new budget in the past. And I

>don't recall the effects being dangerous or destructive to the global  
>internet community.

> Milton: (13:05) it's always about power

> Greg Shatan: (13:05) Asha, I hope we can do that, but I don't know of  
>any way to ensure a positive outcome.

> Jordan Carter (.nz, WP1 rapporteur): (13:06) Asha: accountability is  
>always and everywhere about power - it's about who has the right to  
>decide in the final question. And we've suggested a very limited, careful  
>and nuanced answer to that.

> Jordan Carter (.nz, WP1 rapporteur): (13:06) As grown ups, even.

> Robin Gross [GNSO - NCSG]: (13:06) Board paternalism is part of the  
>accountability problem at ICANN in general.

> Jonathan Zuck (IPC): (13:07) +1 Jordan. It's about power. That's it.  
>Everything else is about preventing the need to use the power but as  
>Steve put in the chat, the FACT that power is out there will make the  
>process run more smoothly

> Asha Hemrajani: (13:07) @we are not talking about all the budgets - I  
>repeat for those who have just joined this discussion today who may not  
>be aware of the whole story - we are ok with veto of the 5 year plan and  
>the PTI/IANA budget...

> Guru Acharya: (13:07) if the method to implement all community powers  
>is to spill the board then does it matter if they spill the board for a  
>line item or entire budget or iana budget - you could do it for all  
>anyway by spilling the board.

> Robin Gross [GNSO - NCSG]: (13:07) The amount of resistance we get from  
>the board certainly points to this being about power shifts.

> Asha Hemrajani: (13:08) @Robin, paternalism? Last time I checked I was  
>a woman

> Jonathan Zuck (IPC): (13:08) @Asha. I think that position of the board  
>is understood. That said, there is still broad consensus in the community  
>that the community that this power extend to the annual budget as well

> Asha Hemrajani: (13:08) @jonathan, I understand that AFRALO was against  
>a veto also

> avri doria (atrt, participant): (13:09) btw, i wasn't kidding about a

>compromise on this, to avoid the catastrophe whether realistic or not,  
>being a hold on board salaries.

> Robin Gross [GNSO - NCSG]: (13:09) +1 Avri

> Jonathan Zuck (IPC): (13:09) @Ahsa. To be clear, we do not have  
>unanimity but we do have broad consensus.

> Alan Greenberg: (13:10) But AFRALO suggested a line-item veto which I  
>think would be really harmful in that it would allow part of the community  
>to pick on another with no pain on their own behalf.

> Jordan Carter (.nz, WP1 rapporteur): (13:10) but that's why we need to  
>work out some process detail

> Jonathan Zuck (IPC): (13:10) +1 Alan and Jordan

> Keith Drazek: (13:11) @Avri: I could also support something along those  
>lines. Also agree the devil is in the details, but I think we can find a  
>way to prevent instability and chaos.

> Robin Gross [GNSO - NCSG]: (13:11) Agreed, Keith. The FUD approach  
>isn't working.

> Keith Drazek: (13:12) Or perhaps salaries and the offending line item,  
>leaving non-discretionary spending untouched.

> Steve DelBianco [GNSO - CSG]: (13:12) Thanks to staff -- please show  
>the hyperlink for this document

> Alice Jansen 2: (13:12) Link for ST discussion is -  
><https://community.icann.org/download/attachments/56142506/Stress%20Tests%20-%20analysis%20of%20PC2%20v3.pdf?version=2&modificationDate=1444985265269&api=v2>

> Jordan Carter (.nz, WP1 rapporteur): (13:12) Glad to get off that table  
>at last

> Eberhard Lisse [.NA ccTLD Manager]: (13:15) If we safeguard essential  
>services from veto, line item vetos get even more powerful...

> Asha Hemrajani: (13:16) @avri thanks for that...I don't see consensus  
>on this point, so more discussion is good

> Alice Jansen 2: (13:16) we are on page 5

> Asha Hemrajani: (13:16) any chance staff could make the font bigger on  
>the screen?

> Grace Abuhamad: (13:18) In the AC room, you have scroll control



- > Grace Abuhamad: (13:18) We will adjust the physical room screen as well
- > Asha Hemrajani: (13:19) yes I meant the physical screen, thank you Grace
- > Paul Rosenzweig (Heritage) 2: (13:20) Steve is right -- the fact that
- >the majority vote move is not currently on the table doesn't mean it
- >won't be in the future .... and we must protect against that possibility
- > James Bladel: (13:22) +1 Paul.
- > Robin Gross [GNSO - NCSG]: (13:23) +1 Paul.
- > Milton: (13:24) +1 Paul
- > Keith Drazek: (13:25) The show of hands was just to assess whether to
- >open a queue for discussion. Not yet a consensus call.
- > Paul Rosenzweig (Heritage): (13:26) This rationale is a good and much
- >fuller explanation of why the Bylaw amendment is needed. I would think,
- >however, Steve that you should add a back reference to the NTIA
- >requirements. Without the ST18 Bylaw change there will be no approval
- >for the transition, I think ...
- > Alice Munyua (GAC): (13:26) I think we all agree that this issue still
- >needs to be discussed at the GAC level
- > James Bladel: (13:26) Question: What response/determination are we
- >waiting for from the GAC?
- > Keith Drazek: (13:27) Other parts of the community commented and
- >strongly supported inclusion.
- > Paul Rosenzweig (Heritage): (13:27) +1 James -- and WHEN will they
- >finally speak (or advise us that they don't have consensus to speak)???
- > Alice Munyua (GAC): (13:27) the issue is whether or not the rationale
- >should be included as it is presented as part of the CCWG document
- > Paul Rosenzweig (Heritage): (13:27) Of course we should include a
- >rationale -- why would we make a change without explaining it??
- > Alice Munyua (GAC): (13:28) and of course we should have a rationale.
- > Paul Rosenzweig (Heritage): (13:28) +1 Alice -- I was too quick ....
- >sorry
- > Paul Rosenzweig (Heritage): (13:29) Thomas --- Is it worth setting an
- >expectation as to WHEN you expect GAC feedback?
- > Kavouss.arasteh: (13:30) PLS DEFER DISCUSSION ON ANY WAY TO PROCEED
- >UNTIL GAC EXAMINE THE MATTER CAREFULLY

- > James Bladel: (13:31) But do we have an ETA on the GAC's response?
- > Guru Acharya: (13:31) i dont understand - what if gac claims they are  
>determining consensus by voting instead of by rough.... it seems wierd to  
>create a dichotomy between voting and consensus
- > Megan Richards European Commission: (13:34) rationale is certainly  
>improved but it might be useful for all to see what legal advisors say  
>about its implications. my reading is that only refusal of GAC advice  
>requires mutual discussion with ICANN board and only when based on  
>consensus. in principle nothing in the wording says that GAC advice must  
>be based on consensus, only that GAC consensus advice which is refused  
>must go to negotiation. if
- > Steve DelBianco [GNSO - CSG]: (13:36) Exactly, Megan. We are NOT  
>attempting to tell the GAC how to make its decisions
- > Alice Munyua (GAC): (13:36) +1 Megan
- > Robin Gross [GNSO - NCSG]: (13:37) I guess this is another case where  
>we just go in circles.
- > Alice Jansen: (13:41) Human Rights analysis -  
>[https://community.icann.org/download/attachments/56142506/Human%20Rights\\_P\\_C2.pdf?version=1&modificationDate=1444739018000&api=v2](https://community.icann.org/download/attachments/56142506/Human%20Rights_P_C2.pdf?version=1&modificationDate=1444739018000&api=v2) - see p8
- > avri doria (atrt, participant): (13:42) number 3 should be civil &  
>poitial rights
- > James Bladel: (13:42) What does "respect" mean in this context?
- > Milton: (13:42) It should be Covenant and CIVIL and Political Rights
- > avri doria (atrt, participant): (13:42) civil & political not cultural &  
>political
- > Roelof Meijer (SIDN, ccNSO): (13:42) @Steve: no, we aren't. But we are  
>trying to tell the ICANN board how to deal with (the different types of)  
>GAC advice, aren't we? And I know I would not be happy with the GAC  
>trying totell the board how to deal with ccNSO advice...
- > Niels ten Oever: (13:42) @james 'Respect' as in opposition to 'Protect'
- > avri doria (atrt, participant): (13:42) it is wrong in both 3 & 4
- > Niels ten Oever: (13:43) @james So it's not an obligation to enforce
- > Niels ten Oever: (13:43) <comment> we achieved consensus in the WP4 on  
>a definition - this was a summary of the comments.

- > James Bladel: (13:43) @Niels - not clear how ICANN would/could enforce,  
>even if they wanted to.
- > Tatiana Tropina: (13:43) +1 to Niels, it was the idea behind suggesting  
>the language (protect vs. respect)
- > Keith Drazek: (13:43) I think "respect" means "live by" as opposed to  
>"protect" which would have a more external and activist meaning. But I'm  
>no expert.
- > Niels ten Oever: (13:43) @James - that's why they also should not do  
>it.
- > Milton: (13:43) i thought we already had consensus that HR was WS1
- > Niels ten Oever: (13:44) @James - that's why it is 'respect'
- > David McAuley (RySG): (13:44) agree with Keith and that is how I saw it  
>in WP4
- > Tatiana Tropina: (13:44) @Milton, a couple of comments were against WS1  
>- we had to address them anyway
- > James Bladel: (13:44) If we have to choose, then Option #1 is the most  
>appropriate language for this purpose.
- > Wolfgang: (13:45) My understanding of "respect" means that ICANN has to  
>check whether a decision by its board violates existing human rights.
- > Athina Fragkouli (ASO): (13:46) I agree with this suggestion
- > Matthew Shears: (13:46) + 1 James
- > Niels ten Oever: (13:46) +1 James
- > avri doria (atrt, participant): (13:48) we talked about. there is no  
>applicable international law on human rights for corporations.
- > Bruce Tonkin: (13:48) In our articles of incorporation we have:
- > Bruce Tonkin: (13:48) The Corporation shall operate for the benefit of  
>the Internet community as a whole, carrying out its activities in  
>conformity with relevant principles of international law and applicable  
>international conventions and local law and
- > Robin Gross [GNSO - NCSG]: (13:48) agree that option 1 is most  
>appropriate
- > avri doria (atrt, participant): (13:48) no, there is now applicable HR  
>law for corporations
- > avri doria (atrt, participant): (13:49) is not applicable.

- > Steve DelBianco [GNSO - CSG]: (13:49) @Bruce -- option 1 is consistent
- >with the Article you cited. Yet it is more specific by mentioning human
- >rights.
- > Bruce Tonkin: (13:50) Ah OK - @Acri I interpreted Article 4 to be that
- >we use the principles of international law in making our policy
- >decisions. Not international laws apply to corporations - but we have
- >explicitly recognized it in the articles of incorporation.
- > Niels ten Oever: (13:50) @Tijani - that is why it says within scope and
- >mission
- > Tatiana Tropina: (13:50) I think mentioning "within its mission" is
- >enough
- > Mary Uduma: (13:50) +1 Tijani
- > Wolfgang: (13:50) @ Avri This depends from the case. I would prefer to
- >develop a procedure via concrete cases.
- > Bruce Tonkin: (13:51) This related to our core values - and we should
- >use those values in decision making.
- > Tatiana Tropina: (13:51) WP4 was trying to narrow and restrict as much
- >as possible to avoid any controversies
- > Matthew Shears: (13:52) I also think that some would say that
- >"principles of international law and applicable international
- >conventions" do not necessarily include human rights and that it is
- >better to explicitly mention human rights so as to ensure that they are
- >seen as relevant
- > Mark Carvell GAC - UK Govt: (13:52) Reference to guiding principles
- >introduces some needed
- > Robin Gross [GNSO - NCSG]: (13:52) Agree, Matt.
- > Mary Uduma: (13:53) The Language in the bylaw should be specific and
- >refer to only Names and Numbers as mentioned by Tijani
- > Mark Carvell GAC - UK Govt: (13:53) ..(continued)..some needed criteria
- >or standards to adhere this to a non-state entity like ICANN.
- > avri doria (atrt, participant): (13:53) yes Mark, but getting in the
- >Guiding Principles is the WS2, because they are complicated in that they
- >are guidelines for ways to actually do it.
- > Bruce Tonkin: (13:54) SDo do we just have a list of example

>International laws and conventions that we may want to take into account.

> Wolfgang: (13:54) @ Matthew: The language of Article 4 includes de  
>facto all international conventions: Trademark & Copyright, Human Rights  
>, security etc.

> Mary Uduma: (13:55) If is vaguely stated, it could be interpreted  
>severally.

> Greg Shatan: (13:55) The intention is for the WP to create a relatively  
>short rationale and framework document that will clarify many of these  
>issues.

> Eberhard Lisse [.NA ccTLD Manager]: (13:55)

><http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>

> Eberhard Lisse [.NA ccTLD Manager]: (13:55) Human rights entail both  
>rights and obligations. States assume obligations and duties under  
>international law to respect, to protect and to fulfil human rights. The  
>obligation to respect means that States must refrain from interfering  
>with or curtailing the enjoyment of human rights. The obligation to  
>protect requires States to protect individuals and groups against human  
>rights abuses. The obligation to fulfil means that States must take  
>positive action to facilitate the enjoyment of basic human rights. At the  
>individual level, while we are entitled our human rights, we should also  
>respect the human rights of others

> Bruce Tonkin: (13:56) IN the new gTLD guidebook we explicitly  
>referenced:

> Bruce Tonkin: (13:56) The Universal Declaration of Human Rights

>(UDHR)Module 3Dispute Resolution ProceduresApplicant Guidebook | version

>2012-06-043-21€ The International Covenant on Civil and PoliticalRights

>(ICCPR)€ The Convention on the Elimination of All Forms ofDiscrimination

>Against Women (CEDAW)€ The International Convention on the Elimination

>ofAll Forms of Racial Discrimination€ Declaration on the Elimination of

>Violence againstWomen€ The International Covenant on Economic, Social,and

>Cultural Rights€ The Convention against Torture and Other Cruel,Inhuman,

>or Degrading Treatment or Punishment€ The International Convention on the

>Protection ofthe Rights of all Migrant Workers and Members oftheir

>Families€ Slavery Convention€ Convention on the Prevention and Punishment

- >ofthe Crime of Genocide€ Convention on the Rights of the Child
- > Eberhard Lisse [.NA ccTLD Manager]: (13:56) So "respect" human rights
- >is defined somewhere :-)-O
- > Eberhard Lisse [.NA ccTLD Manager]: (13:57) The obligation to respect
- >means that States must refrain from interfering with or curtailing the
- >enjoyment of human rights.
- > Bruce Tonkin: (13:57) Not sure why we need to list just one
- >international convention/treaty. I would rather tan during the policy
- >development process that members of the communiyt identify an issue that
- >is not conceistent with intenrational law - then tey should raise that as
- >part of the policy process.
- > Eberhard Lisse [.NA ccTLD Manager]: (13:57) Examples :-)-O
- > James Bladel: (13:57) +1 Alan.
- > Matthew Shears: (13:57) @ Wolfgang - yes but when you use the term
- >"relevant" it is open to interpretation
- > Niels ten Oever: (13:57) @Alan - This has been mentioned before. Would
- >you have an example?
- > Mary Uduma: (13:57) + 1 Alan
- > Eberhard Lisse [.NA ccTLD Manager]: (13:58) My point was we don't need
- >to define what "respect" human rights means.
- > David McAuley (RySG): (13:58) My sense of the WP4 work is that we
- >agreed ICANN would be guided by a high level ³respect² commitment but
- >would not become burdened with HR claims and perhaps we need another
- >sentence to make that clear.
- > Bruce Tonkin: (13:59) @Avri it sounds like we need to clarify the
- >language in the articles of association. I and most of the Board
- >memembrs I think - interpret them differently. You
- > Bruce Tonkin: (14:00) ie we think that we shoudl take those principels
- >into account in our decision making. Your comment was that legally a
- >corporation doesn't need to apply those principles as we are not a
- >gobovernment and not a signattory to an international convention. THat
- >doesn't stop us from taking them into account in our deicsion making -
- >which is how I interpreted the artivcles of association
- > James Bladel: (14:00) Refinement, yes. But I think #1 is closest.

- > David McAuley (RySG): (14:00) agreed Leon
- > Robin Gross [GNSO - NCSG]: (14:01) refinement, not revision
- > Matthew Shears: (14:01) yes, lets refine option 1
- > Mark Carvell GAC - UK Govt: (14:01) Maybe for rationale: or footnote:  
>the UN Guiding Principles are an authoritative global reference point for  
>business and human rights. Agree this should not be watered down.
- > Greg Shatan: (14:02) Leon, what about the other options for  
>consideration?
- > Nathalie Coupet: (14:29) Hello, Matthieu
- > Megan Richards European Commission: (14:29) thanks Thomas !!
- > Mathieu Weill, ccNSO, co-chair: (14:30) Hello
- > Steve DelBianco [GNSO - CSG]: (14:36) These areas of divergence seem  
>relatively minor. Perhaps we are very close to having a consensus for  
>how this community power would work
- > James Gannon: (14:37) I read it similirarly Steve
- > James Gannon: (14:37) I think we might be closer than we think
- > Steve DelBianco [GNSO - CSG]: (14:42) Well, let's not get hung up on 75  
>vs 80% threshold. We are seeking a decision - making process that aims  
>for consensus among AC/SOs. That's the goal of breakout led by Jonathan  
>Zuck tomorrow.
- > Jordan Carter (.nz, WP1 rapporteur): (14:42) the comment analysis here  
>doesn't get me the sense there are major areas of contention here
- > Jordan Carter (.nz, WP1 rapporteur): (14:42) they all relate instead to  
>the decision-making methods
- > Jordan Carter (.nz, WP1 rapporteur): (14:42) which are being decided  
>elsewhere
- > Malcolm Hutto: (14:43) The only significantly divergent position is  
>making recall subject to standards of misbehaviour, because that  
>introduces the question of who decides whether the conditions have been  
>met
- > James Gannon: (14:43) Does that not allow an AC or SO block the board  
>spill after the fact by inaction? Or is that examined (Sorry catching up)
- > Robin Gross [GNSO - NCSG]: (14:43) yes, Malcolm, but it seems the  
>consensus is to NOT restrict the board removal rights.

- > Robin Gross [GNSO - NCSG]: (14:44) Agree with Jordan.
- > Jordan Carter (.nz, WP1 rapporteur): (14:46) James, no, don't think so
- >- if by that you mean the timeframe
- > James Gannon: (14:47) Ok thanks Jordan
- > Jordan Carter (.nz, WP1 rapporteur): (14:47) sorry, James, I was wrong,
- >it sort of does in the sense that if an SO or AC doesn't appoint
- >replacements, it might fall over
- > Jordan Carter (.nz, WP1 rapporteur): (14:48) this might need to look
- >into that
- > Robin Gross [GNSO - NCSG]: (14:50) But Alan, what if someone is defamed
- >in the process? Should they really have to forego their right to have
- >that adjudicated and possibly clear their name?
- > James Gannon: (14:51) Yeah that was my concern, but if we have a
- >process that if a body does not appoint its interim director in time that
- >there is a contingency there then we are ok
- > James Gannon: (14:51) ^^ ref Jordan
- > Steve DelBianco [GNSO - CSG]: (14:51) The reason for board spill might
- >be as plain as this: the board's interpretation of "fiduciary duty to
- >the corporation" differs from the consensus view of the community about
- >how to interpret that fiduciary duty.
- > Jordan Carter (.nz, WP1 rapporteur): (14:52) someone could only be
- >defamed by statements made in the context of a community discussion about
- >removal, not I guess by the act of the process itself
- > Jordan Carter (.nz, WP1 rapporteur): (14:52) and I don't know if we
- >would want to provide indemnities for defamation in that situation, it
- >might encourage bad behaviour
- > Alice Jansen: (14:52) WS2 paper -
- >[https://community.icann.org/download/attachments/56142506/WS2%20comment%20](https://community.icann.org/download/attachments/56142506/WS2%20comment%20analysis.pdf?version=1&modificationDate=1444764628000&api=v2)
- >analysis.pdf?version=1&modificationDate=1444764628000&api=v2
- > James Gannon: (14:52) Which would be a separate issue to the spill
- > Robin Gross [GNSO - NCSG]: (14:53) I don't want to have a situation
- >where folks defame at will because they can't be punished. That sounds
- >dangerous.
- > Jordan Carter (.nz, WP1 rapporteur): (14:53) +1



> Alan Greenberg: (14:55) @Robin, at the same time we are now demanding a  
>"rationale" and implications of lawsuits could imply we never use the  
>power. Fine with me, actually, but I thought we were building the process  
>so it \*could\* be used.

> Greg Shatan: (14:55) Indemnification would only protect individuals  
>acting in their role as AC/SO representatives. I think it could be  
>narrowly focused.

> Robin Gross [GNSO - NCSG]: (14:56) we need to find a balance between  
>not encouraging defamation and not encouraging defamation lawsuits.

> Alan Greenberg: (14:57) Simply being removed might cause a claim of  
>their reputation and therefore employability being harmed.

> Robin Gross [GNSO - NCSG]: (14:58) I'm concerned about the suggestion  
>to move these transparency issues out of WS2

> Robin Gross [GNSO - NCSG]: (14:58) I strongly object to moving  
>transparency and whistleblower out of WS2

> Greg Shatan: (14:59) Defamation is a false and unprivileged statement  
>of fact that is harmful to someone's reputation, and published "with  
>fault," meaning as a result of negligence or malice. Statements of  
>opinion can't be defamatory (unless they clearly imply unstated facts).

> Mathieu Weill, ccNSO, co-chair: (14:59) Transparency is proposed to  
>remain in WS2.

> Greg Shatan: (14:59) So it's not just any statement that could harm  
>reputation.

> Robin Gross [GNSO - NCSG]: (14:59) I see transparency about  
>interactions with govt out of WS2 4a.

> Robin Gross [GNSO - NCSG]: (15:00) 4b rather

> Alan Greenberg: (15:01) Greg, is there a new law in the US prohibiting  
>lawsuits that might in fact have little merit?

> Steve DelBianco [GNSO - CSG]: (15:07) on the email list, I just  
>circulated a list of Transparency improvements that are part of our 2nd  
>draft proposal, work stream 1

> Greg Shatan: (15:09) Alan, Rule 11 of FRCP and its equivalents would  
>sanction frivolous or bad faith lawsuits. That's been around a fairly  
>long time. A lawsuit with little merit could be filed, but it won't last

>long. Probably would not survive a motion to dismiss for failure to  
>state a claim. But as a general matter, anyone has the right to file a  
>lawsuit as long as its nonfrivolous and not in bad faith.

> Greg Shatan: (15:16) I seem to recall a bottom-up process by which the  
>URS was developed.

> James Gannon: (15:18) (Following on transcript) Yes it was bottom up  
>but never consensus policy outside of new gTLDs

> Keith Drazek: (15:20) Contracted parties should be able to voluntarily  
>incorporate terms into negotiated or renegotiated contracts. Consensus  
>policies from PDPs are terms imposed on contracted parties. Let's be sure  
>to recognize the difference, while reasonably questioning how to define  
>"voluntary."

> Greg Shatan: (15:21) So, if these renewals were voluntarily entered  
>into by these registries, then there's no issue....

> Olga Cavalli - GAC Argentina: (15:24) Leon Pedro is in the que but he  
>has no connectio to adobie

> Olga Cavalli - GAC Argentina: (15:24) I can rise hand for him

> Pedro Ivo Silva [GAC Brasil]: (15:25) I am back. Thanks Olga ;-)

> Kavouss.arasteh: (15:25) For the first sentence on which I have  
>commented ,I suggest the followin

> Kavouss.arasteh: (15:30) to be edrafted

> Steve DelBianco [GNSO - CSG]: (15:31) ICANN has implemented "consensus  
>policies" per Specification 1 approx 10 times in its history. Policies  
>to restrict domain tasting, for example.

> Steve DelBianco [GNSO - CSG]: (15:32) here they are:  
><https://www.icann.org/resources/pages/registrars/consensus-policies-en>

> avri doria: (15:34) how many of these teams are we creating and how  
>many places are people going to have be in at a time? are these the  
>WP1-n teams we have now or a new slice and dice?

> Alan Greenberg: (15:34) My hand was ignored, but I wanted to point out  
>that it is not clear (although Becky disagrees) whether the New gTLD PDP  
>resulted in "Consensus Policy" as defined in the current Spec 1.

> avri doria: (15:35) i ask becasue these little groups seem to be  
>multiplying like bunnies.

> Thomas Rickert, CCWG Co-Chair: (15:35) Alan, we had connectivity  
>issues. I apologize.

> jorge cancio (GAC Switzerland): (15:36) I feel we should discuss these  
>issues, at least at level of where there are substantial concerns, at the  
>CCWG...

> Alan Greenberg: (15:40) Some of us have actively participates in  
>multiple WSs. Being in several breakout sessions tomorrow will be  
>difficult. As is finding the time to write detailed e-mails on each  
>possible issue.

> Robin Gross [GNSO - NCSG]: (15:40) I'm worried we won't have enough  
>people here (at least from my own SG) to cover all the break-outs.  
>Presumably, I can only go to one of them, and I'm keen to follow several.

> Matthew Shears: (15:40) can we stagger them in the day?

> James Gannon: (15:41) I agree Robin

> James Gannon: (15:41) We need to be inclusive on the break out strategy

> jorge cancio (GAC Switzerland): (15:44) this presentation is really,  
>very difficult to follow...

> Matthew Shears: (15:50) if we insist on "private sector led" we could  
>just say "private sector led involving the full participation of ....."

> Steve DelBianco [GNSO - CSG]: (15:57) Agree, Milton. Bylaws affect  
>actions of the corporation, but do not constrain the kind of advice given  
>by GAC or SSAC, etc.

> Robin Gross [GNSO - NCSG]: (15:57) Completely agree, Milton.

> jorge cancio (GAC Switzerland): (15:58) To clarify: That language is an  
>addition, if you compare it to current Bylaws. And after the first public  
>comment it was clear that there was no consensus supporting it. Apart  
>from that ICANN is bound by its Bylaws, hence whatever advice from any AC  
>(including the GAC) which is outside or contrary to the mission, has no  
>bearing on ICANN.

> Keith Drazek: (15:58) +1 Milton

> John Curran: (15:58) The scope of would be clearer, Milton, if

> Robin Gross [GNSO - NCSG]: (15:59) I do not support WSIS language on  
>multi-stakeholderism. ICANN has been private sector since it was  
>created and we aren't changing that. We can't use this as an opportunity

- >to change the meaning of multi-stakeholderism.
- > John Curran: (15:59) the definition of SSAC, GAC, etc. were distinction
- >from ICANN's bylaws
- > jorge cancio (GAC Switzerland): (16:00) Either we aff the qualification
- >of their input having to be within ICANN Mission etc to all SO/AC, one by
- >one, or either we state it (as is done now) generally and applicable to
- >all SO/AC
- > Milton Mueller: (16:00) Agree with Robin - "non state actors" or
- >nonstate institutions would be better than "private sector" but the whole
- >point of governance institutions like ICANN is that they are not
- >intergovernmental organizations.
- > Robin Gross [GNSO - NCSG]: (16:00) Agree with Greg. Tunis Agenda and
- >WSIS were developed in a UN environment. This is not a UN environment
- >and so not appropriate to ape that language.
- > Olga Cavalli - GAC Argentina: (16:01) Robin, Net Mundial was not UN
- >meeting and developed a similar definition
- > Pedro Ivo Silva [GAC Brasil]: (16:02) +1 Olga. Netmundial was a genuine
- >multistakeholder bottomup process.
- > Grace Abuhamad: (16:02) Apologies -- the scribe pod is down. We are
- >working to reso;ve
- > Lori Schulman: (16:02) The root of the term goes to the "privitization"
- >of Internet functions away from the U.S. Government under Bill Clinton's
- >administration. Private = not part of a US federal agency.
- > Milton Mueller: (16:02) Olga: Netemundial discarded the Tunis Agenda
- >roles
- > Milton Mueller: (16:02) It talked about equal roles. The WSIS Tunis
- >Agenda was a state-centric definition of roles, written by states, for
- >states, and relegataing non-state actors to a subordinate role.
- > Olga Cavalli - GAC Argentina: (16:02) @ Milton, sorry my English
- >islimited, can you clarify "discarded"?
- > Milton Mueller: (16:03) changed, not affirmed,
- > Milton Mueller: (16:03) The WSIS roles were not upheld by the
- >Netmundial statement
- > Olga Cavalli - GAC Argentina: (16:03) thanks, any way the definition of

>multistakeholderism in Net Mundial does not give a special role to the  
>private sector  
> Milton Mueller: (16:04) true.  
> Milton Mueller: (16:04) the WSIS definition does however give a special  
>role to governments  
> Olga Cavalli - GAC Argentina: (16:05) ok so let use Net Mundial  
> Brenda Brewer2: (16:06) Working on bringing the Scribe screen back into  
>view. One moment please.  
> Cheryl Langdon-Orr - ALAC APRegional Member: (16:06) thx Brenda I miss  
>it ;-0  
> Mark McFadden: (16:07) +1 to Cheryl - I miss it too!  
> Robin Gross [GNSO - NCSG]: (16:09) I think the standard MUST be de  
>novo. One of the biggest concerns with IRP today is the 2013 change in  
>the std to an abuse std.  
> Cheryl Langdon-Orr - ALAC APRegional Member: (16:11) agree Robin  
> nigel hickson: (16:11) Re "multistakeholder" this was agreed at NetMundial  
>" Multistakeholder: Internet governance should be built on democratic,  
>multistakeholder processes, ensuring the meaningful and accountable  
>participation of all stakeholders, including governments, the private  
>sector, civil society, the technical community, the academic community  
>and users. The respective roles and responsibilities of stakeholders  
>should be interpreted in a flexible manner with reference to the issue  
>under discussion  
> Milton Mueller: (16:12) Exactly. the whole idea that governments are in  
>charge of public policy has been discarded (ended, not repeated) in this  
>definition  
> Milton Mueller: (16:13) Roles and responsibilities are flexible  
> jorge cancio (GAC Switzerland): (16:14) Could you elaborate, Milton?  
>how do you infer that?  
> Milton Mueller: (16:15) It is not an inference. It is right there in  
>the language. WSIS says different stakeholders have fixed, defined roles.  
>NetMundial says the roles and responsibilities are flexible and depend on  
>the issue  
> jorge cancio (GAC Switzerland): (16:16) flexibility does not mean that

>the underlying role disappears... it's a non sequitur

> Matthew Shears: (16:17) NM language is a valuable evolution of the WSIS

>language

> Jorge Cancio (GAC Switzerland): (16:18) +1 to Mathew - we are evolving,

>that's it :-)

> Wolfgang: (16:18) The original "division of labour" goes back to the

>Geneva Declaration (2003) which gave governments a monopoly over public

>policy making on Internet related issues. This was "undermined" by the

>WGIG definition (Tunis Agenda) which speaks about "sharing of decision

>making processes" among all stakeholders, but gives governments also "a

>respective role" (open for interpretation). Netundial has pushed this one

>step further. ICANN should not copy this language but should use it as a

>source of inspiration to modernize its language and bring it in line with

>the general understanding (of the 2015s) of MSM.

> Milton Mueller: (16:18) Jorge; Yes, it does mean that the fixed,

>pre-defined role disappears.

> Milton Mueller: (16:19) That is exactly what it means, and that is

>exactly why it was proposed and agreed at the Netmundial meeting

> Robin Gross [GNSO - NCSG]: (16:19) I'm not sure we want to require

>participation in PDP before one can file an IRP. What if they didn't

>know about the issue at the time of the PDP? That seems too restrictive

>to those outside the inner ICANN community.

> Rinalia Abdul Rahim: (16:19) +1 Robin

> Becky Burr: (16:19) Robin - we spent a long time discussing this point

>and I think most folks agree with you

> Kavouss.arasteh: (16:19) Wolfgang,

> Julia Wolman, GAC Denmark: (16:19) Important point Robin

> Jorge Cancio (GAC Switzerland): (16:20) Dear Milton: that is just your

>inference. It has no basis in the language, as far as I see. That roles

>are flexible, still means that the roles are there, which is just natural

> Kavouss.arasteh: (16:20) We should specifically read and refer to

>applicable paragraphs of WSIS

> Becky Burr: (16:20) it really is an abuse of process issues, and I

>would rather address that directly (e.g., frivolous, vexatious claims)

>rather than participating in PDP

> Robin Gross [GNSO - NCSG]: (16:20) exactly, Becky.

> Milton Mueller: (16:21) It is not an inference. If you want to deny

>that words mean anything, feel free, it is your right. But you cannot

>tell me that those words uphold the same idea as the original Tunis

>Agenda, and it's clear that most people here agree with me

> Eberhard Lisse [.NA ccTLD Manager]: (16:21) How can someone mark

>something as green when there is opposition????

> Robin Gross [GNSO - NCSG]: (16:21) Jorge, I don't understand how you

>can say it is an inference. The exact words are there in NetMundial.

> Eberhard Lisse [.NA ccTLD Manager]: (16:21) It's not Tthe Thomas

>Rlckert

> Eberhard Lisse [.NA ccTLD Manager]: (16:22) It's not the Thomas

>Rickert Show!!!

> jorge cancio (GAC Switzerland): (16:22) Who says it means the same?

>flexible acts as a qualifier of roles... there is evolution, but it does

>not mean that roles disappear - that is just a desire, perhaps

> John Curran: (16:23) Jorge - note that the flexible

>responsibilities/roles are with respect to multistakeholder activities,

>and does preclude participants having specific and/or exclusive roles in

>other contexts...

> Olga Cavalli - GAC Argentina: (16:23) +1 to Jorge's comment. And

>whichever the definition, there should not be a specific relevance given

>to the private sector

> Robin Gross [GNSO - NCSG]: (16:24) The NetMundial language says all

>groups develop those policies. That is a considerable change from WSIS

>and Tunis.

> David McAuley (RySG): (16:24) well said Becky

> jorge cancio (GAC Switzerland): (16:24) The point, for me anyway, is

>that we reflect what we do here, which is a specific way of living a

>multistakeholder model, where we all cooperate

> Milton Mueller: (16:25) But the Netmundial document does not reference

>the WSIS Tunis roles at all. So it is not a "qualifier" of those roles,

>it is a statement that they are no longer the main reference point, the

>roles are flexible. It's pretty clear that you are the one twisting  
>yourself into a pretzel in an attempt to get the words say what you want  
>them to say.

> Sivasubramanian M: (16:25) please share the link to the color coded doc.

> Pedro Ivo Silva [GAC Brasil]: (16:25) Agree with Mathew that NM should  
>be seen as an evolution with respect to WSIS, which means that it does  
>build on the Tunis Agenda and does not reject it

> Mike Silber: (16:26)  
>[https://docs.google.com/spreadsheets/d/1HcUUDn5DHSVo7ILo-FWU\\_QMa8PGgfZWTP\\_kGo1EXNQs/edit?pli=1#gid=1327274628](https://docs.google.com/spreadsheets/d/1HcUUDn5DHSVo7ILo-FWU_QMa8PGgfZWTP_kGo1EXNQs/edit?pli=1#gid=1327274628)

> Sivasubramanian M: (16:26) Thank you Mike

> Wolfgang: (16:27) @ Olga & Jorge. A key language is "sharing decision  
>making" from the Definition (Tunis Agenda). That means whatever your role  
>is if it comes to decision taking you have to "share" it with other  
>stakeholders. Sharing is not defined. It can have different forms  
>(consultations, hearings, splitting of votes etc.). Details have to be  
>experimented in the future processes. Net Mundial was a step forward into  
>uncharted territory More will have to come.

> Eberhard Lisse [.NA ccTLD Manager]: (16:28) I consider Thomas  
>Rickett's conduct an attempt at manipulating the process.

> Eberhard Lisse [.NA ccTLD Manager]: (16:28) this is in violation of:

> Eberhard Lisse [.NA ccTLD Manager]: (16:28) Those who take part in  
>ICANN multi-stakeholder process, including Board, staff and all those  
>involved in Supporting Organization and Advisory Committee councils,  
>undertake to [...] Act in a reasonable, objective and informed manner  
>when participating in policy development and decision-making processes.  
>This includes regularly attending all scheduled meetings and exercising  
>INDEPENDENT judgment based SOLELY on what is in the OVERALL BEST interest  
>of Internet users and the stability and security of the Internet's system  
>of unique identifiers, IRRESPECTIVE of personal interests and the  
>interests of the entity to which an individual might owe their  
>appointment. [...]

> Milton Mueller: (16:28) It is sad to see people use a double standard:  
>when GAC wants to get involved in something they say "equal footing" but



>when it comes to policy development you want to retain the archaic WSIS  
>role definitions which privilege governments as having a monopoly on  
>public policy development

> Robin Gross [GNSO - NCSG]: (16:28) Equal Plus?

> Milton Mueller: (16:29) It's like Animal Farm (Orwell) all animals are  
>equal but some are more equal than others

> jorge cancio (GAC Switzerland): (16:30) @wolfgang: decision-sharing is  
>a very swiss thing ;-)

> Sivasubramanian M: (16:31) Milton, Governments are slow to embrace the  
>ms model, and it might take a generation for governments to give up a  
>portion on their "monopoly" over public policy development.

> Mark Carvell GAC - UK Govt: (16:32) Agree the CF should be predictable  
>process with precise procedures and timelines.

> Sivasubramanian M: (16:32) The other stakeholders can't possibly take  
>governments head on. Plenty of coaxing is required to get them to  
>involve the stakeholders in the actual policy process.

> Milton Mueller: (16:32) I agree, Sivasubramanian

> Sivasubramanian M: (16:33) We could do that by "capturing" Governments

> Robin Gross [GNSO - NCSG]: (16:33) :-)

> Robin Gross [GNSO - NCSG]: (16:33) I like that concept, Siva. ;-)

> Milton Mueller: (16:34) a lot of interest groups are already doing that

> Sivasubramanian M: (16:34) Want to join me in a conspiracy? We will  
>initiate one

> Panus: (16:34) I think the community forum should be mandatory somehow  
>if we have some idea what will happen on the yearly basis such as public  
>comments on budgeting etc.

> John Curran: (16:34) Governments already have the unique ability to  
>engage in public policy rule making in their own environments, they do  
>need an unique role in multistakeholder policy development...

> John Curran: (16:35) do NOT need

> Sivasubramanian M: (16:35) John, Yes, some governments - only some  
>governments - have the ability to engage and do engage, to some extent.

> Matthew Shears: (16:36) @ Panus - i think it is a key piece  
>("mandatory" ) of the process of getting to the decision-taking phase.

>it might be difficult to set a particular schedule as it is unclear when  
>it will be triggered

> Robin Gross [GNSO - NCSG]: (16:36) may we please see the language on  
>the screen?

> Sivasubramanian M: (16:36) Other Governments could begin, but in a  
>reverse order, start from within the ICANN and IGF ms processes, and then  
>take it forward in their national environments for general public policy

> Sivasubramanian M: (16:36) Which makes it very very important for ICANN  
>to prove the success of this model

> Alice Jansen: (16:36)  
>[https://community.icann.org/download/attachments/53783460/CCWG-2ndDraft-FI  
>NAL-3August.pdf?version=1&modificationDate=1438621330000&api=v2](https://community.icann.org/download/attachments/53783460/CCWG-2ndDraft-FINAL-3August.pdf?version=1&modificationDate=1438621330000&api=v2) - p 112

> Robin Gross [GNSO - NCSG]: (16:37) REALLY need to see this text

> Alice Jansen: (16:38) ST text -  
>[https://community.icann.org/download/attachments/56142506/Stress%20Tests%2  
>0-%20analysis%20of%20PC%20v3.pdf?version=2&modificationDate=1444985265269  
>&api=v2](https://community.icann.org/download/attachments/56142506/Stress%20Tests%20-%20analysis%20of%20PC%20v3.pdf?version=2&modificationDate=1444985265269&api=v2)

> Panus: (16:38) @Matthew Sheares: Thanks for your clarification on this.

> Greg Shatan: (16:44) I will give this further consideration. I assume  
>this document is in our reading list?

> Steve DelBianco [GNSO - CSG]: (16:44) thanks alice, for posting the  
>link, ST 29 and 20 are on p 3

> Greg Shatan: (16:45) Thanks for the link. Is there a Word version as  
>well?

> Greg Shatan: (16:48) I hope that our "measures" don't prevent ICANN  
>from enforcing Section 3.18.

> Greg Shatan: (16:49) Subject to reasonable expectations on the part of  
>all those involved....

> Malcolm Hutty: (16:52) Can you provide a link to Section 3.8 please/  
> Desiree Miloshevic: (16:55) Support Robin's point of being careful with  
>this text - no extension of icann's mandate into content control

> James Gannon [GNSO-NCSG]: (16:56) Yes strongly support Desiree and  
>Robin

> Keith Drazek: (16:59) +1 Desiree and Robin and James

> Eberhard Lisse [.NA ccTLD Manager]: (17:00) What difference is there  
>really, between Content Control and forcing URS on pre-existing  
>Registries?

> Milton Mueller: (17:00) Are we not allowing comment?

> Stephen Deerhake (.as): (17:01) Eberhard: No difference that I can  
>see...

> Greg Shatan: (17:01) Who watches those who watch the watchers?

> Mathieu Weill, ccNSO, co-chair: (17:03) the ones watching the watchers  
>are those that the watchers are watching Greg. Obvious !

> Jonathan Zuck (IPC): (17:04) Quis custodiet ipsos custodes?

> Greg Shatan: (17:05) Mathieu, so everyone watches everyone else?

> Mathieu Weill, ccNSO, co-chair: (17:05) Yes ;-) Just like now

> jorge cancio (GAC Switzerland): (17:05) infinite regression has its  
>limits... the question is to find the right balance

> Mathieu Weill, ccNSO, co-chair: (17:05) I can see you BTW

> Robin Gross [GNSO - NCSG]: (17:06) I share James' concerns on this  
>point.

> Stephen Deerhake (.as): (17:06) Greg: GHCQ watches the PMs; the PM's  
>watch GHCQ. That why the GHCQ HQ building is circular.

> Nathalie Coupet: (17:06) Audio is intermittent

> James Gannon [GNSO-NCSG]: (17:08) Agreed Jorge 100%

> Athina Fragkouli (ASO): (17:09) Agree with Mathieu's suggestion

> Seun Ojedeji: (17:12) @Milton But going to a member model(for example)  
>is not seen as reform of ICANN

> Robin Gross [GNSO - NCSG]: (17:13) I agree with Milton. Much of this  
>is new material and we don't support it.

> Robin Gross [GNSO - NCSG]: (17:13) "thank you for your comments, but  
>I'm not taking them on board" Yikes!

> Matthew Shears: (17:13) we cannot load up WS1

> Sivasubramanian M: (17:14) Disagree with Milton. The on going  
>processes for AC SO improvements are not enough. We need to look at AC SO  
>accountability more comprehensively.

> Jordan Carter (.nz, WP1 rapporteur): (17:14) Internet Governance by  
>NYAH NYAHs.

- > Robin Gross [GNSO - NCSG]: (17:14) but not in WS1, Siva. that is the  
>issue.
- > Sivasubramanian M: (17:14) Work Stream 2, perhaps, but it is in way a  
>distraction
- > Alan Greenberg: (17:14) WS-Nya nya ne nya na...
- > Sivasubramanian M: (17:15) This need not be a precluded item from WS  
>1, but could be examined in greater depth in WS2
- > Leon Sanchez (Co-chair ALAC): (17:15) @Robin Milton's comments are  
>already taken into account, we said this will be fleshed out as WS2
- > Sivasubramanian M: (17:15) Alan, please translate
- > James Gannon [GNSO-NCSG]: (17:15) IF we put it in WS1 we wont meet the  
>deadline
- > Robin Gross [GNSO - NCSG]: (17:15) Leon, so you are saying this WS2 -  
>ok. I would be ok with that.
- > Asha Hemrajani: (17:15) +1 Greg
- > Keith Drazek: (17:16) I have no problem with SO/AC Accountability as a  
>WS-2 requirement. But it is clearly not a WS-1 requirement under the CCWG  
>Charter.
- > Matthew Shears: (17:16) + 1 Keith
- > Sivasubramanian M: (17:17) Should WS1 preclude this item as a rule?  
>Simply because it is not under the Charter? It is an important  
>component, at least very basic discussions could happen in WS1, some  
>mention could be made about AC SO accountability in the WS 1 phase
- > Steve DelBianco [GNSO - CSG]: (17:18) Please see Stress Test 33,  
>requested by NTIA: Participants in an AC/SO attempt to capture an AC/SO  
>by arranging over-representation in a working group, in electing  
>officers, or voting on a decision. (p.116 of our 2nd draft report)
- > Sivasubramanian M: (17:18) only to be examined in much greater depth in  
>WS2
- > Seun Ojedeji: (17:18) @James I agree with that view of not putting it  
>in WS1 however that its a none-issue is not something that we should  
>uphold. The entire accountability of the organisation is work in progress
- > James Gannon [GNSO-NCSG]: (17:18) Agreed Seun
- > Matthew Shears: (17:18) @ Seun - agree these are important issues

- > Greg Shatan: (17:18) I'm not suggesting we make new accountability
- >measures part of WS1. I'm suggesting we stand up for ourselves and say
- >that we are accountable organizations and an accountable community, and
- >that we have a good story to tell today for each of our organizations.
- >That's not to say we can't get any better.
- > Robin Gross [GNSO - NCSG]: (17:19) True 'dat, Greg.
- > Seun Ojedeji: (17:19) That said, personally I am concerned that we are
- >putting everything to WS2 which makes it look like this particular CCWG
- >will last till eternity.
- > jorge cancio (GAC Switzerland): (17:20) @Steve: very useful points!
- > Matthew Shears: (17:20) +1 Greg
- > Alice Jansen: (17:22) Scorecard link
- >[https://docs.google.com/spreadsheets/d/1HcUUDn5DHSVo7iLo-FWU\\_QMa8PGgfZWTP\\_](https://docs.google.com/spreadsheets/d/1HcUUDn5DHSVo7iLo-FWU_QMa8PGgfZWTP_kGo1EXNQs/edit#gid=1327274628)
- >kGo1EXNQs/edit#gid=1327274628
- > Alice Jansen: (17:22) Go to sheet 2
- > Alice Jansen: (17:22) Progress tracking
- > Robin Gross [GNSO - NCSG]: (17:25) can you clarify wht is in scope for
- >"decision-making" and "enforcement model" sessions please?
- > Robin Gross [GNSO - NCSG]: (17:26) I'm not entirely sure what will be
- >discussed in which of those.
- > Greg Shatan: (17:27) Irish flag colours....
- > James Gannon [GNSO-NCSG]: (17:27) For the record that wasnt me
- > James Gannon [GNSO-NCSG]: (17:27) =)
- > Hillary Jett: (17:29) All upcoming CCWG sessions are located here:
- ><https://community.icann.org/pages/viewpage.action?pageId=56134263>
- > Sébastien (ALAC): (17:30) Can we have all the invitations for the
- >meetings tomorrow and Monday?
- > Robin Gross [GNSO - NCSG]: (17:30) I thought we were looking at both
- >designator and membership - not preferencing designator at this point -
- >we haven't determined it meets requirements, so I don't know how that
- >become our focus.
- > avri doria: (17:31) I still question the jump that was made form
- >considering SM to considering SD.
- > Alice Jansen: (17:33) Thank you for joining today's session!

