Transcription ICANN Los Angeles
Framework of Operating Principles Cross Community Working Group
Wednesday 15 October 2014

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John Berard: Good morning, this is John Berard, and this is the Cross-Community Working Group's Framework for Cross-Community Working Groups Working Group.

I see that we've got some people in the Adobe Chat Room including Becky Burr the Co-Chair. Becky, are you there?

Becky Burr: I'm here, I don't know if you hear me.

John Berard: Great. How do you feel Becky?

Becky Burr: Okay.

John Berard: Well we look forward to seeing you when you're up and around again, so get well.

Becky Burr: All right.

John Berard: I'd like to start I guess, Mary, just by introductions and then you can take us through the agenda. Okay?

So as I said, I'm John Berard from the Business Constituency.

Avri, why don't you take if from there? Introduce yourself, come on now.

Avri Doria: Avri Doria, a member of the NCSG.

Everton Rodrigues: Everton Rodrigues from Brazil Fellowship Program.

Tijani Ben Jamaa: Tijani Ben Jamaa, Vice-Chair of ALAC.

Steve Chan: Steve Chan, ICANN Staff.

Jim Galvin: While she's coming up to the front, so this is Jim Galvin from SSAC, also Vice-Chair of SSAC.

(Janeen Goodman):   (Janeen Goodman) with (Avenue Four).

Mary Wong: This is Mary Wong from ICANN Staff. And John, I think you already introduced Becky in the Adobe.

John Berard: And who else do we have in the Adobe Room?

                The timing of this working group is a little odd for us today. It comes just before the GNSO Council Public Meeting. Avri and Mary and I need to be there for that and so we won't go any longer than 12:30.

                That means that I want to truncate our conversation in the most productive way. And I'll have Mary take us through what the agenda had been and then we can discuss some changes that perhaps I'd like to implement.

Mary Wong: So in the interest of time as John said, we had had an initial agenda that was going to take folks, especially newer folks, you know, kind of laboriously through our work.

But suffice it to say that this working group was created, and as John mentioned, maybe some events may have superseded our work really to try to map out a common path forward for cross-community working groups.

Even if you're new to ICANN, you would have seen there seems to be an increasing number of cross-community working groups simply because a lot of the number of issues that the ICANN community is dealing with cuts across more than one group. And as it is, while this group was chartered by the GNSO and the ccNSO Councils, we have participants from the ALAC, the SSAC and other groups as well.

So what we had done was clearly to - well not clear to the newer people, but what we had done was to look at typical working group's life cycle and map out certain phases, and we had planned to make a progress report of where we are with that. But as John noted, there may actually be productive and quicker ways of using our time.

So John, on that note, I'm going to hand it back to you for your suggestions.

John Berard: Thank you Mary.

I had asked that the spreadsheet that was originally created at the start of our work which cataloged the aspects of the cross-community working groups that had already been empanelled be put up. Do we have that? Great.

So is we can begin in this way, before the GNSO Council this afternoon is a motion to accept the cross-community working group on Internet Governance Charter. And it's one of two or three very high profile and important cross-community working groups that are in place right now.

If one were to look at that charter, you would see that almost entirely, they have answered in the way that suits them best the questions that we had posed initially that relate to the life cycle of a working group.

There is the - here I'll turn it back to Mary. I'm going to pick the wrong words. Can you find the actual descriptions we used for the life cycle of the working groups? Yes, the five phases of it.

While she does that, I just wanted to make a couple of points about the Internet Governance Charter.

So clearly as we have discussed and as they have implemented, each participating SO and AC, Supporting Organization and Advisory Committee, adopts the same charter. That may seem in this day and age a fairly obvious thing, but in the past that hasn't always been the case. So I think that based on the conversations we've had, we would certainly agree with that.

They are established, that particularly working group, is established by the participating SOs and ACs. I think we're taking a broader look at that.

What we think that almost anybody in the community can suggest that an issue would benefit from the review and participating of a cross-community working group. Having said that, it then becomes incumbent upon either that one person, that one group, that one constituency, that one stakeholder group, to be persuasive in making the case to draw others to the point.

Now this is an interesting point for this particular charter. And I think, Avri, you've had a hand in drafting this charter. Yes?

Avri Doria: Yes.

John Berard: Avri is nodding yes.

Avri Doria: Yes, I've been probably involved in the last several of the charters that are cross-community groups.

John Berard: Excellent. And this one specifically says that the working group members are not to represent the SO and AC from which they come or are appointed either collectively or individually.

And do I have that right Avri? Yes. So that may be a difference from what we've been talking about because we have been talking about creating membership that would allow, in fact promote, the members to represent the group from which they come.

This group of course being high profile for a various specific purpose addresses the requirement to communicate back to the community. Now that's not something we've talked about with regard to cross-community working groups.

We've talked about the mechanism by which we would report back to the chartering organizations, but we don't give - have not thought to give cross-community working groups this suggestion, this requirement, this guidelines. And that may be something that we should think about adding in.

Because if an issue is broad enough to require a cross-community working group, it probably means that there is cross-community interest that would benefit from our reporting back. So I thought that was interesting and new item that we should consider.

The work plan, of course every working group needs to have a work plan.

Yes, sure. Go ahead Avri.

Avri Doria: On those two points that you brought up, they're actually related. The one where people aren't serving as representatives but therefore have a special responsibility to report back because of the sensitivity of, you know, what we were dealing with and the fact that it was pointing to such a wide variety of things. I think those two really went hand in hand.

John Berard: Yes, I feel personally foolish for not having thought of it myself in our context just because that's what I do for a living. And here I was not even thinking about communications when in fact so much of the anxiety and anger that I hear in the hallways at ICANN seems to be rooted in a miscommunication or lack of communication.

                Now I realize that in the more technical isles in ICANN, there's never any miscommunication.

Jim Galvin: So Jim here just on this topic.

                I'm concerned that we're putting up a solution to solve a problem as opposed to just sort of stating the problems we basically want to deal with.

                I agree that there is a concern of ensuring there's communication back from the cross-community working group to the original constituencies. We need to make sure that that's there.

                I guess we're just talking about this whether we want to say that members of the cross-community working group never represent their constituencies or are we offering that as an option? I think that it's an interesting problem space.

                I know that that's a different problem. You know, that's where someone, you know, speaks out of turn. And you know, one could argue that well, maybe they elected the wrong person to represent them if they have someone

speaking out of turn. But on the other hand, some people get a little, you know, over excited and into what they're doing.

So I'm wondering if maybe it should just be an option. I mean as part of being appointed to the group should come with a flag or some sort that says that you are allowed to speak to the group or not.

In addition to adding this requirement that Avri is bringing up, which obviously is very important, there needs to be some kind of mechanism or some obligation. I don't know that we can enforce it, but there needs to be some sort of obligation to ensure that there's communication back.

John Berard: Becky, go ahead.

Becky Burr: Yes I just wanted to say, I think that this turns entirely on the nature of the work that the working group is doing; how close it comes to feeding into the policy development process. Because of course we have, you know, kind of formal policy development processes and we wouldn't want to use the cross-community working group process to supplant that.

And I think that was the issue in the, you know, in terms of the transition. You know, groups are going to be coming up with basically recommendations for stuff that feels very much like policy.

And in that context, you know, the ICANN bylaws require us each to sort of develop policy in accordance with the bylaws as they stand. And so that is a place where it's important that, you know, there's no confusion about the status of individuals on the cross-community group and the need to report back and feed into some more standard processes.

So I think the answer is that it depends a lot on the nature of the work that the cross-community group is doing. But at the very least, it needs to be a question that is asked and answered.

John Berard: Thank you Becky.

Tijani Ben Jamaa: Thank you, Tijani Ben Jamaa speaking.

The chartering organization will have to approve the recommendations of the working group. So they have to be informed. And the best is that they are informed as the work is going on. Because suppose we agree on a recommendation and there is a measurable opposition of one of the chartering organization about this recommendation.

If we continue without having the feedback from the chartering organization, we may build on this recommendation other recommendations when we arrive at the end to have them approve the recommendations. We will have to rework all the recommendations because they are based on one of the very opposed recommendations.

And I think that one of the very first cross-community working groups was the JAS working group. Isn't it?

Avri Doria: One of the earlier but there were some before this.

Tijani Ben Jamaa: Yes, yes. And I remember we had one liaison for each chartering organization.

It's true that we need all the members to speak on only their behalf; they don't have to come to represent their constituency. But we need a channel of communication with the chartering organizations so that we do the work without big conflicts if you want. Thank you.

John Berard: thank you very much. This is John Berard again.

One of the - all three comments I think underscore what made me think that we would be able to move quickly to offer final recommendations to the community from our work. Because I do not see us as setting rules for cross-community working groups, I see us establishing perimeters for them.

That in our view, communication can go from silence until the end, which I guess we wouldn't recommend but we would probably recommend communicating on a regular basis back to the SOs and ACs so that we could monitor any deviation from their point of view to some wider point of distribution.

And so that's really what I'd like us to try and talk a bit about today are the perimeters for the aspects of cross-community working groups.

Avri.

Avri Doria: I'm not actually sure the perimeters might not even be confining.

One of the things that I'm thinking of is that what you've definitely set up is considerations; that these are all issues that must be considered in forming one.

I can imagine a situation where one would be creating a cross-community working group with hard representatives who actually were able to put out statements quickly without needing to go to prior. You know, so it really depends on the situation of the group.

If you were putting together a group where you really had to respond, not in real time, but in close to real time to a situation, you could actually, but it would have to be an intentional thing that you considered. Are these people representatives, you know, can they send out something without getting prior approval? You know, etcetera.

So I'm not sure that we're setting up constraints so much, perimeters so much, as these are the issues that you have to deal with and here are some of the standard solution (unintelligible).

Mary Wong: This is Mary Wong from ICANN Staff.

Without commenting on the perimeters and the potential limitations of those, I wanted to offer up something that this group might want to look at as perhaps a working example or as a live real starting point for some of the things that have been said today.

And that is the current cross-community working group on the IANA Stewardship Transition that I think was formed with basically the collaboration of just about all the SOs/ACs and it started with the GNSO and ccNSO. That group has a charter, it started working - it's working to a pretty hard deadline, you know, as many people know.

So without - obviously we don't want to adopt what it's doing wholesale, but it might be useful to look at that charter, those processes, and see if within our working group we can say, "Those are useful principles, those are useful guidelines. Here are some other nice-to-haves. But these are the absolute basics that you must have for every cross-community working group." That might be one way to proceed.

Tijani Ben Jamaa: Thank you very much.

I think you took the bad example because the IANA Stewardship Transition cross-community working group has formal representatives from ACs and SOs. So it cannot be taken as an example because this task, the transition, is something very special I think.

John Berard: Well, this is John Berard.

In considering - if we were to move - we've now moved from rules to perimeters to considerations, okay. And in moving to considerations, it's possible that when an issue arises that is of interest across the community that might not be as high profile as IANA Stewardship Transition but might benefit from having the same kind of tight membership requirements. And that ought to be - people ought to know that that's a possibility, right.

And this leads me to the chart that's in the Adobe Room now. This was the original chart created for the origination of this working group however many months back. We haven't hit the year mark yet, so I'm feeling pretty good.

But if you were to take a look at the topic and issue columns, those are the ones shaded in blue, it strikes me as if we've almost gotten behind ourselves in thinking about, you know, as if we were further along at the start than we have become.

Because as we continue to look at the issue, we moved ourselves further and further away from what might have been a fairly workable solution that emerged right at the front end, which I think is the result of the fact that cross-community working groups are not new. It wasn't "Hey, what's this, what might it look like, how might it work?"

But they have been in place; there is experience that we can look at. And as this chart shows, there are one, two, three, four, five, six of them right there that we pulled examples from.

And so maybe if we were to look at the topic and the issues only, that might help us get to a point where there were considerations that we could suggest.

I don't think it's any secret that the JAS and the JIG cross-community working groups are the mother and father of this work, right - and you can decide which is which. Because one worked and one didn't, and why each spun the

way it did is reflective of what considerations need to be made in order to effectively construct a cross-community working group.

I'm sorry?

Tijani Ben Jamaa: Which one did what?

John Berard: I would say the JAS didn't work.

Tijani Ben Jamaa: I think it was (unintelligible). There was - excuse me.

There was a smaller problem at the end, but I think it worked.

Avri Doria: Having been in both of them, JIG worked a whole lot better than JAS. And part of the problem we had in JAS is it sort of ended up appearing to work because we ended up not being all that cross-community by the end. Many of the people that had objections drifted away.

Mary Wong: And actually on that note, maybe I just wanted to make one clarification for the record.

That in terms of looking at these cases because these were the past cases, one clarification is that these are not all the universe of cross-community working groups we've ever had, these are the ones that the group early on thought might be useful examples. So this chart doesn't include the ones that were formed since.

And second point of clarification I wanted to make was on the IANA Stewardship Transition. I wasn't talking about the ICG - and I forget what that's called. That has representatives from each group. I'm talking about the one that was just chartered by the ccNSO, the GNSO, the SSAC, the GAC, and I'm probably forgetting somebody else; I apologize - the ALAC of course.

And so that may be a useful example to add to the chart because it is a group that is open to everyone either as a member of an observer. And that's the clarification I wanted to make on the record for those not in the room in case they get confused of all the groups that are going on at this point.

John Berard: Go ahead.

Tijani Ben Jamaa: Just to clarify, yes, I was on the drafting team of this cross-community working group and I am talking about it. This cross-community working group and the charter stipulate that each constituency has to appoint five representatives, so it is formal representatives. And I am talking about that.

John Berard: This is John Berard.

We had in our last meeting, our meeting in London, we talked about membership needing to be specific. One of the things that we talked about with regard to membership was that if you didn't want to participate that you needed to say you didn't want to participate. That doesn't show up in any of the cross-community working group charters that I've read.

And I'm wondering on that point and also the point of consensus in the cross-community working group IG charter, it's a rough consensus. There are in the GNSO, five levels of consensus. There are in the ccNSO two, actually just one. You know, are you willing to die in a ditch I think is the way Becky puts it.

And we have been talking here about wanting to promote the consensus or not approach.

But in terms of members, specifically designated observers in this case, the charter says that there can be no more - the numbers of observers cannot exceed the number of members. So you just cannot have people, you know, popping in and out, which I thought was pretty good.

But just on those two points, on setting specific membership requirements and on the notion of consensus, what's the thinking in that regard? How do you operate in your working groups?

Jim Galvin: So you mean - this is Jim. So you mean inside of SSAC?

John Berard: Yes.

Jim Galvin: We've actually been pretty fortunate overall be technology has the, you know, unique perhaps position that you often do have a right and a wrong kind of thing. You know, I mean it's not 100% true, but because that tends to be true we tend to achieve consensus fairly straightforwardly. We have a lot of discussion about what are the issues, what are you trying to achieve, what's the problem you're solving, and generally a solution, you know, tends to fall out.

Now having said that, of course we have had a few times when we haven't quite achieved consensus. And we have a mechanism that allows for individual members who might have a different opinion and they feel quite strongly about it, then the consensus of the committee as a whole, and there is a spot at the end of all of our work products for dissensions to be documented.

People can withdraw from a discussion altogether and they don't have to give a reason for that, they can just state their name and say, "I wasn't part of this work product." And they can also publish a statement if they have a particularly issue. So they can either, you know, withdraw from the whole thing and say why or they can just pick a particular issue where they had a different point of view and document it.

So ultimately, you know, the Chair gets to still call consensus and consensus is exactly what it sounds like. It's not typically, you know, all that divided; we

eventually come around. But we just have a means for alternate opinions to be documented.

John Berard: Thank you Jim. Becky, you have a point?

Becky Burr: Yes, I think Avri can correct me if I'm wrong, but I think on the Transition Stewardship CC Working Group, although there is a sort of number of members from each constituency, there's no limit on observers. And the charter specifically says that the observers can, you know, participate, you know, as if they were full members.

The only issue is if we ever do polling which is, you know, not where you want to come out; you want to strive for consensus. But if you want to do any kind of polling to inform the group about sort of the array of views, then the participation would be limited to the observers.

But I think that the sort of the number five was sort of specifically to, you know, not to say these people are representatives of the group, but to say sort of the group, you know, the community that they come from, the chartering organization that they come from, you know, sort of, you know, saying these people are the officials. Everybody can be an observer. But it's not that that eliminates the need to go back to the chartering organizations.

John Berard: Thank you Becky. Avri?

Avri Doria: That's indeed correct. One extra piece on it is that - and it even goes beyond polling. Is when there is time to make the consensus call, it is those members that make the consensus call. It's not even a chair that makes the consensus call so much as it those members that make the consensus call, obviously helping the chair do it.

And so there doesn't even need to be a vote. It's just that when it comes time to say, "Yes, we have consensus," or "No, we have rough consensus," it is those people that have to agree on that particularly call.

John Berard: Thank you Avri.

I want to pick up on a point that has come up that I don't think we've talked about and that's dissent. I know that in the Expert Working Group on Registrant Directory Services, there was a rather public discussion over whether dissent should be/could be/would be attached to the report. You know, Jim just talked about how the SSAC reports do allow for dissent.

I personally don't see any problem with dissent being allowed, but I wonder if the nature of a cross-community working group should make that qualify at a higher level before that gets attached.

Jim Galvin: So Jim here.

Yes, one of the things that's interesting though is, again SSAC, since you asked how we do it, we're just an advisory committee. So we're trying to...

John Berard: (Unintelligible).

Jim Galvin: We're trying to inform the community. And you know, others get to decide if they're going to act on what we've said. And you know, and so it's helpful to understand sometimes the balance in the discussion, okay.

So we don't enforce, we don't adjudicate and we have no mechanism for doing any of those things. PDP working groups really are kind of a little bit different because ultimately it occurs to me that dissention is probably not what you want. In the end you want a work product which represents the opinion of the preferred - trying to avoid saying correct - but preferred forward path, you know, which ideally is everyone.

It's not clear to me that a PDP group should have a dissension present. You know, it really should be the public facing position should be whatever it is and that's the end of the story.

If anybody wants to see what alternate views were, in the case of a PDP group unlike SSAC, all of the deliberations and discussions are public, right. So you've got all the archives, mailing list, all the voices. So if you really wanted the details, you'd go get it.

You know, dissension is not something that I would - not like what SSAC does. I don't think there should be a dissenting view in policy decisions that's visible.

John Berard: Thank you Jim. Mary, is someone on...

Mary Wong: No, actually I wanted to say something. May I? This is Mary Wong from ICANN Staff speaking in my Staff capacity rather than on behalf of anyone else in Adobe.

I wanted to follow-up on Jim's comments with I guess two points. And I may be throwing a tiny, not spanning the works, but just adding another - well, depends on which continent I think or from. But it may be an added layer to consider, so two points.

One of these things that, you know, this group might need to discuss further building from this is, you know, there is the deliberations within the cross-community working group, and then that was your question about the dissent or in the GNSO you would call minority statement. And then what happens when that report goes back to each of the chartering organizations.

And I think you are venturing into territory that this group hasn't even really talked about because we've focused a lot on the initiation and the formation

and the chartering, and it seems like we've got some sense that all that has to be agreed on by the SOs and ACs who are participate.

So the question there is whether there is some sort of equivalent thing on the other side and whether that changes whether or not the rules or principles or perimeters are about. There must be one public facing element, for example. So I think that's something that's worth thinking about that's the group view and then there's what happens when the group's view or views goes back to the respective SOs/ACs.

The other point that occurred to me as Jim was speaking was whether this group has considered that cross-community working groups may for the most part, if not all the time, really not be policy-forming groups. And whether that makes a difference.

You've got a CWG that actually - and I can't think of an example off hand, but I was actually going to recommend policy that would be applicable across most of if not all of the SO/ACs that's more appropriately done through a CWG rather than within the remit of an SO/AC.

Is that possible? Is that something that you want to think about? Because if so, then that sort of CWG might look and work very differently from one that is coordinating non-policy issues or non-policy certainly in the GNSO for example when you have consensus policy that's binding on contracted parties. That might be a cattle of fish all together to continue the metaphors.

John Berard: Thank you Mary. Anybody want to jump in on that? Yes.

Tijani Ben Jamaa: About the - Tijani speaking.

About consensus, I do prefer the different levels of consensus. But that doesn't mean that first consensus will be - surely it will be stronger than a rough consensus but it is consensus. There is or there is not consensus.

And to find a report, you would have everything which have consensus will be a recommendation with (unintelligible) point of view recorded. In any case, it's better than a vote because a vote that is a loser, there is frustration, there is tension.

When you have a different point of view and the majority has another point of view, you would be happy to see your point of view reported on.

So in my point of view, the consensus must be the main tool of (unintelligible) something. We have to avoid as much as possible the vote.

But the livers of consensus will give the report more nuance if you want. We will see that some didn't agree and so this is their point of view. And I think it is more affirmative and more comprehensive.

John Berard: Thank you. Certainly a fair bit to think about. I feel as if we've sharpened our focus by expanding our field of vision if that's possible.

Becky, I don't know if you heard me at the front of this meeting. Avri and Mary and I need to be at the GNSO Council meeting and so we're going to close at 12:30. It's now 12:20 or so.

Is there anything that you've been thinking about that you would want to throw on the table so that we can all begin to chew on it as well or should we just proceed with a couple of other points that I wanted to get too, which we need to do here or online?

Becky Burr: I think we should proceed with your points.

John Berard: Okay. One of the elements that I thought we might want to draw from some of the more cross-community working groups are statements of interest. We haven't talked about that before.

I know that within the Commercial Stakeholder Group that I'm a part of that we've been talking about more routinely asking for Statements of Interest. And I think it's driven by the blurring of lines in the roles that people are playing.

And I was just curious. What's the thinking of this group about Statements of Interest as being an element of a cross-community working group?

Avri Doria: Yes, I've long been accustomed to them and I think they're an important and good thing. But I also recognize that, for example, when you come to governments, they find it impossible because first it's partly it's because it's mixed up in their whole notion of being prohibited from having any conflicts of interest. And sort of even asking them for a Statement of Interest beyond their national interest is an accusation and is seen as an accusation.

And I forget what group we went through that in. It might have been - I forget. We went through in that group, but there was a real resistance because they said, "What? You know, we can't do that."

Now not all governments thought that. Some of them said, "Fine, you know, it's simple to write my Statement of Interest. I work for Government X and I do what they tell me to do period." That's an easy statement to make.

So I think that they're an important element and I think they're one that should almost be a requirement given the multi-stakeholder environment. The fact is that you come in carrying a stake, you know, and you've declared that you've got a stake so you really should tell everyone what it is.

And I think we can also though permit the fact that if you happen to be a government employee, we understand that your stake is automatic.

But again, I look at the GAC and I know some of those representatives only contract to the government as representatives - oh, sorry - only contract as representatives and they've got businesses on the side. And they've got this and they've got that. And they use their participation in ICANN as one of their selling cards for their other stuff.

So I think they're important and I think we have to have allowances.

John Berard: I think they're important as well. So let me just get a sense of what everyone else thinks.

Jim and Becky, I'm going to come to you and I'll come back to you.

Jim Galvin: So this is Jim.

A question; it's cross-community working group so members are coming from other communities. Don't all communities require a Statement of Interest? They don't?

John Berard: This is John. No, they don't.

Jim Galvin: Okay, because I mean SSAC does. We have ours, they were just kind of interesting.

So what I was going to suggest is if you could backfill then, in that case, you know, Statements of Interest, you just carry it forward, right. But okay.

Tijani Ben Jamaa: Tijani speaking. I am - I don't see a cross-community working group without a Statement of Interest.

You can put whatever you want in your statement, it is a declaration. So you need to declare it. As Avri said, you can say, "I'm an employee of a

government so I cannot do anything without having their consent." You have to write it; that's all.

But if you have other activities or private activities that you can - and you can use your participation in the working group to serve this activity, it will be more severe so you have. I think the Statement has to be done.

John Berard: Thank you. Becky, your view?

Becky Burr: I agree with Avri. I mean I think, you know, it's becoming fairly, you know, routine at ICANN. Members of the Board, everybody else, we're always talking about that. So to me it just seems the basic - I mean, you know, I suppose if it's members of a government who refuse to provide a Statement of Interest, you know, maybe one just looks the other way or one assumes that this government, the interest of the government representative is the interest of the government.

John Berard: Thank you Becky.

The last point that I'll bring up and it may require a bit more time than we have or than we want to give is the notion of expertise. There's domain expertise that you could seek and that maybe even uses qualification for participation in the cross-community working group, and there's outside experts. We've seen examples of both of these.

And I was just curious what the thinking was in terms of the role for a domain expertise requirement/guidelines/consideration and outside expert.

Anybody want to pick up on that? We could go in reverse order and I could ask you Becky.

Becky Burr: No.

John Berard: All right, well I tell you what then. Let's just close it here then.

I appreciate everybody's willingness to come into the bowels of the Hyatt, and we will move forward in this joyful task. Thank you all.

END