
SINGAPORE – CCWG-Accountability Working Session
Monday, February 9, 2015 – 16:45 to 19:45
ICANN – Singapore, Singapore

CHERYL LANGDON-ORR: Ladies and gentlemen, would you be kind enough to take your seats?

LEON SANCHEZ: Hello, everyone. This is a working session for the cross-community working group on accountability, enhancing ICANN accountability. This is our working session 11. I would like to remind all assistants and attendants that this working session of this cross-community working group on enhancing ICANN accountability is of course open to all, but preference to speak will be given to the cross-community working group on accountability members and participants. If you have any doubts as to who is considered a member and a participant, you can always go to the wiki page and see if your name is in there.

I would also like to remind you to state your names when speaking because we have interpreters. We have a transcript. So all names should be recorded to make life easier for everyone.

We have a pretty packed agenda. We have a lot of work ahead for us this week. This is our first sessions. We will have some other sessions during the week. If we have some remote participants that are on the audio bridge that are not in the AC room, please state your name so we can add you to the roll call.

With no further intervention from your host, I will hand it to Thomas.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

THOMAS RICKERT:

Thank you very much, Leon. Welcome, everybody. I'm Thomas Rickert. I'm the co-chair appointed to the group by the GNSO. The second point on the agenda is the interaction with the CWG and the working group members will know this, but I think it's important for the community to realize and recognize that the CWG and the CCWG are working very closely together.

Part of that is Jonathan Robinson and I, we've spent the last couple of years on the GNSO Council. We're good friends and we were seeking opportunities to spend more time together. We successfully did so. So now we have weekly calls where we discuss how we could best possibly interact.

As you will know, the works of the two cross-community working groups are based on charters by the chartering organizations. So we have complementary mandates, but we are working towards the same goal. I think it's utmost important to reiterate that the two works that are the works that we're doing are interdependent and interrelated, and we're trying to bring that to fruition.

As you will remember, this group has published high level statements a couple of weeks back, which sort of opened the door for the CWG to consider whether they want to embed what they're doing into accountability structures that we are likely to build.

This progresses, and we've had a correspondence back and forth since. I think we're on a very good way towards coming up with a cohesive approach in hopefully the very near future.



We are one in terms of approach, in terms of goals. Nonetheless, the working areas are complementary and we wanted to use this opportunity now that we have most of us present in this room to give Jonathan and Lise the opportunity to speak to our group, to explain where they are, to discuss areas of collaboration and interaction and we will return the favor by visiting their group.

With that, I would like to hand it over to Lise Fuhr and Jonathan Robinson.

JONATHAN ROBINSON:

Thanks, Thomas. Thank you for welcoming us here. As you know, we committed when we met before recently that we would, between your three co-chairs, myself and Lise, we committed that we would, as far as possible, spend time at each other's meetings as part of our commitment to work closely together. Thank you for your kind opening remarks as well. I guess the test of the friendship is whether it survives the work of the two groups, but let's see how we go.

You've asked for an update from the CWG. I think I would be not surprised if people in this room were tired of hearing my voice and the materials of the CWG to date, but let's just remind you there are really two sets of materials that are available at this meeting. The first is a comprehensive slide deck from the CWG that covers background material, the work of the CWG to date and key areas of current discussion.

In a sense, that's presented in a different way in the discussion document where we bring the community up to speed with what we've



done. And ultimately, at the end of the discussion document, rather than to prepare a new or an updated draft proposal, we felt we were not in a position to do that at this point and it made more sense to create an update document in the form of a discussion document that stimulated relevant community input and interaction with our group.

So those are the two materials that you've got amongst you to work with, and I don't propose to present from either of those as part of our update. Lise and I discussed this before this meeting.

One of the things that I think is slightly disappointing is that what we've done is we've attempted in doing our work and bringing it to this meeting to present where the challenges are with the work of our group. In doing so, we've highlighted those challenges by definition and got the community to focus on them. But what we haven't perhaps done as effectively as we might have done, or at least in highlighting those challenges, we haven't banked the credit for the areas where we have done the work.

So I'm just going to take advantage of being in this forum with you guys to remind us and anyone who's involved in listening and tracking this that we did some very detailed work on – we've described our work in groups as RFP 1, RFP 2 and so on, and these are – as we have responded to the different requests for proposals, sub-components of the ICG request for proposals. So that's a description of the current community use of the IANA functions under RFP 1.

Under RFP 2, existing pre-transition arrangements, and we've gone through that in detail and looked at the policy, the oversight and a detailed triage of the existing contract.



None of that is reported on in any detail here and hasn't really been absorbed, so it's just important to highlight that. What we have focused on is where there are significant challenges and issues with our work on RFP 3, which is the proposed transition work.

In particular, we focused on the key models and the work in progress and we need to deliver one model out of that ultimately. We recognize that there's some care that needs to be taken with the CCWG here that we don't send you off on four different courses as we deal with our external, internal, two parts of external, two parts of the internal.

So I think it's important that we both liaise with you, but continue our work to appoint where it's mature enough to be a useful driver to you. So from my point of view and our point of view, that's a key takeaway. It's very helpful that you are cognizant of it and it influences your work appropriately, but doesn't drive your work to the extent that it's immature and that it drives you where relevant.

And notwithstanding that, we have some major common parts to our work – common within our work – and that is the existence of the Customer Service Committee, the Multi-stakeholder Review Team, and the Independent Appeals Panel. We will continue to work and specify that.

One of the things I think we need to make sure we focus our group on is ensuring that we do think about the underlying motivation and purpose and drive for each of those.

And to the extent that those are well-specified, not only will that help us in our work, but it will help us in correlating our work with your work,



and where appropriate, if elements of your work deliver solutions that meet those requirements, it will assist us in handing off any elements to you.

So that really highlights the need for us to work in a certain way and for us to work with you in the ongoing coordination of our work. You did come back to us in some detail on the 28th of January in a reply, and the CWG has not sort of formally reviewed that reply in our work, but if you would like, Lise or myself can make a couple of remarks on that.

I don't want to monopolize your meeting. I'm very conscious it's your meeting. Those are some opening remarks, but we could respond in a little more detail to that e-mail if it would be helpful.

THOMAS RICKERT: Please do. That's part of the reason why we invited you.

JONATHAN ROBINSON: Let me just pull it up so I have it in front of me and make sure I've got it. Just give me one moment to link to that. That's the 28th of January of letter from Thomas Rickert and Matthew and Leon to myself and Lise.

It says: "Subject: CWG Stewardship Accountability Dependencies." It touches on some key points and essentially is a part of a dialogue of exchange.

The first point is on budget, accountability, and transparency. I think this is something where it is clear that in order for our group to properly monitor what is going on, we will need a degree of budget transparency.



At the moment, you don't envisage asking for the detail that we might require, but it's possible that your work might do that. That's one of those areas where if as your work progresses and you specify your budget, accountability, and transparency requirements and it happens that they drive sufficient transparency and detail to meet our needs, it's possible that may be something we can let go.

THOMAS RICKERT:

I think this is one of the areas where both our groups are very cautious not to step over the line, and maybe we are going too far in being that polite. We have discussed this in Frankfurt and we did not want to step over and define for you what your budget detail requirements might be. But certainly we would support budget transparency and I think this is certainly an area we can easily operationalize the coordination budget, finding the parameters that you're looking for and maybe making them part of what we're asking for or what we're recommending.

By the way, this shall not be a discussion between the co-chairs. It's unfortunate that we don't have microphones everywhere in the room, but we do have standing mics over here and there are microphones on the table. So if you want to speak, please give me a signal and I'm more than happy to put you in the queue. Izumi, please?

IZUMI OKUTANI:

Thank you for sharing this. This is Izumi Okutani representing ASO. Thank you for sharing the status of the name CWG. We mentioned about this area of budget accountability. I'm interested to know from the perspective of the IANA operational names, what would be the kind



of accountabilities that you're concerned about? What is the area that you want the CCWG to clarify?

JONATHAN ROBINSON:

I think it's really primarily about transparency of expenditure and understanding the breakdown of expenditure on the components of the functions and details of how that is spent, both so we can understand how resources are deployed, and to the extent that we don't get the service we require that we might understand whether or not that was a budgetary issue. So it's thinking along those lines.

Again, I think it relates to that previous point I made where if we are specific about the requirements, and in particular motivation for those requirements, it may be that in time, as you specify your level of expectations on budget and accountability and transparency or the CCWG specifies its level of accountability and transparency, that may be sufficiently overarching that it will simply meet our needs, but at least we would have specified our requirements and retain those to the extent that they are not covered by your work.

Thomas is right. We need to not do too much of a delicate dance around one another. We need to say what we need. And to the extent that you [meet] it, we may not need it. And to the extent that you don't, we'll persist with that requirement. I think that's the sort of thinking both in the detail of that particular example, and more broadly where we're headed. Thank you.

THOMAS RICKERT:

Steve DelBianco?



STEVE DELBIANCO:

Thank you. Steve DelBianco with the CSG. As all the members of the CCWG know, when we do a working session, we definitely want to get progress on the work. So what would be helpful – you’re exactly on the right place – we’d like to hear your reaction to our five answers to your five bullet questions. I couldn’t find it on the wiki. I wanted the rest of our CCWG to know where they can have it front of them.

Thomas sent us all an e-mail on the third of February referencing his reply to Lise and Jonathan. That’s what all of you want to have in front of you.

All we really want to do is to understand, did you understand our answers? Some of our answers included further questions for you. Please understand that we drafted those at the end of two very long days. We wanted to be responsive, and yet not to be acquisitive, trying to acquire new obligations. We want to be sure we understand [inaudible].

My guess is in 15 or 20 minutes, we could resolve areas of potential help, and most importantly, if there’s an independent appeals panel or a mechanism you’re designing that we could, in the CCWG take on board, it would simplify what some are afraid is an overly complex CCWG process.

Keeping that goal in mind, we ought to be able to go straight down this list of five questions, discuss each one in turn and in the end of a half-an-hour have a simpler plan than we had when we walked into this room. Thank you.



THOMAS RICKERT: Thanks, Steve, and thanks for getting to the point. I did listen into at least a significant part of those long days. In fact, as you know, contributed in part to one session on that.

Yes. That's the helpful approach with one [inaudible]. We haven't systematically gone through your reply in our group. So these are mine and Lise's responses. If you like, a chairs' response. I'm reasonably confident that I'm in tune with the group, but as anyone knows who's worked in this kind of environment, that confidence can be undone relatively quickly as well.

Yes. The principle of the way in which you suggest we work is welcome. Hopefully we've knocked of budget, accountability, to the extent that we can in this particular session unless someone else wants to pick up further on that. If not, I'll go on to the next one.

UNKNOWN SPEAKER: Let me just add, if I may, that I take away as a to-do for you to come back to us with a specific set of data that should go into the budget in terms of transparency. And since we are going to have a recommendation asking for budget approval, we will make sure that your requirements go into our recommendations. I think that's the way to operationalize that.

So we tick that of the list. I suggest we wait for your feedback, and let's move to the next point. Jonathan, please?



STEVE DELBIANCO:

One quick follow-up on the budget. I think it's fantastic to understand from the CWG the level of detail that's necessary to support the transparency goal. That's perfect. But before the word transparency, they had asked us about the word accountability. As you know, we're working hard under community empowerment to make sure that we can veto – not change, but veto – a budget once a year when it comes out.

If the CWG sees that as a favorable community power, we'll actually need to hear that from you in writing at some point very soon, because that's one of the things that ICANN's legal counsel thinks we cannot do. So if we start to gain more I guess support from the CWG, that this is something specific in the way of community empowerment, that could come in very handy. Thank you.

THOMAS RICKERT:

Okay. Thank you, Steve. Unless there are any further interventions, we can move to the next point. That would be accountability for delegations and re-delegations. Jonathan, would you be happy to speak to that? Excuse me for the oversight. Bruce?

BRUCE TONKIN:

Thanks, Thomas. I just wanted to respond just as the board liaison to the cross-community working group. I'm aware we don't actually have a board liaison on the CWG. But with respect to any requests on finance, I'm happy to be the key contact on the board for funneling any requests as it relates to the IANA budget.



I've had some discussions with Xavier on Saturday regarding getting some information together and at least provide what he's able to by the end of this week, and we can drill down into that a bit further.

But for those that are financially inclined, please feel free to talk to me and I can at least explain what the limitations are of the finance system and what information is easily available.

THOMAS RICKERT: Excellent. So we have the second tangible outcome of this meeting, which is a good sign. Jonathan, can we now move to the next point, please?

JONATHAN ROBINSON: Absolutely for re-delegations. Here you had a carefully worded response where you said, "To the extent that the board may take decisions on this area, the CCWG intends to recommend accountability mechanisms that would be relevant and supportive. We expect to recommend a strength in reconsideration process to the board as well as management and staff decisions."

UNKNOWN SPEAKER: Excuse me, Jonathan. Can I just step in? I think on the wiki that's not the version that was ultimately sent to you. In our co-chairs' call, we have discussed this language which was perceived to be not clear enough in the sense of us trying to make the demarcation for ccTLD operators' request.



We should be looking at the e-mail of the third of February, please. This is the 28th draft that went to the co-chairs and we thought we should be a little bit more wordy on that point.

Just to fill you in, in terms of language, our group has discussed extensively in Frankfurt and came to the conclusion that delegations and re-delegations of ccTLDs should be a matter of the sovereign states where the ccTLD operates and that the board doesn't have any substantive decisions to make on those matters.

There might be, however, procedural aspects where the board does have a say, and these should be subject to review and redress and that would be in the remit of our group.

So we said "to the extent" the board has something to say. Steve might wish to add that, but we wanted to clarify that we fully respect and appreciate the delicacy of ccTLD operators' needs, and we went a little bit further in the final wording, which I don't have in front of me, unfortunately. Somebody dug out the e-mail of the third of February. Maybe we can read it out.

STEVE DELBIANCO:

"Notwithstanding the above, and to the extent that the board may take future decisions in the area the CCWG intends to recommend accountability mechanisms that will be relevant. In any event, we expect to recommend a strength and reconsideration process for board as well as management staff decisions." That's what you added to it.

And it's not just board, Thomas. It was management. Because if you recall, Eberhard educated us in his unique way about the way the ccTLD



re-delegations occur. I benefited very much from that. Eberhard instructed us that staff – not the board, but staff – has a certain responsibility of checking the box to say that for a ccTLD re-delegation process was followed.

So if management said process was followed but some of the naming community customers said, “Oh, no, it wasn’t,” well, the CCWG wants to say that we want to give accountability for a management action, not just a board decision. We thought we would try to be helpful on both counts.

THOMAS RICKERT:

Thanks, Steve, for refreshing my memory on the actual wording, which I couldn’t remember from the top of my head. But I guess the topic is clear and I think we should be very clear on emphasizing that our group is not trying to [inaudible] into ccTLD matters.

I think on that basis if the demarcation is clear, then it might be easier to come up with robust mechanisms for that. I think we would like to hear from the CWG as to what its plans are with respect to this and maybe there’s common ground for considering and developing such mechanisms to be cohesive, but the decision-making power should be clearly demarcated.

LISE FUHR:

Jonathan and I, we haven’t spoken to the group about it, but we kind of think this is a fine statement. [inaudible] as well as you will stay away from the policy parts – or we will not have to deal with the policy parts like FOI in our group because this is not in our [inaudible]. We will have



a discussion with the ccs regarding this because it's a very sensitive issue within the ccs that we need to deal with before we get back to you on this completely. Thank you.

THOMAS RICKERT: Okay. So we shelf this point for the time-being, wait for your consultation [staff] taking place. But also on this point, I think we're more than happy to discuss areas of collaboration, but the competences for decision-making need to be clear. I think this is well-understood on both sides.

UNKNOWN SPEAKER: At face value it appears to meet the need and deal with the relevant sensitivity. That's the impression we have at this stage. It seems okay.

THOMAS RICKERT: So Jonathan or Lise, would one of you like to speak to the next point: independent review of board actions?

STEVE DELBIANCO: Before we leave this one, Thomas?

THOMAS RICKERT: Yes, please.

STEVE DELBIANCO: Thank you. I know you asked the CWG to reply. During the discussions in Frankfurt, we did note, however, that if let's suppose we were able to



come up with a mechanism where a permanent cross-community working group or community [inaudible] was available to do a challenge, because management checked the box on a ccTLD re-del.

We admitted that we wouldn't necessarily have a lot of expertise over there in the GNSO and we might not have much expertise at the ALAC. There are places in the community that won't know very much about that process. So let's just go into this with all our eyes open, that a cross-community group – working group, member, structure, delegate, whatever you want to call it – is not necessarily the proper place to get a remedy for a highly specific process affecting one country and the registrants and users in that country. We may not be the best to understand that.

There's solidarity. The community could come together if it's a very compelling case, but it won't be something about which we have very much experience.

THOMAS RICKERT:

Thanks, Steve. So can we now move to the next point?

JONATHAN ROBINSON:

Thomas and colleagues, I'm not sure I can offer a whole lot more. It appears to meet the requirement to me. I don't think I have anything specific to offer [inaudible] discussing introducing binding mechanisms redressed to the independent review for certain decisions of the board. As you said, you were very much in tune with our approach. It appears that you are. I'm not sure I have much to add there.



LISE FUHR: I'd like to add this is another one of those areas where we have to be very clear that there's a difference between the ccTLDs and the gTLDs and this needs to be discussed further. This is one of the issues that's going to be discussed during the ccNSO meeting I know. We hope to get back to you on this.

THOMAS RICKERT: Great. The idea was not to put you on the spot or squeeze information out of you that would require further consultation with your group, but I think have made progress on a couple of points though. I would suggest that we don't continue the exercise of going through the points individually, but you're certainly invited to further comment on any points that you want to speak to.

I think we should conclude this agenda item or move to a final section by [inaudible] sharing some thoughts with us that might stimulate further discussion.

[MATTHEW VEY]: Thank you, Thomas. Good evening, everyone. My name is [Matthew Vey], co-chair for the ccNSO. I think, Lise and Jonathan, you made the effort with your group to share a discussion document before Singapore and it's an extremely useful document to support the flow of information we have to come through both ways.

You've been sort of put on the spot to look at this letter and try and provide us the requirements you need. But I thought I would so initiate

another flow, which I think all co-chairs are very open to do also in your sessions, if you find it appropriate, about when reading the different models and the different discussions where we see the connections with what we are currently seeing in terms of requirements the various work parties that we are currently organizing because I think we need to make things a little bit concrete.

Obviously there's a connection between what you're doing in terms of independent appeals panel and what we're doing in terms of review and redress, which has to be elaborated on. So I think this is something we need to investigate further to understand what IP we'll be dealing with, to of course investigate – I'm [showing] Becky because she's the reporter of this group. Becky, let me just highlight the items where I see connections and I'll hand it over to you.

The appeals panel is one. In some of the models, there are items that I see connected to are community powers area. The golden bylaw model obviously has a lot of connection with the requirement that we are looking at that the community should approve a certain subset of bylaw changes.

I [inaudible] internal trust model there are also a lot of things that resonate with the community powers requirements we are discussing, and that's an area where we should certainly investigate. I think also for both models, both categories, internal versus external, we're working on a definitions document that I think would certainly help us ensure we're speaking about the same things, if we could share those definitions and ensure we are in line on that.



So those are the connections that I see – the IP, the golden bylaws, internal trust, and definitions. I think now it's time for others in the group maybe to chime in and identify other ways of investigating further at a detailed level how we can connect our work. Becky, would you like to start?

BECKY BURR:

Yes. I just wanted to add one issue. While I think that we are going to provide some independent review mechanisms that could be used in appreciate cases, to the extent that – it would be helpful for us to know what the CWG what the standard of expected behavior would be that would be subject to challenge.

When you go to an independent panel, you would say, "I am challenging this because it wasn't done consistent with the process," or "It violated my property rights," whatever it might be. It would be useful for us to hear back from the CWG any discussions about that, what it is you would want to bring to an appeals process.

UNKNOWN SPEAKER:

I would give all that detail now, but I appreciate the question. It's a good point. At a high level we expect to be quite specific and quite contained in our requirements. The way I see this working is that in being specific and detailed that will either be something which we continue to rely on our own requirement for an independent appeals panel or a bit like we talked about, the budgetary issue earlier, the work that you do absorbs those requirements or has an umbrella capability to take on those, in which case we can relinquish the need to undertake that work.



I think that's mechanically how I see it working without giving you the specifics of those requirements.

UNKNOWN SPEAKER: Any further interventions? Steve?

STEVE DELBIANCO: Becky, I'm not familiar – I'm not a lawyer, so I'm not familiar with those kinds of constructs for standards. But the CWG focusing on just naming, numbers, and protocol, it would be helpful for me to understand a few examples of the kinds of decisions that the naming, numbering, and protocol functions would want to use an independent review on. Just a few examples. If now is not the time, you can get them to us later.

But then we actually use those examples when we do stress testing against our mechanisms to say, "Have we even designed for that?" Thank you.

UNKNOWN SPEAKER: Thanks, Steve. Excellent point. Would you like to respond to that instantaneously or later?

BECKY BURR: We can give it a try. Most of it would be if SLA is not being fulfilled. If [inaudible] has consulted IANA with this but they keep on not complying to an SLA, so that would be an example.



The idea is to keep it to procedure and nothing but procedure. We will have to discuss this further and I'm happy to provide more examples later. But a first go would be an SLA not being complied with.

STEVE DELBIANCO:

Thank you. One small follow-up on that is the CCWG has been endeavoring to position these community powers as last resort, rarely used, only after you've exhausted all other forms of relief. So I know the particulars of that example, but if an SLA were not being met, presumably there are just good old-fashioned procedural things that would be designed to challenge that.

And if at some point it was clear that the SLAs are being missed over and over again and ICANN isn't taking the right steps, whether it's the board or management, well then I think it does make a lot of sense to be able to either go to an independent review or something completely different – a reconsideration? Maybe, maybe not. It might just be a community veto on ICANN's decision so that it doesn't even have to go to an outside or independent panel. Thank you.

THOMAS RICKERT:

Thank you. Jonathan, you wanted to respond to that?

JONATHAN ROBINSON:

Steve, it feels to me like we may be conflating escalation with [IAP] issues. Ultimately, the customers are relying on the IANA function to perform a set of duties or services. To the extent that those services aren't performed adequately – I think I said this in this morning's



session – the natural recourse would be to engage it directly through the customer service committee, say, “Look, that didn’t work out. Sorry. It was a mistake. We’ll sort it out.” At a purely operational level. Then there’s a series of escalations.

It’s incumbent on us to specify in detail what those SLAs might be and how we might expect if and when those were broken.

Clearly, there’s a point eventually when if those were repeatedly in breach and that’s one route. That’s the escalation path. In some people’s minds, that ultimately leads to the potential severability or separability of the contract.

Separate to that is an action which has not been instructed or is undertaken, contradiction to or without instruction – those are really the two things that I would expect. It’s either substantially different to what was instructed or an instruction not followed. That, to me, is the point – and at the point that that is raised, we instructed X and X wasn’t done. At the point where that’s not remedied, that’s the [IAP] route to me.

I feel they’re quite different issues, and I hope that helps clarify the difference. Thank you.

THOMAS RICKERT:

Thank you very much, Jonathan. I think that helps a great deal. We will have to wrap up this part of the meeting shortly, but let me just throw in another point where I see areas for collaboration. If you look at the implementation models that our group is currently discussing – membership, delegates, standing, cross-community working group, ad



hoc working group – all these have in common that they're composed of community representatives.

If you look at the MRT that the CWG is thinking about, it's consistent of community representatives. I would be surprised if there weren't ways for us to marry those, certainly fully understanding what their respective roles should be, but this is one area that I think obviously begs the question why we wouldn't bring this closer together.

There's a hand raised in the Adobe. Siva, please.

SIVASUBRAMANIAN MUTHUSAMY: I don't understand why SLAs are discussed in the context of accountability. It's more of a contract and complaints process. Accountability is much broader than performance indicators and whether performance standards are met.

I think we should have SLAs, but the SLAs and [inaudible] of SLAs do not qualify for discussion and accountability. That's my view.

THOMAS RICKERT: Thank you, Siva. Any further interventions? Yes, please? I've forgotten to ask Siva as well as others, I've been reminded that those speaking should please state their names and their affiliations for facilitating the transcription.

UNKNOWN SPEAKER: Sure. [inaudible] from the GAC, Switzerland. I think the question by Becky Burr was quite interesting because it will be an issue to be define

what standards are to be applied by such review mechanisms. If you talk about standards, you will have to talk also about who sets the standards and how the standards are set.

Finally, on the example of the SLAs, I guess Service Level Agreements. And if this relates to the IANA functions, there are a number of customers of the IANA function which have no such agreements, so this would go beyond SLAs.

Perhaps we just need to flesh out in more detail what we are really talking about. Thank you.

THOMAS RICKERT:

Thank you very much. And with that, I would like to wrap up. As a closing remark, I would like to suggest that when we come to see the CWG, we might bring up comparable questions and offer the information that we gave here, maybe we can get some information from your group.

I would like to turn it over for you for final remarks, if I may.

LISE FUHR

This was not a final remark about the [IAP] specific, but more to I think, Steve DelBianco, you mentioned the naming, the numbering, and the protocol. This proposal is only relating to the naming and that's very important for us to underline because there's been a kind of confusion of people thinking that we're making a proposal that covers all, but this is only the naming. Thank you.



THOMAS RICKERT: Would you like to make some closing remarks?

JONATHAN ROBINSON: Thanks, Thomas. Just to say that we appreciate the opportunity to talk with you, to be part of your work. It's clear this is a work in progress and ongoing work with you. So thank you, and we look forward to keeping things going.

THOMAS RICKERT: Thank you so much to the two of you. I'll turn it over to Leon.

LEON SANCHEZ: Okay. Thank you very much, Thomas. The next point in our agenda has to do with the issue of a legal advice update. Could you please put the slides on the screen?

This part of our meeting, I would like to invite Greg Shatan to join us. The slides are up. Our agenda items for this track are the questions that were framed in our face-to-face meeting in Frankfurt. We will take a look at what we did there, and then we discussed in our call of January 27th.

We will remind everyone that has not already seen the document that was circulated to the list with [inaudible] advice and the ICANN legal response to these initial questions. We have also the CWG [inaudible] document which will be presented by Greg Shatan, and the framing questions by the CCWG I would like to call for an exercise to further [inaudible] more questions to both the Jones Day document questions, the CWG document questions, and of course build our own questions to



begin shaping the document that we will in turn submit to the external legal advice that is engaged by ICANN. Well, by the working group I mean.

I would also like to put the timeline. Could we go to the next slide? The questions that were framed.

So the questions that were framed in our face-to-face meeting in Frankfurt, more than questions were concerns with regards to the legal advice we should get immediate response for us to continue working. Please, can we have the next slide?

This immediate advice was identified to be obtained with regards to the mechanisms that would empower the community to take various measures regarding ICANN board action or inaction.

Just as a reminder of our discussion in Frankfurt, we spoke about how the community could approve the organizational [inaudible] budget and strategic point, which is one question that has been responded by Jones Day in the document that was circulated yesterday. How can the community have the ability to recommend and implement changes to the bylaws and Articles of Incorporation [inaudible]?

Then to have the ability to approve changes to the bylaws and how to overturn or require reconsideration of decisions of the board that were [contrary] to the bylaws.

And in case of an action by the board or an issue developed through community consensus to require the board to take action and the ways to prevent ICANN from acting outside its mission and to dismiss one or all members of the board.

This is where the concerns that were raised in our face-to-face meeting in Frankfurt. They were converted into questions. They were turned into questions that were submitted to ICANN legal, and here I would like to emphasize that these questions were sent by us as chairs to ICANN legal and we stressed the need for speed on a response.

So what was circulated yesterday is the result of that pressure we made over ICANN legal team to have this reply as fast as possible, so these replies could feed into the work of not only the working group as a whole but the legal sub-team that has been acting since our face-to-face meeting in Frankfurt.

As I said, this document – can we please go to the next two slides?

This document that came from Jones Day with responses to the initial framing questions, this is to be seen, as we discussed on the list yesterday many times – this is just another input that constitutes, of course, ICANN’s advice as it stands with regards to the questions that will be later put into external legal advice.

But this is just another input for us to consider. This is not the advice we’re looking for. This is not to be seen as the legal advice that the cross-community working group will be relying on. It was just a quick answer to initial questions that were framed in the Frankfurt meeting I will later discuss in our call of January 27th.

Of course some of the exercises we would like to later develop in this session is to feed, as I said, more questions into [inaudible] document that we will be delivering to external legal advice.



Now I would like to turn on to Greg. Greg, if you could please take us through the CWG document, the CWG draft that it's been also put into consideration to the legal sub-team to feed our discussion. Please, Greg.

GREG SHATAN:

Thank you, Leon. Is there a next slide after this? As it says here, for you it's another input for the legal sub-team for the CWG. It was a scoping document intended to identify the kinds of issues and questions that we needed to put in front of counsel and also to identify the type of legal counsel and the type of legal expertise that would be the most important for us, recognizing that there are several types of legal issues that are being dealt with in the proposals that we have, such as issues related to corporate governance, issues related to trust, issues related to non-profit law, especially in California, issues related to corporate structures and the like, but ultimately decided that the core that we needed was corporate governance.

The document that we have is roughly eight pages and there's really I don't think any particular purpose in taking you through the whole document. It would take much of the rest of this meeting.

But I think the point of it first was to be able to give background, understanding that any counsel we retained would now have been following the IANA transition issues before we contacted them, and to basically set forth the issue and the questions, the general topics that we needed to cover with them, and then went through in rather reasonable detail describe the four proposals.



Since we had four concrete, although somewhat high level proposals, we really need to get advice from counsel that would help us sort out particular issues, risks, and questions that related to each of those four proposals.

Fortunately I think you're not as far along in your process, and the reason I say that's fortunate is that it's much more common to call in lawyers too late than it is too early, and to a certain extent, we're calling them in too late because we've done a lot of the type of work that one might want to have lawyer involved in as you did it, but we did it ourselves without the benefit of independent legal counsel, although [inaudible] lawyers and those who work with lawyers are on the committee, it's not the same thing as independent legal counsel fit for the particular purpose of advising on these types of issues.

Then the rest of the document includes a whole bunch of questions which really were questions that individual stakeholders, members, and participants had been asking. In essence, the challenges that were made to the quality of each of the proposals or questions about how one would actually accomplish a particular aspect of a particular proposal. So the questions were fairly granular.

The intent in the end of putting those questions together was not to receive back an equal number of answers from legal counsel because that would be both way too much work and really unhelpful – also expensive. The intention really was just to inform counsel in the end – the intention was to inform counsel of the type of questions we were considering, the type of issues that we saw.



Ultimately the idea is to deal in a more fundamental level with legal counsel in the sense that we will give them the factual information they need. We'll tell them the problem we're trying to solve. They will have already seen the ways in which we attempted to solve it or might propose to solve them, and they may say that really you should consider this or this should not be – you can throw that out or the way to do this is that or you're kind of on the right track, but instead of this particular element, try something. There are things obviously that we do not know amongst our group because we don't have the skill set that those lawyers will have.

That's kind of the reasoning around the document. Obviously you can read the document yourselves, and many of you I'm sure already have, but I wanted to walk you through the thought process, what the document is and what it isn't and also give you a sense of the extent to which it should look like the document you would be preparing, and the extent to which it shouldn't look like the document that you're preparing.

Hopefully that's helpful, Leon.

LEON SANCHEZ:

Yes, that's helpful. Thank you very much, Greg. Another [inaudible] we're expecting to have of course is the questions that working party 1 and working party 2 will deliver to us as legal sub-team to enable us to incorporate them into the [inaudible] document that we will deliver to external counsel.



Looking at the timelines, we have a pretty tight timeline ahead. If you look at the timeline here, we have of course in January we made the initial questions that were in turn delivered to ICANN legal. In February we will review the different inputs that we are receiving, which are of course the CWG document that Greg has just explained, the Jones Day document that we received from ICANN legal.

And it is of the essence for us to have the questions that are being stated by working party 1 and working party 2 in this document as well, so we can just have a complete document by the end of February.

At the same time, on a parallel track, the CWG is also engaging or examining candidate firms that can provide this independent and external legal advice. I believe Greg has already been [into this] and what we would like to do is – we don't want to reinvent the wheel, so we would most likely go with whichever firm the CWG engages with. We think that it would be useful for us to engage with the same firm since they will be of course answering a lot of questions from the CWG and they would only need to answer some more questions from the CCWG as well.

So that way we won't be engaging with two different firms, because believe me, if we engage with two or three lawyers we will get as many answers as lawyers we engage with. I think it's easier for us to just engage with the same law firm that the CWG will do.

This would be happening by the end of February tentatively. We hope to have this law firm engaged by the end of February. Is that right, Greg?



GREG SHATAN: That's correct. That's our current best case timeline.

LEON SANCHEZ: Thanks, Greg. That would lead us into having of course our scoping document read by that date. So as soon as we engage with the external law firm, we can deliver this document for them to begin working on it, and we would expect to have their replies or their responses to our questions by the end of March maybe.

This is just an estimate timeframe. We would believe that, or we would hope for, any firm that gets engaged to provide us with this advice to be faster than the end of March of course, because as were discussing with some of the legal sub-team members, like [inaudible], if you go to a legal counsel and you just tell them, "I need this reply by the end of next week," either you're hired or you're not. So we will try to pressure of course the outside counselors.

Then this would feed the proposals that we would be drafting along with our general timeline. We would consider this advice for the different [options] that we would be drafting in our intercessional meeting.

Then, of course, we would be subject to another iteration of our legal advice. When we draft this proposal, it will be of course subject to public comment, and we will then, in turn, incorporate those public comments to our proposal and we would need to do this iteration with the external counselors to validate that what we're proposing is legally viable.



Now I would like to open the floor for comments from the members of the working group, please. Yes, David, could you please say your name?

DAVID MCAULEY: Thank you, Leon. David McAuley, part of the legal sub-team. I would like to thank you and Greg for the work that you've done and just request that as we get to the point of selecting counsel just to keep the sub-group informed, so we have some reaction to counsel as the decision is being made.

LEON SANCHEZ: Thank you, David. We will definitely keep that in mind. Thomas, do you want to say something?

THOMAS RICKERT: I wanted to get in the queue.

LEON SANCHEZ: Oh, okay. Any other comments? If not, we would be going with you on the queue.

THOMAS RICKERT: Yes, thank you. You will remember that one of the working methods that we have agreed on was not to make decisions in one single meeting. We had a discussion – a quite extensive discussion – on how we would proceed on obtaining legal advice during one of our previous calls. During that call, we had already tested the waters whether the group would be okay with us using the same firm as the CWG does.



I would just like to do the litmus test, whether there's any objection to proceed on that basis, because this is a particularly sensitive issue and I would just like to ensure that we have full consensus from this group to just proceed and get out the scoping document that the legal sub-team produces an agreement with our work to the firm that the CWG is about to choose. So unless there is any objection, I would like for that to be recorded in the notes specifically so that we don't have any further discussions on that point. Thank you.

LEON SANCHEZ: Okay. I don't see anyone's hands raised. Just as a final remark to this section – I'm sorry?

UNKNOWN SPEAKER: For the record, we checked the chat online and no objection was made. Thank you.

LEON SANCHEZ: As a final remark to this section of our agenda today, I would like to remind the members of the working party 1 and working party 2 to feed us with their questions.

These questions should be focused as what do we want, not how do we want it. Because the what do we want is to be submitted to the external counsel, and the external counsel in turn will get back to us with the how can we do what we want to do.

Yes, Steve?



STEVE DELBIANCO:

With respect to the way the questions are phrased, in reading the Jones Day reply, the question about terminating Board of Directors (question six), you phrased it very simply I thought. It said, “Is it possible to have a mechanism that will empower the community to dismiss one or all members of the board?”

I think we all in this room know what we meant. We meant the community as represented by any of these six different structures or no structure at all. That’s what we meant.

And yet their answer starts with the word “yes” and then suggests that the independently grouped – let’s say the GNSO has a couple of directors – would it be able to recall that director? So they based their answer entirely off of that, sort of missing the point that we were talking about the community in quotations, a body that would be pulled together.

So the lesson learned for us there is when we phrase the questions for our own law firm, that we make sure that when we say community we mean the community at large as represented by a structure – lightweight versus heavyweight structure – members, delegates, permanent cross-community working group.

LEON SANCHEZ:

Yes, Steve, thanks. Do you want to react to that, Thomas?



THOMAS RICKERT:

Yes. Thank you, Leon. Let me try to put this into perspective again. We've just heard from Greg that in an ideal scenario, the CWG will have contracted a firm by the end of this month, so we went out to get instant feedback from legal sources, to put it that way.

What I would recommend doing, because there are questions in the chat as to when we're going to discuss the Jones Day responses, and I think it would not serve us well to go through the answers in particular. What we're interested in is discussing the questions and potentially being able to resolve some of the issues, maybe out-rule some of the options that are on the table and maybe short-list and identify the preferred options that might be workable. So this is to facilitate our discussions.

We would suggest that we go through the questions to the community empowerment questions, which are basically in this Jones Day document as well, and that will be part of the discussion that we're going to have with Jordan. And let's discuss substance of the questions, and we would certainly welcome Kevin who's in the room, to chime in on that and help stimulate the discussion and hopefully bring us closer to a resolution that can be then put in front of the external lawyers again.

With that, I think I'll hand it back over to Leon for final remarks.

LEON SANCHEZ:

We have two persons in the queue. We have Greg Shatan and Alan Greenberg. Greg, could you please?



GREG SHATAN:

Thanks. I wanted to respond to Steve’s concerns in this discussion with just a little bit more discussion about the method of getting legal advice, which I think those of us who are lawyers who deal with lawyers probably take for granted, and those who aren’t or don’t, first you’re probably in much better shape. Second, this isn’t obvious from a shorthand way that we’re talking about this – getting legal advice in order to solve a problem as opposed to just kind of a statement of the law as it is is really a much more iterative and intimate exercise than you might think.

It’s not where you post a series of questions and wait for a period of time and get back a series of answers. That would not really be helpful. There’s a lot of discussion. Obviously things should be phrased with clarity the first time around. The more information and clear information you can give counsel, the better.

The idea that you would get back a deliverable that made fundamental errors or misunderstandings into an ultimate document would really not be best practice at all.

A first draft that was seen maybe only by the legal team might contain those sorts of things, but those kinds of communication errors would be taken care of in the iterative process between client and lawyer using those terms generically.

I think that it’s important to understand that this is a counseling and very intimate process and the lawyers will come to understand a lot of the things that we understand here and not merely look at a list of questions and try to answer them as best they can with reference to the law. Thanks.



LEON SANCHEZ: Thank you very much. We have now Alan Greenberg in the queue, and next is Avri Doria. Alan, please?

ALAN GREENBERG: Thank you very much. Far be it for me to get between the intimate relationship between lawyers and their clients. What Greg described is indeed what happens when you're trying to get answers and there are misunderstandings. I believe what Steve was saying, however, is we already have evidence of one clear, easy misunderstanding. Let's make sure we fix that one at the very least, so we don't have an iteration we don't need. Thank you.

THOMAS RICKERT: Before we move on in the queue, that's exactly what I tried to encourage us to do. Let's go through the questions. Let's not slice and dice the answers word by word. But let's go to the substance, discuss it, and Kevin will have the opportunity to clarify if need be.

We're not here to analyze the answer. We're here to find solutions to our questions. I think that's a slight difference in our discussion.

LEON SANCHEZ: Thank you very much, Alan. Thank you very much, Thomas. Next in line is Avri. Please, Avri.



AVRI DORIA: Thank you. A quick question based on a point of clarification on what Greg was just saying. I understand we have this small team for the intimate relationship with the lawyers, but I understood that only they would be seeing the draft answers, and I just wanted to clarify with the hope that I'd be told that I had misunderstood. Thank you.

THOMAS RICKERT: For those participating remotely, they could not see that we were shaking our heads. Therefore, I can confirm that this will not go to the sub-team only.

AVRI DORIA: Thank you.

LEON SANCHEZ: I see Robin Gross has her hand raised. Please, Robin.

ROBIN GROSS: Thank you. I have a question about the external independent advice that we're going to get. Has ICANN agreed to pay for that, and if so, what's the budget?

LEON SANCHEZ: We don't have the answer for that. I don't know if – Sam Eisner is over here. Sam, could you please react to that?



SAM EISNER:

Sure. This is Sam Eisner from ICANN Legal. I'm also a member of the CCWG. ICANN is committed to support the CCWG. That includes and we are prepared to pay for an engagement for counsel. We don't actually have an outside budget limit on this. That's incorrect.

We need to make sure that the CCWG gets the support that it needs. We need to make sure that the CWG gets the support that it needs. We've talked with the legal sub-team a bit about ways that we can make sure that a legal engagement is done in the most cost-efficient and effective manner, but also getting the advice that's needed.

So with that understanding we're not imposing a pre-identified budget limit over it, but that does not mean that it's a blank check. That's more what I was trying to say earlier. We're committed to work with the CCWG as necessary, but also expect that we have the engagement managed in a very cost-effective manner.

GREG SHATAN:

If I could just add, I'd say that both groups – or each group – should manage their relationship with outside legal counsel as if we were spending our own money and work on giving them as much support, so that they don't have to go fish for things as possible, make sure that they're well-prepared and make sure that we're responsive. That iterative process shouldn't be too iterative, as Steve and Alan were saying. We need to get things as close to right as we put it to them.

Most legal work is done by the hour, so helping them be crisp will be to everybody's best interest. We need to make sure that we don't waste



their time, kind of going off chasing rabbits. But at the same time, we do get the answers that we need obviously.

LEON SANCHEZ: Thanks. One last question from Siva and we need to wrap this part of the agenda. Please, Siva.

SIVASUBRAMANIAN MUTHUSAMY: Half the participants of ICANN are lawyers. Why can't we have pro bono advice on routine community customs? Why do we have to engage a lawyer and pay for answers to questions?

LEON SANCHEZ: Thank you, Siva. I guess that while there are many lawyers in our community maybe not all of them or none of them are California non-profit law experts, plus that might include some kind of liability and I don't know if anyone wants that liability on them. That's why we have to go for external advice.

STEVE DELBIANCO: If I could just add, there are actually another fewer lawyers in ICANN than you think and I think the CWG, I'm actually the only practicing US outside lawyer who's an active participant in the CWG.

Secondly, it's very important to get independent legal counsel from somebody who has specific expertise in corporate governance issues. And even within corporate practice, only a limited number of corporate lawyers actually have corporate governance expertise, although if you



call and ask them if they can do it, they'll say yes. But that's not the kind of lawyer we need. We need top-flight lawyers. This is under a microscope. If we get half-baked advice from somebody . . .

There has to be lawyer-client relationship ultimately to get real legal advice. Unless there is, it's just talk. Thanks.

LEON SANCHEZ: Thank you very much. Sebastian, I see your hand is raised.

[SEBASTIEN BACHOLLET]: Yeah. I just want to challenge that because we can say that for any topics in this working group we are specialists and we need to take somebody outside because we have specialists inside, and we want a new independent view. We have really to be careful on [inaudible] technical people, engineers, developers and other people in this room. Thank you.

LEON SANCHEZ: Thank you very much, Sebastien. Now it's time for us to wrap this part of the agenda. We need to move on with the work. Next on the agenda is the updates by working party 1 and working party 2. I'd like the hand it over to the [inaudible] of each working party so they can provide us with an update of their work. I believe Jordan is next. And thanks, Greg Shatan, for coming with us.



JORDAN CARTER:

I'm moving up as I want to sit at this table, but because it's much easier to answer questions if I can see if you've got questions. Thank you. This will be a very brief update, and as the conversation goes, we can move.

We were kind of confirmed about a week ago as a working party – working party 1 on community empowerment. The output that we've done so far, which I think I did circulate the whole CCWG list was a paper on, if you want to call it, scope of powers and mechanisms. We wanted to say what the scope of our work compared with working party 2 was. We documented that. It was based on the tree diagram that we did in Frankfurt.

We settled on the word "powers" to describe the things the community should be able to do. An example that's been referred to a lot is [filling] board members. Another one is being able to veto or approve the budget.

The paper drew on the inventory work that had been done earlier to just step these out, these various powers that the community could be able to have.

And because it's a working document and because we haven't even had a chance to have our first phone call yet, I think it's best for us to represent these ideas as ideas drawn from previous comments that people have made – not a complete list in terms of other suggestions are still welcome, and not a complete list in the sense that we're necessarily assuming that us as a CCWG will recommend all of these. I think we just have to be a little bit modest about the status of this list. But that's the power.



And then the third component of that document was a bit about mechanisms or structures, some initial thinking on ways to exercise those powers. The point we need to just be careful of and cognizant of is that there may be different mechanisms for different powers and that implementation detail is something I think this working group will be coming to you a bit later.

So that's all we've done. Steve DelBianco was very helpful in pulling together a first draft document, which we sent out on the 5th. An enthusiastic group of five or six of us got together on Sunday – Saturday? – some day in the last few days here and improved and clarified and rewrote that doc a bit and that's the one that's been circulated.

We will have a first call of the group sometime next week. We'll discuss internally our working methods. I think one of the need to do is [inaudible] input on questions for the legal team. We'll look at the document we've already prepared, look at the existing list of questions. There will be inevitably some gaps and we will add questions as we go.

The other point is that we will need to have think about the shape of the output that we need to deliver by the end of March. In doing that, I'm committed to keeping in very close contact liaising with Becky Burr, the reporter for working party 2. It's a slightly artificial distinction between redress and review on the one part, or whatever the title is, and community empowerment.

So we need to make sure that in our discussions as things come up, if they need to be shuffled between groups, we can do that. And we need



to make sure that we're coming up with in the end a coherent output that lets all of these measures and approaches be put in one place.

I'll just finish this brief update by thanking everyone who has participated so far. It's an interesting challenge to just be the vehicle of accumulating this community wisdom and getting it out there. I'm enjoying doing that work for the community, so thank you.

LEON SANCHEZ:

Thank you very much for this update, Jordan. Thomas? I'm sorry, Matthew?

[MATTHEW]:

We're so interchangeable. It's just a suggestion. In the course of the process of the deliverables, as many iterations we can do on [interim] work products, I think the better for our ability to meet the deadline at the required level of quality in the end.

So the more agile we can be in iterating on a specific outcome just like the one you've been producing very quickly is I think going to be a good practice if we can follow this.

BECKY BURR:

The working party 2 has not had an opportunity to come together. I'm hoping that we'll be able to do that while we're here and we will have a call next week. In the meanwhile, Alice, could you put up the slides?



As Jordan mentioned, we have become keenly aware of the need to work together to make sure that we're not doing the same work in both of the working parties.

It also seemed to me that we need to have a general – not entirely, but partly in response to Mike Silber's question. Accountable to whom for what?

I tried to put together a document that reflects the conversations that we have had in the CCWG generally about what ICANN is accountable for.

You will see when the deck comes up that it follows pretty closely the ICANN bylaws, mission statement, and core values with some changes that I think reflect what I've heard in these conversations. If I haven't put everybody's ideas in, this is just food for thought and to get the juices flowing, so to speak. Can we go to the next slide?

The mission statement that is a straw man here is in accordance with the bylaws to coordinate the global Internet unique identifiers and coordinating the root server system is there. There's a placeholder for what IP addresses, what the numbers and parameter folks want to put in there.

I have added – and this was part of our face-to-face discussion – implementing consensus policies that ensure the stable and secure operation of the Internet unique names systems and that involve issues for which uniform or coordination resolution is reasonable necessary to facilitate openness, interoperability, security or stability of the DNS.



It's a little bit more specific than the general statement. It does reflect some of the picket fence that I know everybody who is not a registry or rather hates to hear about. But it is designed to give us an articulation of ICANN's mission that is actionable. Can we go to the next slide?

There are a couple of pages of core values. This is the way in which ICANN would carry out its mission. We've had lots of discussion about limiting activities to matters that are within the mission statement and require global coordination.

I've also tried to add some of the Affirmation of Commitments, although I don't think I have all of them in there. Operate in the public interest and in accordance with the multi-stakeholder model; Preserve the operational stability, reliability, security, interoperability, and openness; Respect the roles of the SOs and ACs and external expert bodies; Support policy development reflecting the functional geographic and cultural diversity of the Internet. We can go to the next one.

I've circulated this to the working group. Rely on market mechanisms to the extent that is possible; Apply documented policies consistently, objectively, neutrally, and fairly; Remain accountable through mechanisms defined in the bylaws and duly considered government [inaudible] public policy recommendations consistent with the bylaws.

A lot of those are already in the ICANN core values, but there are some additions that are intended to capture our discussion. If we could just go to the last slide.

There are some other mandate that we've talked about and that I think we need to think about, in part because they're sort of critical and



they're parts of the bylaws, but also because we have stress tests relating to things like fiscal responsibility and avoiding capture and the link. So those are things that I think that we need to think about and discuss how we want to put them into this.

The notion here, just for purposes of the review and redress, part of the work is to understand what the standard against which ICANN's behavior would be evaluated, as opposed to we just don't like what they're doing, which might be okay in some cases, but certainly in an independent review, you would want to have a clearly articulated standard against which ICANN's behavior would be evaluated.

This is my first attempt to just get that out there and get the community discussing this. I think it will also be helpful, because in some ways, it's a roadmap to the bylaws changes that we may end up needing and those are definitely going to be overlapping between the two groups.

Beyond that, I will have a draft of a document along the lines of what Jordan has done for working party 1 out for discussion on Wednesday. Obviously we've got periodic reviews that we need to think about. Between us one example of something that fell into both sides was the ATRT kind of reviews.

Also, we have incident-specific reviews where when one of these standards, one of these behaviors, has not been met, that would be an opportunity to use one of the accountability mechanisms and we have to match those to the various accountability mechanisms that exist.



I think this is just out there for the beginnings of the discussion. We're going to talk about it some more. There's clearly work to do, but we've got a document for starters.

LEON SANCHEZ: Sam, is that an old hand or a new hand? Please?

SAM EISNER: Becky, I just had a clarification question so I can understand a little bit more as I'm looking at the document. I'm not clear if these are being proposed as potential ways that we would look at modifying the mission and core values in the bylaws or if these are things that we would be looking at possibly in addition to the mission and core value as additional standards that we would embody someplace to create the standards against which to test times for seeking review or redress.

BECKY BURR: I am thinking about this more in the context of a compact, not just to the community but among the community. I think we have talked about some golden bylaw provisions that might require super majorities to change or community input to change or whatever.

I personally am thinking about this as an expanded mission and core values statement from the bylaws that then takes on some kind of a greater resiliency and requires more involvement from the community to change. That doesn't exactly answer your question, but it really does – actually it is very close to what already is in the bylaws.



LEON SANCHEZ: Thank you very much. We have a queue forming. We have Mike Silber, [Matthew], and then Malcom. Then we're going to break for five minutes for everybody to stretch their legs.

MIKE SILBER: Thomas, thank you. Becky, thank you. That's, to me, absolutely clear. With regard to the follow-up, putting down principles I think is great. Giving agreement on the principles, even better. After that, you can make a decision as to how exactly you document and capture those, and where they're appropriate, ensure that those principles become binding. Thank you. I think that's a great start between yesterday and today. I really appreciate it.

Just one comment, as an interested observer and somebody who's still not following the exact differentiation between the two working parties and the two work streams is that it might be worthwhile just putting a quadrant out and just giving us as a community an idea of what goes where and what is in which quadrant, given that they're essentially three or four. Maybe it's not a quadrant.

But I think that will be useful because I'm still confusing in terms of what goes where, who's addressing it and what the timelines are.

BECKY BURR: Jordan and I have talked about this. The distinction is quite artificial and there are things that could fall into both. One way that we started thinking about it this morning is that the review and redress group would look at fixing the existing mechanisms and the empowerment work group would look more at the new ones, at things like [spilling] the



board and the like. That's a pretty rough shorthand, but I think that that might be workable.

LEON SANCHEZ: Thank you. Jordan, you have some feedback to that. Can I ask you to be brief?

JORDAN CARTER: Yeah. Thanks, Mike. It's a really good point. I think in Frankfurt, if memory serves, we agreed that we couldn't – the work stream 1 is what has to be done to allow the transition. Work stream 2 can go on afterwards.

We said we had to look at the totality of powers or [accountability proposals] because we didn't necessarily know which ones had to be in which work stream.

So in terms of work stream 1 and 2, these two working parties are probably looking at all of the mechanisms over the whole timeframe. So we make sure we get the order right, so that any dependencies for work stream 2 post-transition are dealt with pre-transition if they need to.

The distinction that Becky just mentioned between working party 1 and working party 2, fixing mechanisms versus new mechanisms is one way to think about it. Another way is Becky will focus on the mechanisms and the community empowerment group will focus on new powers.

But at the moment, we haven't talked through this taxonomy enough times to get it really crisply clear. So take your question as an [inaudible] on us to do exactly that, because unless we're crystal clear, having



useful conversations about it with other people is going to be a nightmare. I take that as a strong action on us to do that as quickly as we can.

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

[MATTHEW]: Thank you, Thomas. And thank you, Becky, for providing us with this very important [inaudible] on the questions of the standards of review in a practical way for [inaudible] in that matter. I think it's maybe a breakthrough approach.

I'd like to ask you, Becky, a quick question rather on the other aspects of work party 2. And we know there are other items around independence, around affordability, around right of standing against these decisions.

Just to ask how you're planning to address us with the group, the work party 2, so the whole group has the next steps quite clear on those aspects as well.

BECKY BURR: Those are definitely questions that need to be dealt with. In some cases, it will depend on whether we're talking about independent review or review by the community or by a community body. I know that's one mechanism that the community has talked about that's actually a new mechanism. So in guess my old and new doesn't actually work.

I think we're going to have to figure out categories that we can put things in that say, "In this case, here are the people . . . If you're materially affected by a decision, you can use these various mechanisms in the following order." If the community – question about community [spilling] the board, is it for any reason, is it for no reason, approval of the budget, does it turn on for any reason or no reason? All those are complicated and important questions that we're going to have to address as part of this, and frankly we just haven't gotten there yet.

LEON SANCHEZ:

Thank you, Becky. It seems like some in the room do not really want the five-minute break, because Steve and Julia have asked to be added to the queue. Malcom first. After the break? Okay. But Malcom was promised to speak before the break.

MALCOLM HUTTY:

Thank you very much. Becky, thank you very much for this important contribution. One of the key things that I think we [inaudible] upon in Frankfurt was the agreement that when seeking redress or complaints against some action or policy, there needs to be the possibility for those who are seriously affected by such a decision to be able to question it not only on the grounds of some procedural floor, but also on the grounds that there was something fundamentally wrong with the substance of it.

At the same time, we can't have individuals who are affected by a policy that has reached community consensus and been implemented by the



staff in some manner continually challenged just simply on the basis that you don't like it.

So there is a fundamental need to achieve an agreement on some set of reasonable standards that can go speak to the substance of the issue that are susceptible to being considered on an independent and objective basis, so that a reasonable decision can be taken that there is indeed something fundamentally wrong with what's been done, without it being up to a continual and endless cycle of complaint and appeal and counter-appeal.

We therefore need to set some sort of standards. This document is the first piece of work that this group has done that offers and shows us a way in which we could do that. I think for that reason it is a very important starting point in what we do. I hope we take this as that.

As for how it ends up being used, I can certainly imagine that the outcome of this will end up being written into bylaws or into something that has a similar sort of effect so that it can act as the standard [inaudible] for some form of independent adjudicator. But it is premature to decide the details of that yet.

It is also premature to decide whether you like this on the basis of one particular thing that's mentioned in here or omitted from here. But as a starting point, I think this is a real step forward and I urge the group to use this as the basis working forward.

LEON SANCHEZ:

Thank you, Malcolm. Just for the whole group, let's not forget that some of the points that you touch upon has been reached consensus more or



less in Frankfurt. We said that we need different escalation paths for different subject matters concerned. So not everything can use everything. Not everybody has standing to complain about everything. That's well-understood and Becky has confirmed that these points will be raised.

I think what we have to try to do during this week is to advance our agreement on the overall architecture of how we want to approach things, and then [flesh] it down from the general architecture down to the detail as we progress.

Julia, you can't resist to speak before we break. Just joking, please.

[JUILA]:

Thank you very much. Thank you for these documents. Going through them, this is a [inaudible] question of clarification maybe. It's regard to the mind map and the requirements, and the issue that was brought up in Frankfurt about the transfer of IANA functions to another entity which is on the mind map.

I haven't been able to locate it in the document, but I'm not entirely clear what we decided in Frankfurt on that item. If it were so that it is that it was for the CWG to consider this, I would then assume that if the CWG has not addressed this adequately, then this will be an issue for us in the CCWG at least. Thank you.

LEON SANCHEZ:

Thanks, Julia. Since we don't have the mind map in front of us, I would suggest that we dig it out and that we get back to that point after the



break if we may. Thank you, everybody. we're going to break for five minutes and then reconvene our discussion. Thank you.

UNKNOWN SPEAKER: Five minutes.

LEON SANCHEZ: Can I ask everybody to get seated again? Can I please ask everybody to be seated? We would like to continue.

UNKNOWN SPEAKER: We are going to resume our session. Please take your seats. This is the right moment for a consensus call. No one is here.

LEON SANCHEZ: For those who are still outside and can hear this, please do come back in. We will try to reconvene in a moment. Steve, you have the floor. You're not here. Question dismissed. Larry, can we take advantage of the last couple of moments where we have power of the US government? Can you get them back in?

UNKNOWN SPEAKER: You need to change something. You need to change the climate. The CCWG is also the climate change working group. It may be what we need to take into account now.



LEON SANCHEZ: Usually I would just start, but I think that the introduction to the discussion now is quite decisive for everybody to understand what we're discussing, so I'll give it another moment.

UNKNOWN SPEAKER: And we have Steve's question waiting and we need Becky to answer. Okay, we are going to start. We are going to insert into that particular agenda item a very dull update on the engagement going on during this meeting because we hope that we'll take everyone on board and ensure everyone understands. We are resuming.

Setting the discussion that will continue under substance aside, I would like to remind all group/colleagues that we have an engagement session at 10:30. We are going to have remote hubs as well as remote participation, and of course of mics in the room.

It's one of the big rooms. I don't know which one. I don't remember which one. We'll have a large table like this and we'll be designing this session to engage and listen as much as possible.

We would like to request that along with three co-chairs we would like to ask the work party reports to sit with us at the table in order for them to be able to answer any questions that are related to their subject matter. The three co-chairs will hand over to each other in order to moderate the questions and answers topic by topic.

Just another point on engagement. There has been a lot of sessions already addressing the transition, accountability. We've met with the board. There was a session in the GAC. There was already outreach for many of you in your respective communities.



Please ensure you keep track of the feedback you get because we will dedicate some time on our work session on Thursday to collect that feedback and ensure we come out of this week with as much of shared understanding of the community feedback as possible regarding our progress. This is really directed to all the members, but also the participants. Do sessions in your communities whether it's formal in the SO/ACs or in any other set up, and please be ready to share that feedback on Thursday.

That's really all for community engagement.

LEON SANCHEZ: [inaudible] Julia's question? [inaudible].

UNKNOWN SPEAKER: I don't know whether it's in the [inaudible] on the European Commission to relay that to Denmark, so I'd rather have Julia in the room and she's not. That was definitely a bad idea to make a break. You never get a break on Thursday. That's for sure. Sometimes you have to be accountable to being on time, and if you're not, then there's a penalty.

Yes, a question maybe? Please?

UNKNOWN SPEAKER: I'm also from Denmark, so if you have something I can transfer to Julia later on, I hope you have the question so I'll pass it on to her the answer.

UNKNOWN SPEAKER: Thank you very much. If I'm not mistaken, [inaudible] do you want to? The question was whether our group was addressing the issue on the mind map with a red flag, transfer IANA functions to other entity.

The recollection that we have, the feeling – Julia's here. Julia, we're trying to address your question.

The discussion in Frankfurt led to us flagging this with this red flag because we felt it was within the remit of the CWG and not the CCWG to be addressed. Obviously there might be some connections at some point. If we can provide support to the CWG into the mechanisms to do that, if they want to proceed with that, then obviously we need to be very supportive and reach out to them and I think that's going to be one of the items where we will coordinate.

But that was intentionally not put into work stream 1 because it was felt to be part – I mean, one of the core issues right now within the CWG. We did not want to duplicate that. Does that answer your question, Julia?

[JULIA]: Just one more question. Will that mean that we will get back to it in the case that the CWG won't?

LEON SANCHEZ: If the CWG comes with a requirement that in order for them to achieve that they would need a specific accountability mechanism, then we



might have to address this, yes. But it's only in the event that the CWG clarifies a specific requirement for us to implement that. Is that clear?

UNKNOWN SPEAKER:

I think that the question and this exchange raises a broader issue which I raised this morning in the session which is that neither our work on ICANN accountability nor the CWG's work on the IANA transition, remembering that the CWG is responsible for a proposal that deals with the accountability of the IANA function.

Neither of us can finish until both of us are finished, so that has implications both for the needs to keep both apprised, which the co-chairs are doing. It has implications for the schedule of work for both and the timing issue for getting things to the ICG for final sign-off.

Because until our work has been tentatively approved by the board, the CWG cannot know whether it is dealing adequately with IANA accountability, and until the CW finishes its IANA accountability proposal, we don't know whether we have to do more broad-based work or not. This is just a horrible inevitability of where we are in the process.

LEON SANCHEZ:

We're supposed to be trying to [unlock] that situation by engaging. I was exchanging with Lise that we'll certainly be presenting at the CWG session about where we are and how that could inter-relate with their work, and hopefully, just like we did earlier in this meeting get into more substantive details rather than discuss about process of coordination.



We had a question by Steve, and then Thomas will take over for substantive discussion.

STEVE DELBIANCO:

Yeah. It's a question for Jordan and Becky. Mike Silber's question was a good one because work party 1 and work party 2 are really confusing when they both involve the work stream 1 and work stream 2, and work stream 1 and work stream 2 are very important and they're substantive. Work party 1 and party 2 were somewhat arbitrary distinctions to divide up the work . . . Divide up the work that is highly intertwined.

I found that Becky's distinction just before the break was looking at existing mechanisms like the ombudsman, independent review, board reconsideration. I think of those as the three. They certainly could enjoy some enhancements to make them more powerful and more available to this thing called the community.

They're available to individuals today. An aggrieved individual can go to the ombudsman, can go to an independent review panel if they can afford the lawyers and they can do a reconsideration. But the community doesn't have a standing, and a lot of what the community empowerment theme is of our CCWG is that if you really can get a super majority of the AC, SO, and SGs to say that we would like to challenge a decision, override a budget, etc., that there ought to be a way to have standing, and if in fact the community had standing to ask for an independent review, Becky is right. We need to have a standard for the independent reviewer to follow. And that's true whether the independent reviewer was invoked by an aggrieved individual or by the community after we've given it standing. And also given the community



is structured so that we know what the community is. Is it an ad hoc or permanent cross-community working group or is it a structure of members and delegates? I don't know yet.

But that distinction suggests that we could eliminate some of the confusion that our colleagues are feeling. There's been a lot of requests for simplify, simplify. And it might be unduly complex, and I would wonder whether the repertoires of party 1 and party 2 would have some ideas to consolidate that work and eliminate the confusion of party 1 and party 2 here at this meeting, so that we can move ahead on a simpler track.

LEON SANCHEZ:

Thanks, Steve. That's the best question we could have hoped for, because that was exactly the question we were planning to introduce now in the session about how we could put all of this into perspective and onto a single umbrella.

Thomas, would you like to introduce your line of thinking on this? And then we'll go to the [inaudible]?

THOMAS RICKERT:

Yes. I think we're now at an inflection point. We've done the groundwork. We've come up with the community powers. We've come up with we need review and redress. But actually, some of the community powers that we ask for would be achieved through going through a [redress] process.



Then we have contingencies, and these contingencies should be mirrored the same way accountability answers, to safeguard against these contingencies.

Now, the big question for us is how do we get all these loose ends together? I think that Becky made an excellent starting point by spelling out the core values. If you look at those – and maybe we can bring them up again, or even the mandates would be good which you see on the screen. You see fiscal responsibility.

What we had identified as a contingency is bankruptcy, financial crisis, no income from the domain industry. So if you have fiscal responsibility, if you put that as a main topic, as a mission, as a main theme into the bylaws that ICANN needs to ensure financial viability, then you have something where you can hold the board accountable to if you say, okay, you didn't follow due process or you didn't make sure that enough money is put aside to have funds to run the IANA functions even if bad times are coming. Or when we're talking about [CAPTCHA], that can equally be reflected there.

I think some of the main topics that come out are that we need to some changes to the bylaws, that we need to embed and perpetuate, let's say, the AOC requirements in the bylaws. But then the question is who can trigger that if the board doesn't actually follow that through?

So we have the requirement for an independent body that actually can be called upon in order to get that going. Let's say the board chose to not continue ATRT reviews. What do we do then? Somebody needs to have standing. To get back to Steve's point, to call upon somebody to call the board to action and make sure these reviews are done.



Likewise, for budget approval. These are, I would say, topics in the general interest of ICANN as an organization. But then we have other subjects where individual interests are concerned. Companies that didn't get their way.

Then we have likely different escalation paths, different procedures that can be invoked. Ultimately, of those might go to another body. Or maybe it's the same body.

So I think what we need to think about is what is this ultimate oversight body like? To your point, Steve, giving the community standing – and the question of standing will need to be discussed in Becky's group – would the community actually have standing to invoke all of these procedures, which I think wouldn't necessarily be the case.

But that's something that we need to ask ourselves. Let me just throw out there that we might need some independent judiciary body that can be called upon if ICANN violates its basic mission, if it doesn't fulfill what the bylaws are requiring, if it doesn't provide, let's say, an ATRT.

I see Steve's finger is at the trigger to hit the microphone button, so why don't you open it up? And Sebastien is next.

STEVE DELBIANCO:

Thank you, Thomas. I wouldn't confuse a stress test on a fiscal crisis with fiscal responsibility, because an entity in a household could be fiscally responsible, but the kind of stress test like a domain name industry crisis isn't because ICANN did something irresponsible. But you still run stress tests on fiscal stresses aside from whether fiscal



responsibility is in there. So while everything you said made said, I wouldn't link those two.

The other notion is there is so much overlap between the two work parties that I was hoping that we could simplify quickly in a way that says that the standing questions and the standard of review for independent review, ombudsman and reconsideration, are things that Becky's work party's expertise should contribute. And yet it has to be filtered into the community empowerment that is already in the document that Jordan is circulating.

So there is a way to consolidate the work parties, but still have the work that Becky's doing on standards and standing for the three existing mechanisms dovetail exactly into the document. Because they're already in there. Jordan's document already has community review and challenge and independent review, reconsideration, and it has all of the Affirmation of Commitments items.

LEON SANCHEZ:

I would be open to that suggestion to reframe it that way. Let's hear . . . Who had [inaudible]? Sebastien, sorry.

[SEBASTIEN BACHOLLET]:

Thank you. Since we have interpreters in the room. I know you might not be at ease with the headphones, but these are tools that we all have at hand. I know you have your headset with you.

There's been certain people saying if no one has their headset on, there is no point in having interpreters, so I think we had better use the tools



that are at our disposal because that makes it easier for me to just speak French.

I have a hard time understanding how come every time there's a question we always need to go back to seeing whether we can add something or whether in the outside [world] someone could answer questions and whether someone could provide [inaudible] of oversight or intervene in case the board doesn't act properly, if the internal activity doesn't follow a certain stream.

I would like to take the example of the Affirmation of Commitments. It's an agreement between ICANN and the US Government Department of Commerce. Julie was saying we're trying to solve or transform it into something else.

Instead of transforming it into nothing, maybe we could transform it into something else. What I suggest is that we try and find other organizations which are stakeholders of ICANN and its work – organizations which could actually be on the other side of an agreement.

There's agreements today between ICANN and the registries. There is also agreements between ICANN and the vendors. There's different agreements that have been signed by ICANN with some ccTLDs, so why shouldn't we add to these agreements or to those documents, whatever you want to name them, the elements that could say I'm forced to do this and you're bound to do something else?

That would give us a framework that says if this agreement isn't followed, if there's a breach, there will be a ccTLD that has signed an



agreement with ICANN saying we need to have a review on this, and if it's not done, that ccTLD is going to have the power to act. There's no point in having a new group above that.

I take the example of the organizations which have agreements nowadays with ICANN, but there's others of course. There's regional organizations, representatives for users associations and they have an MoU that they have signed with ICANN. So why shouldn't we turn that MoU into something else? We could add a number of new provisions saying that the users of those organizations do this and that, and I'm ICANN, I do this and that and there's an agreement, and if I don't follow the agreement, there's going to be legal structures in place that are going to allow us redress that situation. Thank you.

UNKNOWN SPEAKER:

Merci, Sebastien. Thank you, Sebastien. I'm going to speak French for a minute. I think in Frankfurt we identified the contract could be mechanisms by which we could enhance the power of the community. It is therefore important that in work party 1 and 2 we could keep this component and we could identify the advantages in the meantime until we can see what we could do legally and see what is the most effective.

LEON SANCHEZ:

I'd like to relay John Curran's remote question, which has been outstanding for a while now but I think it's perfectly relevant to the discussion about how we are structuring the work and the relationship between work party 1 and 2.



John is asking whether it's possible to structure the work based on the list of stress tests. In specific, developing a comprehensive list of stress tests (we have that) and then [work down] at least to determine what mechanism or mechanisms would be applicable for each situation, and therefore whether it's CWG or CWG item or pre- or post-transition.

This I think is a suggestion to be considered. Does anyone want to respond? Becky?

BECKY BURR:

I think with the exception of the bankruptcy and solvency issue, I actually looked at the stress test to make sure that they were essentially covered in the core values. I have to say fiscal responsibility is not the same as insolvency. I'm having trouble figuring out how that fits in the compact, but I think the point of having stress tests is to identify what you need to have in place and make sure they're there. I'm quite conscious that we need to do that.

LEON SANCHEZ:

So one of our action items could be to try and put the contingencies in front of the values and mandates you're highlighting to make sure we cover everything.

I think financial continuity and stability of the organization is a very relevant principle because it's at the [basis] of ICANN as well. We can manage that; I'm confident.

I think Steve had is – oh, we have Malcolm first. Sorry, Malcolm. And then Steve.



MALCOLM HUTTY:

Thank you. I'm a little confused as to how these are now being divided because reading the written description of the differences between the two work parties it looks like they're being divided according to whether it's a remedy that is available to an individual or a remedy that is available to the community.

Then there's this other description that I've just heard, which is about whether it's about the existing remedies or about new ones.

It strikes me that there were several different pieces to the jigsaw here that we need to address. One of them is who can seek a remedy, and that seems to be people that are affected by or the community. Then you start breaking down the community. Does that mean the whole community and how you identify them or parts of it? And if so, which parts and so forth?

Then there's what mechanisms are available. We've already had a lot of discussion about that and we haven't finished it yet, but we've got a long way down that route.

Then there's the question of according to what standard would that be decided? Becky, I spoke to that earlier and I said that we made a really good start there.

And then there's what could be done. What would that mechanism result in if the accountability complaint were upheld?

There I think you may have a difference between those things which are binding and enforceable which might result in essentially a [inaudible]



or a do-over. And those which might result in something that's more nuance such as setting up a review team or something like that.

Now, if we divide according to who it's available or indeed if we divide it according to whether we've got a sort of process already, but we want to change it or whether we want something completely new, I suspect that we're going to be doing in parallel the same work that may be in conflict.

So I would support the earlier comments that actually these two work parties aren't well divided at the moment and should be rolled back together.

If there were a need to separate them out, the one I would suggest to be considered is in terms of the intended outcome where it's going to be an enforceable type mechanism such as do-over [inaudible] and so forth, or whether it's something that results in something like a review team or some more nuanced things that might result in where you need to do positive action here, but we don't know what that is. That's going to have to be the initiation of a process to do it rather than order for a specific outcome.

In summary, yes, I support rolling these together and maybe breaking them out in a different way or not breaking them out at all.

LEON SANCHEZ:

Thanks, Malcolm. Next is Steve.



STEVE DELBIANCO: I'd just like to agree completely with Malcolm. We're looking to consolidate and simplify. To John Curran, just stay tuned. In several minutes, we'll turn to the stress test and you'll see that when you apply stress tests, it's a way of evaluating all of the mechanisms you have all at once to see how they respond. It isn't a very useful way to break up work.

LEON SANCHEZ: Thanks, Steve. Jordan and then David, and then we'll close that item. Jordan?

JORDAN CARTER: Thanks. I'm finding this conversation a bit frustrating because our working party was formed last week. Becky and I had a good chat about the confusions here. We're having some other suggestions made. I would really like to spend some time tomorrow thinking about it, discussing it with the co-chairs, discussing it with Becky and trying to come back to Thursday's meeting with a really sensible proposal that between now and then we [inaudible] check with you, we maybe put it on the list so we can sort out this organization of work issue.

Because if you remember where we came from, we came from a tree diagram. We kind of sliced a bit of it off and put it in the working party.

The focused thinking to really make this as effective as possible hasn't been done yet. I would just plead for the CCWG's indulgence to give us the chance to do that and present it back to you on Thursday.



LEON SANCHEZ: Thank you, Jordan. David?

[DAVID]: Thank you. I was going to speak originally in favor of what Steve was saying, but in light of what Jordan just said, I would say that sounds like a very good idea and I would ask Becky as a member of the legal – as the review and redress sub-group – if you would speak with us, too. Because there are good ways to get something together by Thursday that could eliminate the confusion that comes up from work party 1 and work party 2.

BECKY BURR: I completely agree. It's been clear to us that we had to work at least closely together. So let us . . . Yeah.

UNKNOWN SPEAKER: Thank you. I think it's fair to say that we need to review this a little bit in terms of organization. We've had extremely substantive proposals about how to do that from the various speakers, so this is certainly – I will pick up on Jordan's idea that gather and come back to this group by Thursday with a sensible way of dividing work if need be, but at least organizing it in an easier way to comprehend and read for everyone in this room, but also outside of the room.

The stress tests are pending and we are all impatient of looking at that, but there are two remaining items I'd like to cover first. First of all, there were expressions of interest to discuss some aspects of the Jones Day document, and in light of this discussion, if there are any urgent



outstanding questions on that matter, we can certainly find a few minutes to make sure we address them.

The second one is a proposal by – and it's related to this discussion – that Bruce proposed to give a very short update on the Board Governance Committee discussions regarding the review panel, the review changes that are ongoing, just to make sure we get that in the appropriate time.

First, are there any pressing needs to ask for clarifications regarding the document that was provided in a very much appreciated short timeframe for this meeting, just make sure – if there's not, we move on. But I just don't want to leave aside anything that would be pressing. No, there's not, okay.

Bruce, can you give us a quick update on the Board Governance Committee and how that would fit with our organization of the work?

[BRUCE TONKIN]:

Thank you, Matthew. I think as others have noted on the cross-community working group that the standing panel that's envisioned in the bylaws is not in place, but the bylaws do allow for that eventuality. We use an international center for dispute resolution that appoints panels and there's currently 12 cases in the first step of the IRP panel, which is cooperative engagement, and seven cases are actually into the full IRP process. There's about 19 in the pipeline there.

In terms of forming the standing panel, staff ran into difficulties. One in that their provider, which is the International Center for Dispute



Resolution, didn't have the concept of a mechanisms for standing panels, so they went back and forth on that for a while.

Then they've been working with Jones Day on creating an RFP for seeking members of that panel. Really, the Board Governance Committee, first you want to apologize in that we haven't been tracking the development of that panel properly. If we did run into difficulties implementing it, we should have come back to the community much earlier and said here's some of the implementation issues, get some input on the RFP, etc.

But the Board Governance Committee just wanted to know from this group whether it envisaged making significant changes to that IRP process, and in particular, the use of the panel or whether they felt it was still worthwhile continuing down the current path, which is to actually form that panel.

I'm not really looking for an answer today, but just wanted to raise that as a topic [inaudible] board is seeking guidance from this group, whether you want us just to continue down the path of forming that panel or wait until the CCWG has had a chance to review the whole independent review mechanism.

[MATTHEW]:

Okay, thanks. So you're asking for guidance, which obviously we won't be providing at that meeting, but maybe if there are a couple of comments regarding this discussion, and starting with Becky I think it's perfectly appropriate. Please, Becky?



BECKY BURR: I'm not speaking for the group; I'm speaking for myself. I wouldn't move forward because I think we can move forward together and I think it makes it more sense rather than putting something together that's going to be modified, tweaked, changed, whatever. We've waited this long. Let's get it right.

[MATTHEW]: Thank you, Becky. David?

[DAVID]: Thank you. My answer is close to Becky's. It's not quite the same. I think that answering Bruce's questions would be something for the review and redress group to do. I wouldn't take that as a message to stop right now any work on the standing panel.

It's noteworthy that in a specific case, the [inaudible] Africa case, the lack of a standing panel actually had an impact in that case. I just don't imagine it would be worthwhile to advise the board to stop right now doing whatever they're doing to create a standing panel. Thank you.

[MATTHEW]: Thanks. I would note that it's definitely in our charter to be in any position to advise the board formally to do anything, except accept our proposals. And yet, if a board committee submits a request to get information about how our work is proceeding, I think we'll certainly do that. But I wouldn't commit the group to any form of advice or recommendation that is outside of our scope. I'm conscious of the way it may not be the full answer that's being expected, but I think we can



give [inaudible] yes probably we will be working on this, but then it's the board's decision to move on or not move on. But you'll have a sense of the community discussions on that topic.

I really take on the suggestion by David that I think it would be great to have an e-mail or something that's an input that we could share with the work party 2 group, so that they can prepare something for us to consider in terms of answer. Would that be okay?

[BRUCE TONKIN]:

Yeah. I think you've summarized it very well, Matthew. It's ultimately the board's responsibility and we're not happy it hasn't been completed. Likewise, I sort of welcome Becky's comments that we're happy to work with whichever members of the community want to work with us on it, basically.

[MATTHEW]:

Thank you, Bruce. I've had a hand raised by Robin and I think it was on the first topic, wasn't it? That's why I didn't go to you until we finished with Bruce. Robin, if you have a clarifying question, please go ahead.

ROBIN GROSS:

I just have a question for the Jones Day lawyer, if that's what you're asking.

[MATTHEW]:

I think he's in the room. Please ask your clarifying question. The chairs will convey the questions if need be.



ROBIN GROSS:

Okay, thank you. My question is about your understanding the California Corporations Code Section 5210. Section 5210 is the code section that deals with how public benefit organizations are to be managed, which is the way ICANN is currently run. It's a public benefit corporation.

Just bear with me for one moment. What section 5210 of the California Corporations Code says – and I'll read it verbatim; it's actually quite short – is that "each corporation shall have a Board of Directors, subject to the provisions of this part and any other limitations in the articles or bylaws relating to action required to be approved by the members or by a majority of all members, the activities and affairs shall be conducted and all corporate powers shall be exercised by or under the direction of the board. The board may delegate the management of the activities of the corporation to any person or persons, management company, or committee however composed, provided that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board."

So this is sort of the universe in which we currently live. It's the corporations code section that talks about how these organizations must be managed.

My question is about this part here where it says at the beginning "subject to the provisions of this part and any limitation in the articles or bylaws relating to action required to be approved by the members or majority of all members."

What is your understanding of this part that says “subject to the provisions of this and the limitations in the articles or bylaws”? What does that mean?

UNKNOWN SPEAKER: My understanding of that, how I read that, is – oh, [inaudible] Jones Day.

UNKNOWN SPEAKER: My reading of that is the underlying “law” or rule is that the activities of the corporation are within the purview of the Board of Directors, unless the code provides that the members have a right to vote on something. Then, the board’s decision isn’t the ultimate determination of that particular matter, because the members have the right to vote on that matter as well to approve it.

[MATTHEW]: Okay, thank you. I think we shouldn’t be going into a back and forth legal analysis that might leave a number of us aside from the conversation. I see some nodding in the room.

But what we’re highlighting here is a topic for further legal expertise, and it’s certainly useful for us as a group and not know, but maybe in the work parties or in the mailing list to highlight where exactly we think there is a question to be asked for third-party review. That’s typical in a group, in a discussion, that we may have disagreements on interpretation. That is perfectly acceptable, especially as far as the [inaudible] is concerned, because as an engineer, I know that [inaudible]



is very much left to interpretation. It's much better with hardcore scientific matters, which I've been educated in. That's the way it is.

I think it's useful for us to spot these items for further investigations. Leon, you want to add something?

LEON SANCHEZ:

Yes, thank you, Matthew. I would like to ask the legal sub-team to find a moment for us to maybe ask these questions to the Jones Day lawyer at some point between today or tomorrow so we can further advance in our work scoping the document. Would you be available, Robin, to do this?

[MATTHEW]:

May I observe that today will be quite limited. I don't know. Maybe you'll be speaking in Pacific time. Otherwise, it's going to be very short. Yes, please [this] time, and I think it's going to be useful.

Thomas, you wanted a concluding remark on this item? Then we'll go to the moment you've all been waiting for – the stress test.

THOMAS RICKERT:

Yes. Let me just say that at the outset of this discussion after the break I had announced that we wanted to discuss how to operationalize, and somehow we got locked up in discussing process again and how we best structure our work. So we will come up with an answer to that on Thursday, but still my hope is that we're going to have a substantive discussion on how we can actually implement. Therefore, it's extremely valuable for the legal sub-team to talk with Kevin. Maybe that will help



advance our discussions at what mechanism can we have to advise the board on certain things or [inaudible] the board so that we get clarity that.

Maybe for the community type requests there is another mechanism needed, but I think that as a starter, it would be good to get some clarity on what committee or what other legal vehicle can be used to impose certain things on the board so that we get that off the table and can further talk about operationalizing things.

With that, I'd like to hand it back over to you, and the stress test that everybody has been waiting for. I'm sure you're shivering with anticipation now.

[MATTHEW]:

I'd like to thank Becky and Jordan for taking on the work and for their flexibility as well into arranging the work structure which we'll be doing in the coming days.

Steve and Cheryl I guess will be joining us at a table. Quick reminder, we have 25 contingencies grouped into five categories, and during our last meeting, our last call, we agreed that the stress test work party would provide us with a few examples of what the stress test would look like and they have once again delivered a remarkable time and extremely high quality.

The goal of this discussion is of course we can have discussion about whether we think the assessments of this group are accurate, but also is this the kind of output we want to see on the 25 contingencies? Cheryl, would you like to . . . ?



CHERYL LANGDON-ORR: Thank you very much. We're just bringing up – it's up, right? Ready to roll, okay.

First of all, I know you mentioned the I think quite extraordinary amount of work that's being done in a very short order, but I did want to put to the public record here how much it's been appreciated that within 48 hours – because 48 hours ago, this document was a first pass of looking at some samples to go through the stress test exercise. And to have had the work party in an extraordinarily busy meeting mode anyway managed to get that to this more final form – admittedly still only sample exercise with more work to be done. I'd certainly like to have that thanks from my point of view, and certainly from Steve's point of view, to all of you who contributed to those edits and who helped build this document for what it is today.

I want to make really clear that this is a work in progress, and what we want to get with you today is some input and some feedback as to how we are heading, where we're heading, and what possible – if any – course corrections we might need to do by using these examples.

So with that, I'm going to toss it over to you, Steve.

STEVE DELBIANCO: Thanks, Cheryl. You posted on our last week's call – you may all remember the web page and it was the first link in the note that Cheryl and I circulated earlier. In that web page was the repeat of what the charter says about contingencies or stress tests, the five consolidated categories that we came up with in Frankfurt.



Underneath that, we prepared a table where we indicated the underlying stress tests that were rolled up into the five.

But a lot of you probably didn't notice that Cheryl and I at the end of that picked up the 34 different board risk committee risks. Bruce, I think you were helpful in getting this done in last week's call. It might have been two weeks ago on the call that you asked this work party – the chairs asked this work party to ensure that the board's risk committee stress test were baked into ours. There's 34 of them. The only ones we'd probably need to pay attention to are the ones we indicated in red because all the rest were already covered.

Some of the ones in red are not applicable. Others we've proposed with a question mark to simply add them to ones we have, and one of them we pointed out was so far outside of ICANN's scope that we couldn't believe it was in there. That was the one that said it was a stress test; if ICANN failed to implement a global multi-stakeholder distributed Internet governance ecosystem according to the NETmundial principles – I think we think that was a typo.

So we don't have to go through those 34 now. I just point out that the work party tried to do what the chairs asked us to do and address that. Thank you. Alice, if you'll bring up the document that Cheryl talked about next.

Cheryl mentioned the folks who came through on 24-hour turnaround. I thought I would call them out by name: James Bladel, Samantha Eisner, Malcolm, Greg Shatan, and Tony Holmes all contributed in rapid turnaround in the middle of a busy weekend on this.



Again, remember that the stress test – and this is the PDF that Cheryl and I distributed about an hour ago, if you’re having trouble finding it.

We said let’s take a look at what the charter asked us to do, and also the chairs asked us to ask another yes/no question about is the threat directly related to the transition.

What Cheryl and I were hoping to do is to walk you through a few samples so you can understand how we would apply stress tests to the mechanisms that have been proposed. But as you said earlier, it’s all the mechanisms that are proposed. You consider this whole body of enhanced accountability and the new structure that the CWGs come up and say, “How would that new world respond to stress test?”

One of the first ones we picked is a relatively easy one. It’s in area number five, the failure of accountability to external stakeholders, and the stress test reads, “Let’s suppose ICANN or NTIA chose to terminate the affirmation.” The consequence is that ICANN wouldn’t be held to it anymore. There are certain commitments in there that are not in the bylaws. And as Sebastien indicated earlier, there are Affirmation of Commitment reviews that are baked into there that would no longer be required.

There’s a three-column table you have. The first was that stress test, the second is, well, let’s take a look at the existing accountability remedies and see whether they answer how sufficient are they, and then we’ll look at the proposed ones.

Under the existing, we point out that the Affirmation can be terminated by either party. There were still folks that didn’t know that with 120



days' notice. We stated what I think is relatively obvious, that as long as NTIA controls the IANA contract that ICANN does feel pressure to main the AOC. In other words, it's highly unlikely they would unilaterally terminate the Affirmation knowing that that might jeopardize their ability to get the IANA contract the next time it came up.

So let's turn the column of Proposed. We took a look at the mechanisms and said, "What would happen if ICANN were to terminate it?"

One of our proposed mechanisms was the community could challenge a board decision. Robin, you were calling this a board veto. It might be an independent review, it could be a reconsideration or the community might pull together this member or delegate structure and veto a board decision to cancel the Affirmation. That is an example of a mechanism that could answer.

Another proposed measure was to bring the Affirmation of Commitments provisions into the bylaws more proactively with community input. If we did that, then that little bilateral agreement between ICANN and the US government disappears. It doesn't get replaced with another counter-party, which I think Sebastien was mentioning earlier, but instead it just gets buried in the bylaws of ICANN. It becomes part of the DNA.

And it's not just the four periodic reviews. It's also commitments, which are in paragraphs 3, 4, 7, and 8 of the Affirmation. You could familiarize yourself with that.

So what if ICANN’s board then tried to dump from the bylaws and pull them out? Well, there’s another mechanism for that because the community could veto that proposed change to the bylaws.

I’ll slow down there and take questions on that. I don’t want this to be too complex. We picked an example that was relatively easy. It’s an example where the current mechanisms are not adequate because ICANN can walk away from the Affirmation, and it’s an example where the proposed measures are adequate.

And to the answer the chairs’ questions, the chairs asked us, “Is this directly related to the transition of IANA stewardship?” The answer is definitely yes.

I’m happy to take a queue of questions on that.

UNKNOWN SPEAKER:

Some questions. These are on [substance] or on out outcome. I think we have an excellent example of the kind of outcome that we described and now we need to ask whether we think that’s something we can translate to the 25 and present as an outcome of our work at some point. Malcolm?

MALCOLM HUTTY:

Let’s look at where these came from. These 25 stress tests were drawn from research of points that have previously been made within the community – stress test that members of the community would be applying themselves to judge our output. These five generalize those points.

That is helpful because it avoids being overly specific in missing things that people hadn't come up with but would have [done] if they had thought of it. It may be helpful to our work to organize our work.

In that sense, I would support what's been done. I think it's been useful and it will be helpful to us.

However, with this caveat. In generalizing, you lose some of the detail of the underlying work that it's been drawn from. Those underlying 25 points still apply because they've come from the community . . .

UNKNOWN SPEAKER: But this is not one of the generic five. This is one of the 25. They're addressing it – all the 25. Isn't that what you're calling for?

MALCOLM HUTTY: Okay, yes. Sorry. I understood that you were producing this consolidating stress test, what you had on the—

UNKNOWN SPEAKER: This is not one of the generic five categories. This is one of the 25 and they're planning to do that for the 25.

MALCOLM HUTTY: Okay. I beg your pardon. In that case, fabulous.

UNKNOWN SPEAKER: Excellent.



[MATTHEW]: Miracles happen, I tell you. Any other question? My personal appreciation is this is exactly the kind of thing we need at this stage and it's going to be extremely useful for us.

One suggestion I would do is we need to look at the complex ones, at least one. I would suggest one that has been highlighted during yesterday evening's session as well as the opening session today, which was legal actions against ICANN.

We've all heard [inaudible] mentioning the fact that the number of legal actions against the organizations managing the Internet identifiers before ICANN was created was one of the key moments where this first transition happened, and I think this is a good candidate for testing our system – stress testing our stress-test system – because it's going to be a complex one and one that I think we could learn a lot about. What do you think Steve or Cheryl?

STEVE DELBIANCO: I would just say that working for these three chairs make your spouse or your boss look like an angel. We turn around all these stress tests in 24 hours. Matthew points out one we haven't yet done. Okay, point taken. And I did hear [inaudible] presentation today. Yes, sir, we will get to that forthwith. I did want to pick up on something—



[MATTHEW]:

Just a reminder that we might unfortunately get advice or input that might lead us to a few more at some point. We [can't] throw that out, so we need to be ready.

What kind of support and help would you need to make that happen in a sustainable way while keeping at least a couple hours of sleep?

STEVE DELBIANCO:

I think we could probably have that one by Thursday. Okay. But I did want to point out that the exercise of going through one as a sample is so illustrative of, "Oh, that's why we do stress tests." Up front they help to inform you of things you better design for, but the true value and interest is applying them after you've designed your prototype and ask the question, "How will it react? How much better does it react than the status quo, and how do we need to tweak it to make it better?"

In order for the stress test to be done, though, you have to have your prototype, the thing you're evaluating. And I believe you understand, based on the last two hours of today's meeting, we don't have a prototype yet. It is in development. It's somewhere halfway down the assembly line. We haven't decided all the options that are going to go in. We don't even know the structure that will be there.

So what Cheryl and I did in this draft, I said things like one proposed measure is empowering the community. I'm not suggesting that that is mechanism number 1.4 in Jordan's document or structure that Robin Gross suggested versus the member structure. It's just a general capability or power called a community veto.



It may be that the specific way it's implemented could change the way the stress tests are written. So it isn't all that constructive to do all 25 stress tests now because our prototype is not done. Our model is not done. But do enough of them that people understand how we're going to use them, and I hope we won't be sarcastic the next time we say, "Can't wait for those stress tests."

[MATTHEW]: Can I suggest we start at least having one in each category? My feeling is that there might be some commonalities in terms of requirements.

UNKNOWN SPEAKER: Sure, sure.

UNKNOWN SPEAKER: Do you want to do another one?

CHERYL LANGDON-ORR: Did you want to do more? Of the five categories, we have four, but we also know it's a long day.

[MATTHEW]: Yeah, I know. Thomas, did you want to say something first?

CHERYL LANGDON-ORR: The document is in the community's hand.



[MATTHEW]: We might have time for a second one, but Thomas, you wanted to say something?

THOMAS RICKERT: If I might suggest, it would be good for you to maybe do number five, because the outcome of number five is that the proposed remedies are not sufficient. I think that this imposes an extra challenge on our work because we would have hoped that what we came up with in Frankfurt would be robust enough to get answers to our contingencies and now we see that this is not the case.

So I think that we need to talk about process a little bit again, because I think if we do this sequentially, wait for the whole stress test document to be ready, and then find out about the deficiencies and start working on those, that might lead us into some extra timing issues.

So this point number five is an ideal example for us to come up with good ways to deal with this.

I think I should pause here because this is abstract for those who haven't read the documents, but I would like to get back to this after the presentation at this very point.

STEVE DELBIANCO: Would you like us to walk through this one?

THOMAS RICKERT: Yes.



STEVE DELBIANCO:

Okay. Folks, if you scroll down, it's stress test number 5 of 25, and it happens to live in category one called financial crisis or insolvency. Again, this is the PDF that was distributed an hour ago. Alice, thank you for scrolling to it.

This stress test surprised me when it emerged early on, because it's a really tough one. You don't often see things like act of God as a stress test as a way to instruct how you proceed. Yet, I think we learned a lot by running through it.

This stress test is that there's a financial crisis. Significant reduction in domain sales, so the revenues are down; increases in registrar and registry continuity costs to keep them running for the registrants who have acquired domain names and registries that are going out of business, and this would thereby threaten ICANN's ability to operate.

We reached the conclusion right away in that column that this threat is not directly or indirectly related to the transition of IANA stewardship. Nonetheless, we tried to analyze it.

Under the existing accountability mechanisms, the middle column, we said that today ICANN could propose revenue increases or spending cuts, and they could do so, but they're not subject to challenge by the ICANN community. So board or management might make dramatic cuts, decide not to have the meetings anymore, decide not to publish documents and we couldn't challenge that. There's no way they would take a move like that, but the point I'm making is the community doesn't have any power to challenge.



The community certainly has input on the budgeting and strat plan, but those are much more long-term documents once a year with a five-year horizon, and I do understand – Samantha corrected us on this – is that each year registrars have to approve ICANN’s variable registrar fees. So if ICANN’s reaction to a financial crisis was to dramatically increase the registrar’s variable fees, I guess if it’s that point in the year, the registrars could say, “Hell, no.”

And ICANN’s reserve fund, which is pretty hefty right now – [inaudible] got his eyes on it. You guys better watch it. But that reserve fund could support continued operations for some period of time. I guess it all depends on the severity of the crash and whether the burn rate at ICANN can be reduced to make that reserve last longer.

So flipping to the third column, and I guess we’re finished then, the third column is, “What would our proposed accountability measures, the prototype so far, do for us?”

Well, one of them was the community could veto ICANN’s proposed annual budget. Again, that’s only once a year. But if that budget increased revenues in ways we didn’t support or had cut spending in ways we don’t support, we could block that proposal.

Another is the community could challenge a board decision. So let’s suppose it’s not annual budget time, but rather it’s mid-year. It’s mid-year and ICANN is taking a significant decision to react to the financial crisis. Let’s suppose they were going to cut the third meeting of the year to save several million dollars.



That decision, if it's transparently communicated, we have a mechanism in there where the community has standing to challenge that board's decision immediately, and challenge the decision in a community veto way or perhaps, Becky, send it to an independent review panel. Though, it's hard to say how an independent review panel would have a standard to evaluate a question like, "The community says we shouldn't cancel the annual general meeting." So that might well be just a community veto decision, a reconsideration, put it back into the board's lap.

So we concluded that neither of the existing remedies or the proposed remedies really go all the way. They're helpful to the extent that you're at the right time of the year for the budget, but neither would be adequate if the revenue loss was extreme and sustained – that was a good phrase.

So, to the chairs, that's another example. I'm happy to take questions.

[MATTHEW]:

Great example. I have Alan whose hand was raised in the Adobe room. Please?

ALAN GREENBERG:

Thank you. The measures we're talking about address what has sometimes been called an out-of-control board or a board that's making bad decisions. The issue was raised a while ago of how do we control an out-of-control community?



It strikes me as you were going through this that the community could stop the board from making a bad decision. The community could also stop the board from making a good decision and cause the crisis or exacerbate the crisis. I'm not quite sure how we handle that in these scenarios, but it's something to think about.

[MATTHEW]: Thanks, Alan.

UNKNOWN SPEAKER: You get the community you deserve if you're the community.

[MATTHEW]: Thomas?

ALAN GREENBERG: As an answer, yes, we might deserve it, but we're still worrying about how does the Internet keep running after that?

[MATTHEW]: Thomas?

THOMAS RICKERT: Yeah. Just to finish this point, I guess what we need to think about between today and Wednesday is how we deal with this type of scenario. We can say there are no solutions for every problem. We can ask for certain standards such as ICANN needs to make sure that they're



always 8-12 months' worth of money in the bank, which can only be touched in certain cases.

But I think we need to make our answer robust enough so that nobody can say, "You haven't done due diligence on that." So we might call upon the independent experts to ask them for best corporate governance practice to deal with these things to get some additional answers to lean on and maybe to form sub-teams to immediately jump on those items that do not yet have a satisfactory response.

So I think this is food for thought. Let's think about how we can deal with these unresolved items so that we can work on the building out the stress test as well as upcoming issues as we work those.

With that, I'd like to hand back to Matthew.

CHERYL LANGDON-ORR: We have one more question, please.

JONATHAN ZUCK: I guess I don't want to split hairs here. The [cart] says that this isn't necessarily related to transition of IANA stewardship, but I guess I would suggest that the problem described doesn't represent an accountability problem. I think it represents a community problem and that the accountability is over how the board reacts to that problem, not to the problem itself.

I think we're going to set ourselves up for failure if we stress test every problem that might occur and that somehow our accountability mechanism are designed to solve those problems. That's going to be a



community-wide challenge whenever that occurs to try and come about solving those problems, and hopefully our accountability mechanisms would have cut in long before we got to that point because board decisions were potentially leading to this financial crisis, but the actual fact of a financial crisis I think is not, in and of itself, an accountability problem – simply the reaction to it is one in which we need to apply our solutions.

In saying that they're helpful but not adequate, I'm not sure that – I think they're adequate in addressing what would in fact be the accountability problem. They're not adequate in solving the financial crisis.

[MATTHEW]:

There's no way to solve a financial crisis. ICANN is not responsible to any – that's an external event, maybe driven by internal decisions, but it's maybe an external event.

But a point of contingency and risk management is to address both internal risks as well as external and see how you mitigate them. What we need to be prepared for is people reviewing our proposals and asking whether that's a sustainable proposal in the light of the changing relationship with the NTIA.

I guess some people might think that if there was a big financial crumble at ICANN, the NTIA would step in right now in the current setup. Some people might think that. I don't know if it's accurate or not.

Just like governments are asked to step in when a bank too big to fail starts failing. That's why think it's important that we make sure we



know exactly how we respond when someone inquires about our work. It could be the NTIA, it could be an external observer, and says, “Okay, you’ve set up a lot of accountability mechanisms for internal risks, but what if the world crumbles outside? Does the Internet identifier system still gets the appropriate level of investments, and is maintained in good condition?”

That’s why this kind of contingency I think is something we need to be really ready to say what we have put in place or whether we have decided that this is outside of our scope.

UNKNOWN SPEAKER:

I feel like what you’re saying in effect is that the NTIA may be playing a role other than accountability. If they’re also playing the role of savior, that’s not necessarily a role of keeping ICANN accountable. I guess that’s the—

[MATTHEW]:

Well, you can [inaudible] because it also means – don’t think of ICANN. Think of the banks. Were they really accountable for their financial failures? That was the whole public debate around the banking system. Because they knew that they were too big too fail, they knew they could take some risks and they were not fully accountable for their risk-taking because they knew someone was coming in to save them. That’s where it links to accountability.

If you want, we can pursue this discussion offline because I see some people are getting tired. I don’t know why, really. It’s only starting. Bruce has his hand raised.



[BRUCE TONKIN]:

Yeah. I just want to give a perspective as a board member in this area as well. One mechanism that you haven't perhaps captured there is the law. If we let the company [inaudible] then the directors will go to jail. That's one thing. So that's in terms of spending what we can't afford.

The other element here is what the board has also set up is a reserve fund and a contingency fund. I know you've got that there. I just want to be clear on the timescale here, because if you actually look at a real scenario, let's say revenues drop to zero this year. We've got a budget process starting with the community now for the budget starting first of July. So the community would actually be part of the budget development process, taking into account that loss of revenue well within the timescale for our normal budgeting process. So we've actually already built that in.

I think the risk of this is pretty low.

[MATTHEW]:

Okay. [inaudible] further discussions. Obviously we need all the input we can get into those stress-test documents, but we have I think a very relevant structure, an excellent prototype, and something we can certainly get a lot of value of like we're doing when discussing this particular one.

First of all, I'm going to the "any other business" item, so this is good news. We are approaching the end. Adam, did you want to do any other business? You said something like this. Please?



ADAM PEAKE: Good evening, everyone. Adam Peake, ICANN staff. The first thing I have on my list, at the top of the list, is to thank the interpreters for staying late and all the work they do. Thank you very much for that. [applause]

UNKNOWN SPEAKER: And the scribes.

ADAM PEAKE: And the scribes, of course. Thank you. We're staying late tonight, and unfortunately the working session on Thursday morning begins at 7:00 AM. I know that's great fun, isn't it? I love that.

Anyway, 7:00 AM on Thursday morning and it's in the Padang room, which is the large room that will be set up for the public forum. As you all know, I think the public forums are set up in the auditorium format, but we will have desks with microphones first thing in the morning so that members and participants can get there early and sit at a desk and also sit at a microphone. I'm sorry to say get there early, but we can't really save them for you because it's a sort of first-come first-serve, but there will be desks and microphones in the Padang room.

I also want to just note again that we have our final expert advisor having joined the group – Professor Lee Bygrave from the University of Oslo, our expert in international law.

I want to also thank [Yan] for coming to the meetings, and also Ira Magazina has been meeting with the CCWG co-chairs. So we have our



advisors on board and we should be thinking about how to engage with them.

That's the end of the any other business. Thank you very much, everyone.

[MATTHEW]:

Thank you, Adam. Before I let you go for a well-deserved dinner or anything else you have planned, just to recap what we have in the pipeline until Thursday.

There's engagement. Please engage and collect feedback. That's something we'll discuss Thursday at 7:00 AM. It's promising.

We'll discuss timing and timelines as well. That's certainly a hot topic this week. This is high on our agenda as well.

Three strong items. How we structure work on the requirements to get more into substance. As Thomas was saying, we are at the inflection point where we need to go from requirements that are rather abstract into actually creating those solutions. I think our discussion today shows that we're at the inflection point, but not yet there. That's what we are looking to achieve before we leave Singapore.

The structure of the work and the global architecture and how all of this fits into a big picture is going to be one of the things we'll be working with the reports on until our meeting on Thursday

Obviously on the stress test, we've made good progress. We'll investigate legal action and how we can deal with the uncovered items, such as the one we've discussed.



So, lots on the plate in a very, very busy week already, but thank you everyone for staying so late and for being so constructive along this three-hour session. I look forward to further exchanges across the week. Have a good evening.

[END OF TRANSCRIPTION]

