
BUENOS AIRES – CCWG-Accountability Meeting with the ICANN Board

Sunday, June 21, 2015 – 15:00 to 16:00

ICANN – Buenos Aires, Argentina

MARKUS KUMMER:

Good afternoon. May I ask you to take your seats? It's 3:00. We have one hour at our disposal. I think it's a very important session and one hour is not that much time.

Good afternoon, everybody. I'm Markus Kummer. I was asked to chair this session. Normally, it would have been Bruce Tonkin who is the Board liaison to the CCWG, but he was not able to be here in time, so I was asked to replace him. I will do that to the best of my abilities. We have the pleasure of having the three co-chairs of the CCWG here with us. You know them all: Philippe, Mathieu, and Thomas.

But before start, I would like to invite our chairman, Steve Crocker, to say a few words on how the Board approaches this exercise. Steve, please.

STEVE CROCKER:

Thank you, Markus. Let me, on behalf of the Board in particular and on behalf of Bruce, thank you for stepping in. I'm going to speak pretty directly on one big top-level point. The whole focus of this exercise is how to examine and improve the accountability of ICANN as a whole and particularly of the ICANN Board.

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There's a natural assumption that there's a tension between the Board and the community with respect to this process. It just isn't true. At least it isn't true on our side, on the Board side.

We are absolutely interested and committed to having ICANN as a body and the Board as a particular subset of ICANN operate according to the highest possible principles of accountability and transparency.

There is a lot more implied or latent coordination and commitment to this process than might be perceived. The areas where we tend to be active in the dialogue is trying to understand how the proposed mechanisms will play out, what are the unintended consequences perhaps. We all have to live with the results of whatever machinery is put together.

Board members have a limited lifetime. Some of us have extended it perhaps longer than expected, but nonetheless, we're all – and I'm not feeling any pain at the moment, so I'm being deliberately a little bit funny in choosing my words. We're all term-limited. We'll be out of here after some period of time. We all are selected to represent the community and to oversee the corporation as a legal entity and a variety of other activities.

Whatever perceived weaknesses have been in the past, we know that over a period time, first of all things have gotten much better from the earliest days. We're a much stronger organization. And not only stronger in terms of having a budget and stronger processes to get things done, but we're also stronger in terms of how we communicate

and the degrees of organization and process that we have in place to protect everything.

Yet, we understand that that's only partway up some possibly unending scale of improvement. So we're fundamentally in support of this process. I'm conscious that not everyone feels that as much as I do, but I want to make a point of saying that

With that, we're here to listen, to respond, and to help move this process forward if we can.

MARKUS KUMMER:

Thank you for that, Steve. Maybe a few words of explanation. There are Board members around the table. If they will speak, they will speak in their individual capacity. But we have made a collective submission at the request for comment as a Board [position]. I think that's a [mission] showed how constructive the Board engages in that process.

I would be amiss in saying that we are really thoroughly impressed by the effort that goes into this process. Innumerable hours spent on the phone, conferences, e-mails, and physical meetings [inaudible] conference calls, but it's almost impossible to keep. It's almost like a full-time job and I'm sure you will confirm the people who are leading this exercise. It's really truly impressive.

Now, an agenda is up there on the wall if you can read it. We will start with an update on the recent developments on the CCWG. Then also have some interactions with the Board about the questions that were

sent out. I'm aware there were some ruffled feathers and I think [Ron] will explain a bit the rationale behind these questions. And all the other questions are really closely inter-linked. One of them how to improve communication. It's an exercise we're already engaged in right now. Then the next steps and the follow-up including resource allocation.

But without further ado, who would like to update? Thomas? Okay, please.

THOMAS RICKERT:

Thank you very much, Markus; thank you very much, Steve, for the kind introduction. On behalf of the CCWG, we would like to thank the Board for the opportunity and your time to discuss where we are and what needs to be done to complete our effort.

I remember that we had a comparable discussion at the Singapore meeting where the Board confirmed that they don't have any issues whatsoever with us designing mechanisms whereby we could [get rid of you]. And that was a very encouraging moment, and I guess that clearly showed that there's a commitment from the Board to enter new territory for ICANN in order to enhance the accountability of the organization as such.

But likewise, our group was encumbered with looking at contingencies, looking at worse-case scenarios only. Therefore, we want to make absolutely clear that even though we are talking about mechanisms to remove individual directors or even record the entire

Board, there is no suspicion whatsoever in anything that you do as individuals.

So we should completely separate that and look at these things on a very abstract level, just making sure that the organization is safeguarded from contingencies that we have identified.

I'd also like to go on record by saying that this doesn't only go for the Board, but the Board plays a central role in that we are seeing a lot of Board members on our calls in our meetings. We're seeing a lot of government representatives as well as we do see a lot of representation from other sectors of the community.

I think that it's very encouraging that there's such great interest from all parts of the community and I think that this is quite unprecedented in ICANN's history.

So with that, I think I'd like to move to a quick update on where we are. I think it is not necessary for us to dive into an overview of what we did because the level of specificity that can be seen on the questions that you've asked clearly shows that you've looked at our proposal at much greater detail.

But what I'd like to sum up at the outset of our discussion is that we have prepared a report which is not a report containing consensus positions, but the status of our discussions at the time because we did want to get input from the community to get confirmation, criticism, or suggestions for alternative approaches as we move on.

Since we're working against a very aggressive timeline, it would have been a great danger for us to wait until the very end and only then include the wider community.

So we are very happy that the Board did chime in with its comment. We're also happy that the Board did follow-up with its questions that we're going to discuss in the next sessions of the report. But we're also happy that other parts of the community let us know what their concerns were.

In brief, we got more than 60 comments, most of which have been very supportive of our general approach. That is the good news. So the community powers that we've established as being essential to enhance ICANN's accountability have been confirmed as being the right way to go.

Also, the enhancements to the review and redress mechanisms have been confirmed by the vast majority of commenters as being the right way to go. There are some questions on details that we need to further look at and we've spent a lot of time analyzing the reports that we got to determine whether they require further actions and we have sub-teams working on that.

This is maybe interesting for everybody in this room. Our comments have been discussed individually and in detail. So nothing is swept under the carpet. Nothing has been neglected. This is all being taken on board and that's what's truly needed for a community effort towards consensus. So this has all been done.

So the four building blocks have been supported. The powers again have been supported. Review and redress have been supported. We're working on details there. Some major themes that the community has flagged for us to take a deeper look at, and that is diversity. So the community has said you need to make sure not only as an aspirational session, but try to operationalize diversity. That's well understood. Openness, inclusiveness have been [inaudible]. The need for us to make our proposal so easy to understand that there are no barriers for people to buy into because of linguistic hurdles, for example.

Then also the level of complexity has been challenged. What we perceived as not being too complex has been perceived by others to be very complex and hard to understand to third parties. That's what we took to heart, particularly the question of the community mechanism is one that we have entirely revisited.

In our report, we have made clear that no determination has yet been made on what legal vehicle should be used to enact the community powers. We have specified a reference mechanism that seems to get most traction in our group and that was based on a model whereby the SOs and ACs would all get votes. Five votes for all groups except for SSAC and RSSAC which would get two votes. And we would operationalize those by the requests to these groups to set up unincorporated associations by filling out forms accepting articles of association and registering those as UAs under California law.

These would be established in addition to the SOs and ACs and they've been [inaudible] alter-egos or avatars of the SOs and ACs which were

meant merely to be a transportation mechanism for the SOs and ACs to participate in a voting scheme. But that has caused a lot of [confusion].

People ask the question, “Why do we need this additional layer of legal entities? Who does control those legal entities? What about watch the watchers? Who controls the community?” That was a reoccurring scheme of criticism that we saw.

So what we did last Friday was sit together and there were multiple opportunities options on the table on how we could move forward. All those individuals in our group that wanted to present their vision of how we could operationalize accountability [got] their time slot to briefly be as persuasive as they could in terms of what they would like us to do.

So everybody was heard, no interruptions, no criticism. They would talk one after the other and could do their sales pitch, basically; or elevator pitch or whatever you might call it. After that we said, okay, there’s a lot of common ground in this. Let’s revisit our list of requirements for an accountability architecture and see whether this still stands after the public comment period has been conducted.

We found out that there were some points that we could clearly rule out, some options that we could clearly rule out. So this reference model is off the table. We’re not doing it. We’ve listened to you. We’ve read the comments that we got. It’s off the table. Forget about it. So we’ve now entered our discussions into a new phase where we had

other models and we're now in the process of merging the other options and take the best of our words, if you wish.

What we're now looking at – and again, this is a work in progress, so don't take anything for granted – but we're currently looking at leading all the SOs and ACs as they are. They would not register additional legal entities. But they would just express their views on what they think when it comes to voting on the escalations in the community powers. Let's say when it comes to the adoption of a strategic plan or bylaw changes or such. They would do that the way they are today.

And should they wish at some future point in time to more formalize, be more authoritative of these powers, they can pass a resolution and say, "We—" Let's say as a GNSO. I come from the GNSO. Let's just to illustrate the process. The GNSO could then pass a resolution that they come together to exercise certain community powers and that would be sufficient evidence, giving sufficient legal personality to the GNSO in this case to have powers and authority. We would leave it there.

So we would have a staggered approach to firm up the community powers, yet not encumbering various groups with how to manage all this. So we are looking at a very light [inaudible] approach at the moment.

Again, details are yet to be specified, but we listened to the community. We learned our lesson and I think that we're on a very good way towards – we're moving closer to consensus. At least

looking at what's happened on the mailing list since Friday and today. There's a lot going on. But this seems to be getting a lot of traction.

Since this is [inaudible] that was also a big concern for the Board, I hope that I didn't bore you too much with dwelling on that, but I think it's important for everybody to understand how flexible we are in our thinking and how much we tried to take all alternatives on board and refining what should be a truly consensus-driven community proposal.

I think I should pause here and open it up for questions.

MARKUS KUMMER:

Thank you, Thomas, for that. That definitely has been a consistent desire by the Board to keep it as simple as possible. It seems to be moving in that direction. Are there additional comments from the other two co-chairs? In that case, I would like to open up for questions. Are there questions/comments from fellow Board members or others? [Ram] was first, then George, and Kuo-Wei.

[RAM MOHAN]:

Thank you very much and appreciate both the openness and the intent to keep it simple. In fact, that was one of the big motivations when the Board responded to you. I wanted to just spend a few minutes to speak a little bit about what was on our minds and what we were thinking of. One was to make sure that proposals stay as simple as possible while still achieving the objectives that you're trying to get through.

The intention there ought to be to make it easier for new people joining the ICANN community to understand and to ensure that the implementation timeframe still stays within the month that we're looking to achieve.

Specifically, when we provided a set of very detailed set of questions, it was – and it is – primarily to assist with identifying potential side effects from the draft proposal to identify areas that perhaps could deal with some simplification that when we looked at it felt like there was some complexity associated with it. And also potentially to identify questions that might arise in political processes once the proposal itself gets submitted.

The intent is to try and ensure that there are clear answers to those questions. So that is a smooth pathway to the proposal getting approval through the political processes.

We recognize that the questions will take some time to consider. I don't think there's an expectation that all of them should be answered in a great deal of specificity or detail right here.

Our thought process was that most likely these questions would arise if not in our minds, in someone else's minds. We would really want to have those be raised and work in a collaborative manner with you. That remains the mindset from the Board and from many of us on the Board who are engaged in this process is to work collaboratively and to focus on the substance of what's happened.

As what Markus and Steve had mentioned earlier, there's certainly parts in here that can be enhanced as we go forward in our cooperation and collaboration. We're learning from that as well and we stay committed to working in that area.

MARKUS KUMMER: Thank you. You already anticipated agenda item 2, but there's no harm in that I think as all the agenda items are inter-linked. George and then Kuo-Wei.

[GEORGE]: Thomas, thanks for the introduction. I, too, value your hard work and you've done a lot of it. I echo what Steve and Markus have said

I attended your Saturday session and I was impressed with your willingness to look at different models of membership or non-membership, different ways of enhancing the accountability and I think it's an important thing to do.

You may not be able to answer this yet, but my concern is with the external judicial review. The question I have is when you look at your models of accountability, is it the case that – is external judicial review the ability to in fact sue the Board or to sue other members, whatever – is that a necessary part of any acceptable model that the CCWG is going to recommend? In other words, is it a show-stopper if that ability is not in the model that is adopted? Thank you.

THOMAS RICKERT: Thanks, George. I'd like to defer to Becky Burr who leads the sub-team working on exactly that.

BECKY BARR: Thanks. And I'm going to say in advance that this is not my area of legal expertise. We've had assistance from counsel on this, so I'm going to give you my best understanding of this, but obviously I'm subject to correction.

There are a couple of questions here. One question is do we need some mechanism of ultimate enforceability? That is a question on which I believe the community is split, and there is a significant portion of the community that thinks that is absolutely critical. It is a dependency in some cases of the CWG.

There is also a significant part of the community that thinks that's problematic or unnecessary. That is the gap we're trying to thread here.

Then there's a second-layer question. If you come up with something that at some point offer the option of ultimate enforceability, what are your options for dispute resolution? Do you go directly to a court in Switzerland or California or something else, or do you have the ability to say, for example, you must use the independent review process that we are setting up here?

My understanding is, while there always outlier exceptions, if we actually provide meaningful erring of dispute through a dispute resolution mechanism binding arbitration, we can feel pretty

confident that we have an effective means of channeling disputes through that.

I just want to say that is an issue, the substance of which the community actually hasn't decided whether that's good or bad. We did hear some comments from the GAC members, for example, who said binding arbitration was a bad thing. In fact, it made me recall that actually governments probably don't have the ability to enter into the kind of binding arbitration agreements that we're talking about

So we have to remember that that's not a done deal. But the scary prospect of spending endless hours in a California court should be taken off the table. We really believe, and I think the lawyers would back me up, that we have meaningful controls on that.

The one thing I will just say is in all arbitration, binding arbitration, situations, an aggrieved party generally has the ability to go to a court and say, "I got this determination and arbitration and the guy on the other side is blowing me off. Enforce it."

I think that right would still pertain, but that's not a review of the underlying dispute. It's "Here's the dispute. We agree to this process. We reached the conclusion, and the guy on the other side of the table is not paying attention."

MARKUS KUMMER:

Thank you. I really appreciate the comprehensiveness of your intervention.

KUO-WEI WU:

Thank you very much for the chance for the communication between the Board and the CCWG. First of all, [inaudible] is not doing really the impact what is this new structure would be in the operation of ICANN, but just one simple question for the CCWG is it seems like your [layout] that is based on the current constituency. What about if someday maybe three years/five years after, eventually the ICANN structure is changing?

I think we maybe need to be thinking about if their constituency structure is changing, we don't need to go through this bylaw change again. Maybe you need to put that into your considerations because based on the current constituency. That's the only question I have at this moment.

BECKY BARR:

That's a really valid question and something that we need to think through and something that we haven't thought through. I just have one practical question about that. Right now the SOs and ACs are actually embodied in ICANN's bylaws.

So it seems hard for me to figure out if we were going to change that how we could do it without actually going into the bylaws. Totally valid point. I think that there are lots of different ways to approach it, but I'm not sure it's as big a problem as we think because of the current structure.

KUO-WEI WE: Let me continue for following that. If we don't need to touch the bylaw, I think that would be easier. If we need to touch the bylaw, I wish this is the chance for us to fix not only for now, also in the future. If we are going to touch the bylaw – so there's a reason I'm asking, because based on the current constituency, [inaudible] thinking about future going to happen.

If nothing [inaudible] the bylaw, fine. But if we did that, then we need to think about that.

MARKUS KUMMER: Thank you. Mathieu would also like to ask.

MATHIEU WEILL: As Becky said, this is a very important aspect whether a new SO would be created or another one would be [inaudible] is something we need to consider in the system, and we will. I think we'll take it to heart.

The key question will be what level – how the community feels should be the safeguards when such a very strong reform – I mean, that happened within ICANN already in the past – happens. Whether it's something that the Board can do on its own, or whether it should be something that the community needs to have a veto right or approve prior to this ticking into force. That's the requirement approach we need to have on this topic.

It's certainly a discussion that we'll have within our group and provide rational about whatever proposal we make on this approach.

BECKY BARR: Add one point here. I may have misunderstood your question a little bit, but I don't want you to be confused. Every single proposal on the table involves revising ICANN's current bylaws. There is no proposal that doesn't involve that, because for example, the community powers have to be embodied in it. I just don't want anybody to be confused. Amending the bylaws, changing the bylaws, to the littlest extent possible has been an affirmative motivating goal in this.

I can't imagine a circumstance in which the bylaws are not amended to implement the recommendations.

MARKUS KUMMER: Thank you. I have a few [inaudible] for the floor. Kavouss, then Akram, Wolfgang, Steve, and Greg, and Cherine. Could I also ask for the interest of remote participants, whenever you take the floor, please state your name and affiliation. I think Kavouss has been waiting the longest. Please, yes?

KAVOUSS ARASTEH: First of all, before everything, let me, as a participant of the CCWG express our sincere appreciation to the three co-chairs and the chair of the two working groups and any other persons who have devoted this time, and also thanks to the ICANN staff who have beyond the call for duty provided all possible assistance to the CCWG. In less than a few hours, the output was ready for review and we thank them very much.

Now, coming to the point, I think I congratulate you, chair, because your very quick reflection that something doesn't work and UA doesn't work. We [inaudible] in April, but we've come to the point that it doesn't work. Not because it is not correct, because it does not fit with [inaudible].

Now, you want to replace it by something. I don't know. I have heard resolution. I don't know what is [inaudible] resolution. What is the content of resolution? But that is not the question.

The question is that, now, for two areas of empowering the community and independent review mechanisms with two or three models that we have – voluntary model, designator model, and membership models – how these powers could be exercised by the community if we remove UA.

We understood that in order to have [inaudible] that needs to be able to bring a suit to the court you need to be in [inaudible]. And without UA, what is the vehicle and modality to make that possible? You don't need to reply now, but we have to reflect on that. And that is one of the questions raised.

The second question is the mechanisms for the independent review. There was questions of the combination of that, the way they are selected and the diversity and so on and so forth.

Some people understood that the ICANN select them, ICANN Board. I understood ICANN make pre-selection and community selects them. But that should be clear.

Then the people said that it should be compatible with international law, but not in particular law because you enter into the area of deciding on the jurisdiction indirectly of each every country. So we have to look at that one to see what extent.

Then you need to make some corrections. There is no longer the term traditional bylaw and fundamental bylaw. There is one single bylaw with two categories. Category one, two-thirds of majority. Category two, three-fourth of majority. Because that doesn't [inaudible] California law the fundamental bylaw.

The way that the community approves the bylaw is no longer valid. There should be some changes to transfer the power of the Board to the community because the last Board is currently, according to California law, [inaudible] not with the community. So we have to make that changes.

Thirdly, if some or few of the SO and ACs decide not to be part of these new mechanisms or not to be part of some of them, what is the status of those SO and AC with respect to the collective decision in particular. For instance, [inaudible] Board member? If an SO or AC is not a member at all, could it participate in the [inaudible] of the entire Board or not?

The other question is that. You may say yes, but we want to have a clear answer of that. What we have asked, we have asked in tableau form. Table. In the tableau term, table. In the vertical column, we have all seven SO and ACs. In the horizontal, we have models and we have

to see which one of the SO and AC under which condition has the authority to exercise which of these powers. This must be totally clear.

So there are many things. We have to reflect on that. And I think we need to clearly read all of the comments received and perhaps encourage those people who have not commented decide to be more active between now and 17 and 18 of July in Paris in order to enable CCWG to prepare its second set of documents for the public comment. Thank you very much. Muchas gracias.

MARKUS KUMMER:

Thank you. I suggest in the interest of time we have already less than – we have used more than half of our allotted time and I have one, two, three, four, five, six people at least I recognize ask for the floor. This is Steve DelBianco, Wolfgang, Alan, Greg, Cherine, and also Sebastien. [Fadi] as well. No, no. You say something as well, Erika. We also want some kind of gender balance.

ERIKA MANN:

Oh, stop the stupid gender balance.

MARKUS KUMMER:

Can I ask you all to be as short and concise as possible? Then I will give you the opportunity to react. We don't have that much time to move to the other agenda items, but the follow-up, next steps. Sorry?

UNIDENTIFIED MALE: I think Ram's comments would deserve just a feedback.

MARKUS KUMMER: Oh yeah, [we'll come] to that. Definitely. Okay. Steve, you are the first on the list, please.

STEVE DELBIANCO: Thank you. Responding to Ram's intervention, and what you see on the screen up there – the Board's questions. I'm so relieved to hear your explanation for the intent of the questions as well as moderate expectations as to the degree of detail that might be necessary to answer questions like who would fund lawsuits among members? Would the ability to remove the entire Board serve as a deterrent to attracting highly qualified candidates? Would we overwhelm the ombudsman? Questions like that.

We didn't think that our model was very complex, but people perceived complexity. You didn't think these questions were tough, but they were perceived as having hostility.

I'm so glad to hear your explanation. That will help us to move forward. Because on Friday morning when the Friday surprise of these questions came upon us, it was quite a source of contentions in the meetings that we did hold.

I'll just say that it's interesting if you go back 17 years when we were standing ICANN up at the first time. If this bank of 156 questions served as the gauntlet by which we had to create the very first incarnation of

ICANN, I doubt we would ever have gotten it off the ground. So we appreciate the helpful nature of it. I think a lot of them will be answered by the improvements streamlining and simplification and flexibility that Thomas and Becky have described so far. Thank you.

MARKUS KUMMER: Thank you. Wolfgang?

WOLFGANG KLEINWAETCHER: I just want to make a comment to the conversation between Becky and Kuo-Wei because restructuring is a valid issue and an issue for the future. But my recommendation is move forward step-by-step with small steps. The simplicity which was already raised, what is now on the table. First things first is to have a good contribution by Work Stream 1 to enable the transition, and minimize this and simplify this.

Then comes Work Stream 2 and I could imagine that at the end of Work Stream 2 we will work to Work Stream 3. This could be ICANN 2020 and this could include a restructuring process which takes on board all of the outcomes from the [inaudible] we have.

I am in the Structural Improvements Committee and we are getting now the review from the GNSO [inaudible]. This will be a task for tomorrow. This is ICANN 2020. We have now ICANN 2015. Move forward slowly. Stumble forward, as [inaudible] has recommended in San Francisco but in very small steps. If you want to do everything at once, you will fail.

MARKUS KUMMER: You left out the right direction, Wolfgang. Stumble forward in the right direction.

WOLFGANG KLEINWAETCHER: I just said there is no intention, and I think it's outside of the scope of our group to restructure the SO/ACs. This is totally not on the table. I just want this to be clear. This is no confusion. This is not what we are tasked to anyway. That's just to make sure there's no confusion on that particular aspect. That's not something we're going to stumble on. We are not moving to discuss the restructuring SOs and ACs at all.

MARKUS KUMMER: Thank you. Alan Greenberg, please.

ALAN GREENBERG: I fully support what Wolfgang said. I will say, however, that the problems are not all that challenging. If we end up giving every AC and SO the potential for an equal say in governance, if we invent a new AC and SO, then probably we'll end up giving them the same vote. But it's a decision to be made at the time.

If we invent a brand-new construct, an advisory supporting organization, then we're going to have to think carefully of where do they fit. And if we ever restructure the whole organization completely, everything's on the table. That's not today's problem.

MARKUS KUMMER: Thank you. Greg?

GREG SHATAN: Thank you. Greg Shatan, Intellectual Property Constituency and a participant in the CCWG, member of the CWG. I think we are actually moving forward, especially with the changes we've made in a fairly simple and modest way looked at the – what we're looking at is basically community input into bylaws, community control over the folks on the Board that we've selected to represent us, and input into certain strategic decisions and financial decisions at the very highest level. So it's basically really three categories. So that I see as fairly simple.

Implementation issues like we call bylaws with a higher threshold a fundamental bylaw or a banana really don't – shouldn't concern this meeting at least, though the devil is definitely in the details. I think if we have the big picture right, we get everything else right. I think that includes changing the bylaws. Deciding how to change the bylaws is a big issue. Actually changing the bylaws is basically corporation housekeeping. In my law firm, you could probably give that to a third-year associate. You'd make sure they're supervised. But it's not a huge undertaking. Bylaws are the natural home for the rules by which an organization works.

Last point. The only way we ever end up in court is if the will of the community that we've all agreed to in the bylaws is disregarded by the

Board. We hope it never comes there. We hope that we have a [inaudible] relationship where we don't even get close to that. But that really is, in essence, the final step that should come after many, many other steps – hopefully constructive steps – so that we don't even see that as something that ever actually could occur, even though it's somewhere on the chart just like it could be 140 degrees in New York, but it will never happen. At least not while I'm alive. Thanks.

MARKUS KUMMER: Thank you. Cherine?

CHERINE CHALABY: I'd like to add my thanks to all the thanks to the committee for the hard work and coming up with proposals. I'd like to make a specific comment regarding one of the proposals. That is to give the right to the community to reject the budget approved by the Board. And these are really concerns in my own personal capacity and I wish you to take those in a constructive way as you formulate and finalize your ideas and thoughts.

I've not yet seen mechanisms in detail around how this will work, so this is why I'm making those concerns. And here are three unintended consequences which I really would appreciate you take into account.

The first one is what I call budget paralysis. Here whereby members of the community will vote against each other rather than be accountable to each other. So, for example, given budget limitation, what will stop members from voting against funding projects that do

not facilitate a personal interest. This could lead to a situation where the budget is never adopted or takes long to adopt.

The second consequence, unintended again, is a threat to the financial stability of ICANN, because under the new proposal, member of the community will have the right to reject the budget but not a single member of the community will be accountable for the budget bottom line. Hence, the proposal gives rights without responsibilities. To me, this is not a sound accountability principle

And the third unintended consequence is what I call unfairness, because final budget decisions will be made by members of the community who do not have an obligation to act in the collective interest of all stakeholders.

Now, please take those in a constructive manner. You don't need to respond now, but all I have to say is that the current budget process, whether you criticize it or not, is still robust and transparent and ensures that none of the above consequences can occur. It also ensures that the community can participate and we can always improve and change the current process.

So, please, again, once again don't take this as hostile criticism. It's just food for thought and take it into consideration as you finalize your proposal. Thank you.

MARKUS KUMMER: Thank you. I have three more speakers on the list, and then I will ask the three co-chairs to comment collective proposal. Please be as short as you can. Sebastien, [Fadi], and Erika. Sebastien first.

SEBASTIEN BACHOLLET: Thank you very much. I would like to say that the Board is not coming from the moon. You are coming from the community. I would like you to say that more often that you are part of the community because sometimes we have the impression that the work we are doing is to try to find a way to [inaudible] from the community.

Second point, it seems that from some of the people in this room that the Board is still, even in this subject of last resort, when we came to ask questions, to add something, we can't [inaudible] in the working group and it's a little bit strange.

In the same time, the community needs the Board, because at the end of the day, with the current bylaws, you will change the bylaws and we need to work closely as much as possible.

My last point is that we need to keep this organization as flexible as possible. If we don't do that, it's not just a question of complexity. It's also a question of flexibility, because if we don't do that, somebody will take over us. Thank you.

MARKUS KUMMER: Thank you. Fadi, please?

FADI CHEHADÉ:

Thank you. Thank you very much. On the Wikipedia page of multi-stakeholder governance, there should be two things. I think you'll all agree me we should have the picture of Mr. Kavouss because he has been our best ambassador. And secondly, it should have the pictures of this committee with the great chairmanship of this trio here we see: Leon, Mathieu, and Thomas. Thank you. Really. It's a triumph of our model.

If the transition doesn't happen, we can still talk about this effort as having been a triumph and we should remember that. And for all the governments in the room who maybe in past lives doubted the multi-stakeholder model, this is it. So tell your colleagues it works.

I want to comment on the work you're doing with great care because I deeply respect what you're doing. What we've built at ICANN is very delicate. It's very delicate. In fact, many people sitting with me at this table have built it. You know how delicate it is.

So as you enter transition, the last thing we need is to destabilize this delicate balance. This is the multi-stakeholder model. It is not designed to be a rock. It is designed to be a model that includes laws and bylaws, but it also includes people and trust. This is how it worked. This is how John Postel built what he did. This is how we continue to build what he did.

Do you think there are very strong bylaws that bind me to the root service operators? The people whose hand is on the till? No. There are other things that make this system work. Let us not lose them as we destabilize this model for the sake of making it stronger.

However, what you're doing is critical because you are strengthening what we have, and therefore please do it with care is all we ask you. There is nothing against your work. It is all good work.

The second thing I ask you is when you're done with all of this, will the model be perfect? No. Will Work Stream 2 make it perfect? No. My colleagues said three. Will Work Stream 17 make it perfect? No. This is a continuous improvement. The idea that this is the end of the line, and my goodness, if we don't fix it all now and Larry Strickling disappears and becomes a pumpkin, ICANN will fall part! No! We're here. This is your community. This is your system. He will go away and we'll still be here. Yes, we, ICANN. We'll be here.

Now what we should avoid is making sure that we don't inadvertently create a model that gives special interests power. And some special interests are trying to take power. Don't be fooled.

And let's not re-anchor ICANN in a US jurisdictional system by mistake, not intentionally. We are trying to globalize ICANN, not to bring it back to a California court. It's very important.

So your work is very delicate. It's very important. We thank you for it. We will support you for it. And yes, when you showed incredible flexibility in your work in the last 24 hours, which is amazing, what you did in the last 24 hours would take an inter-governmental model 24 years. It's amazing. You moved and you made changes. You listened. We thank you for that. Let's continue the dialogue. Let's continue listening to each other. Let's not surprise each other. Let's continue to be doing things in the open because what we're building we will need

to be responsible for when we're all gone, like Larry. This is a model for generations, not for us.

So as people leave, as I leave next year, as Larry leaves in 2017, as people change, as you change, this model should survive the scrutiny of time.

MARKUS KUMMER: Thank you. Erika?

ERIKA MANN: Thank you. I have a very simple question. I wonder how you want to reply to the public comments. I couldn't say, unfortunately, on Friday until the end. I'm sure you have discussed it then. I would appreciate if you could talk a bit about it because they're very different in nature, very different in character, so I would love to hear more about this.

[MARKUS KUMMER]: Now we have less than ten minutes left. We really have filled our allotted time. I'm not sure if it's possible to go into extra time, but I see also people are standing. There are not enough chairs.

What I would suggest to all the co-chairs have the opportunity to answer the questions and that we roll the other agenda items into that. I think the agenda item about the questions was satisfactorily dealt with Ram's intervention and Steve's reaction. I think that's an issue that is off the table and I'm very happy about that.

There was also the question of next steps and of resources, and among the next steps as I see it, one of the very urgent [inaudible] will be to start amending the bylaws to make them, bring them in line with your work.

Also a question was resources, staff, or otherwise and I presume that Fadi can commit to that. The work is too important to starve it of resources, so I hope you don't need to devote much time to that.

The other item was to enhance communication between the Board and the CCWG. I think this meeting was a great exercise in enhancing the communication. My very simple suggestion will be maybe have regular calls between the Board and the CCWG. We have had some calls before, but make it more frequent and regular. That will be my input into that.

With that, may I invite you to comment on all the questions, comments, and also other ideas you may have? I give the last word to our chairman to wrap up the session.

MATHIEU WEILL:

Thank you very much, [Kavouss]. I think the questions are all very much very valid. I will turn to address Cherine's questions to Jordan who is the Work Party 1 leader, and maybe that would be fitting that you start, Jordan, and then I will follow-up on what you said on the next steps. And Erika's question as well. Jordan?

JORDAN CARTER:

Thanks. Jordan Carter here for the record, .NZ. Thanks, Cherine, for those questions. They're very important ones. What we tried to identify in the report that we need to implement all of these powers, including the budget one, in a way that provides the least possible disruption to ongoing ICANN processes. Obviously the budget and the operating plan is a critical part of that.

We have to juggle the requirements the CWG has placed on us to provide a meaningful mechanism of budget control. But all of the concerns that you raise are important ones. Some of the ways we've already tackled them include the very high decision thresholds that would be required to send the budget back for reconsideration, the fact that all of the issues the community wants to identify to send back have to be identified on the first pass. So there can't be an ongoing ping-pong back and forth with new issues be raised and so on to delay the budget's adoption.

There's more work that we need to do in terms of what would be the continuing budget proposition, as should a budget be delayed. And there would need to be adjustments and time made in the budget planning process to make sure the disruption of a single return was not something that the corporation couldn't tackle.

So you're asking the right questions. We thought about some of them. We need to do more work in thinking about the ones you've raised and the ones that other members of the community have raised. So thank you for that.

MATHIEU WEILL:

Thank you, Jordan. Addressing Erika's question, our intent is to provide detailed answers on each of the comments we've received. We are using the same public comment tools as the GNSO is using for the PDPs and we have already populated most of the answers, so that will be obviously made public, as well as the remarkable summaries that were realized in a very short time by the work party leaders that you've heard already. So there's going to be summaries as well as detailed answers on the public comment.

Regarding the next steps, and I think in terms of cooperation between the Board and the cross-community working group I think I welcome [inaudible] suggestion to have more regular calls. That can only benefit more constructive dialogue. I think what we've seen this week was a symptom of a dialogue that was not close enough and it's settled. At some point, you get to face things quite directly and honestly and maybe in two strong a manner, but it's the sign of a constructive dialogue when we can put that away and move forward, and I think that's what we're doing now.

I also want to encourage the Board members to participate directly. We have outstanding contribution from Bruce Tonkin, who wasn't able to be here today; outstanding contributions from Chris Disspain, Erika, Wolfgang. To value their bringing is in their experience, in their ability to express concerns as Board members or community participants. That is really what we need at a discussion level because these are issues where we need to fully understand what the underlying concern and that's not easy to put in an e-mail or in a contribution to public comment. We need dialogue as much as

possible with as many of you. We're willing to make the steps to make that happen.

If there's time during this ICANN 53 meeting to do that and discuss about some of the questions, let's do it. I think that's very useful.

Regarding the drafting of the bylaws. We fully concur this is a very important aspect that needs to be tackled very early. Some of the public comments we're receiving show that some of the proposals are actually quite mature and getting a lot of traction from the community. Let's put them into the next phase as early as possible. That's certainly something that needs to be done in cooperation with the ICG because they need to be adopting the bylaws as well, and we took note of your comment that said we need to assess the consequences of the overall bylaws when we change a single article. And that's something we need to do together with ICANN staff and management, because obviously our groups cannot have perfect expertise in all the bylaws.

So we will need to define very quickly how we work together, what are the roles and responsibilities of our group, the ICG, maybe ICANN staff and management, the Board, so that we are clear on this and we can be constructive and move this forward quickly. So we would certainly welcome technical assistance on this and I think that's a signal that would be useful to the community if the Board at some point during this week were to signal that this has been kicked off and that resources are being allocated for that in order to facilitate this important part of the process.

So that's really I think the essential that I see for the next steps. Leon, Thomas, want to add something?

LEON SANCHEZ:

Thank you very much. I'd just like to thank the openness of the session. Of course I think the messages, as Fad said, that we are listening to different comments that we're receiving and we very much appreciate those comments. We'll incorporate those into our next document. We of course encourage you attend the different sessions that we will be having throughout the week. It is of the essence that we receive this feedback from you and I think it's a great idea what Mathieu has just said, that it would be requiring technical assistance in order to be able to build an integral proposal of bylaw restructure. We'll look forward to working with staff.

FADI CHEHADÉ:

I can tell you right now that technical assistance will be made available, period. As much as you need, as soon as you need. We'll announce after a Board meeting we have today some details that would help you understand when and how it will be available, but no question about it.

[THOMAS RICKERT]:

Just before we turn it back over to Markus, I'd like to say that it's very nice of you and of many others to applaud us as co-chairs for what we've done, but we can't emphasize enough that it's the reporters and

the whole group of more than 140 people. It's our excellent staff that makes this happen, right?

[applause]

We rather need to consider the economic impact or the ecological impact of our work because of all the midnight oil that is burned. We'd rather get some applause when this is all over. We're not yet there. Whether or not we can pull this off depends on all of you. Chime in with your criticism and comments as early as you can so that we can take them on board and then hopefully in a couple of months' time we will all have a great party.

MARKUS KUMMER:

Thank you. While it was my objective to go into this meeting to come out of it with the sense of being here as a community, and I think we achieved that objective. Steve, would you like to say a few words?

STEVE CROCKER:

Thank you, Markus, and I'll be brief. There's been some mention about the bylaws and I just want to echo basically the sequence of thoughts about it from a Board perspective. We're keenly aware that bylaw changes of course are necessary and we want to facilitate that process rather than ignore it or retard it.

So our attention has already been in the direction of what does it actually take to implement and look at the schedule, look at the sequence of steps necessary. There's a small concern that we have

procedures in place for making changes to bylaws. We don't want to short circuit those, particularly when we're talking about how to increase accountability and legitimacy for ICANN.

Anyway, our attention has been focused on that. Fadi has quickly responded with the offer of resources and so forth, and at the Board level, we're equally focused on that.

There's another kind of interesting irony here, which is it is the nature of the substance of what we're talking about that we're worrying about extreme failure cases.

At the same time, the task in front of us is to play to win, which is how to get this done and not have it fall apart. So there is a kind of interesting interplay there. We do have time pressure. We've used up quite a bit of time and reference was made to Larry disappearing like a pumpkin. [inaudible] some distance off at 6:00 PM day. He will not have turned into a pumpkin and we will be able to see him live and I recommend it.

In any case, joking aside and humor aside, it would be useful to move this forward as rapidly as possible, and as I say, to play to win. We all anticipate that this is not the last and final iteration of the process of looking at ICANN an improving it. Indeed, we fully expect that one of the action items along with all the changes to the bylaws and so forth will be a requirement to come back and evaluate and continue that process. Work Stream 2 certainly a piece of that, but there may be even more.

Let me echo thanks for everybody. The commitment level is enormous. The ecological impact is not just on midnight oil but on thousands of pages and other kinds of consumables. Thank you, all.

MARKUS KUMMER: Thank you. [inaudible] close the session.

[END OF TRANSCRIPTION]