
BUENOS AIRES – CCWG-Accountability Working Session 3

Thursday, June 25, 2015 – 10:15 to 11:45

ICANN – Buenos Aires, Argentina

LEÓN SANCHEZ:

Good morning, everyone, and welcome back. Some of us really didn't leave. Welcome to this CCWG on Enhancing Accountability session.

We will be doing roll call as usual with the Adobe Connect room. We do encourage all people that are in the room that are attending the meeting to log into the Adobe Connect room for participation purposes. It is really difficult to keep track of queues and people wanting to speak if they are not in the Adobe Connect room. We will be, of course, taking this into account, and we would very much appreciate it if you could actually log into the Adobe Connect room.

This is a reminder for all of those who are members of this group or participants and have not filled in their statements of interests. Well, it could be just about time for you to do it. As usual, staff is willing to help.

With no further delay, I would like to hand this to my co-chair, Mathieu, for the next agenda item. Please state your name when you speak for the record and the remote participation. Thank you.

MATHIEU WEILL:

Thank you, León. Good morning, everyone. We've had a long week. We've come a long way from last Friday's face-to-face meeting.

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Yesterday's meeting was very intense in terms of feedback, concerns being voiced, and proposals being made. What we've been doing overnight and this morning was actually trying to recap this, so we can have a shared view of what we're hearing from you, and what the proposals on the table are. I've noticed some proposals were put forward between yesterday's session and this morning, which are consistent with that.

We've worked with [inaudible] to try and recap where we are. This is very much of a recap kind of thing. I don't know if we can get the visualized layout of the discussion yesterday?

Just to introduce – we started last Friday by a very good discussion on the requirements for the community model, and those requirements were including, obviously, the CWG requirements. That includes the budget requirement, the ability to remove individual board members or recall the whole board. That will be easier when I get there. We had requirements about openness, about the ability to adjust to future changes in the community, and a requirement for the community to have leverage over the ICANN Board or the corporation if need be.

This notion of leverage I think is quite important. We've heard a number of concerns that were fleshed out a lot during the week. One of these initial concerns was to involve the courts as little as possible, and that's what took us to rule out the UA model.

Here are the powers we want. We've discussed about this empowered SO/AC membership model, which enables to get the community powers, the budget, operating plan, strategic plan, removable of

individual board members, the recall of the board, the change of normal bylaws, and the change of fundamental bylaws. That was check on this.

However, problems came up and were discussed intensively yesterday. Oh, I've got some echo here. Can we see those problems? Can we stop the echo?

The problems were stemming from the statutory legal rights of members. That includes derivative actions. That was related to this issue of not getting into court. I did not collect the paper, which we used for that. [Do you have this?]

THOMAS RICKERT: Might we review this? Legal complexities.

MATHIEU WEILL: Legal complexities and formalities. Those were the problems we've had in this model.

One of these also was the capture issue whereby a SO or AC that would acquire legal personhood first might try to capture the system by launching a derivative action first or claiming it was the only member of ICANN. Those were the problems that we have encountered looking at this model and discussed extensively yesterday.

We've also heard yesterday a number of proposals for how to make tradeoffs and adjust this model. That's what Thomas is going to describe.

THOMAS RICKERT:

Yes. Maybe to add to this slide that you see on the screen, the community powers will all go into the bylaws. I guess that's a very important point that we need to take stock of. Let's not confuse the exercising of rights with the enforcement of rights. I think we can take it for granted that the community powers that we've put in the middle of the screen will go into the bylaws. I've heard no one say that we shouldn't put them in the bylaws, and that the community shouldn't have them.

The question is can we have enforceability for all those powers? On the left-hand side, you see the boxes. All of those boxes can be ticked for the membership model. But even there are more rights than we have envisaged for the community to have with the statutory rights. There's a long list of statutory rights that has been pulled together by external council. You all have that. I hope you have read it. But it's quite a lengthy list of rights that come with the membership model.

Then we have the derivative action, which would also be possible, so that can also be ticked. We have the legal complexities – at least, perceived complexities. We can also tick that.

At least there is a perception that the one who shoots first gets the first bite of the apple when switching on the membership mode. That can also be ticked.

We have all of these. Some of which we wanted, some of which we didn't have on our radar maybe, where we would need to find ways to limit those powers, so that at least, no one single organization can bypass community processes to exercise powers. Can we now go to the status quo slide please?

We will have the opportunity for you to let us know whether you think we have inadequately captured what the temperature in the room was. But what we think we heard you say last Friday is that, for the moment, we should maintain the status quo. We should not touch the way the SOs and ACs function. We should not look at what legal status they have.

Some claim to have legal personality already. So be it. Others think they don't. So be it. Whether that is a true statement or not is not for us to decide. But let's work on the basis – let's work on the assumption – that we keep the status quo.

You will remember the middle of the slide that we saw last. The community will be able to exercise the powers on the basis of the status quo. Now, we have two questions in front of us.

One is – and I tried to reflect on that in my recap yesterday for those who have been in the room – is how, if there is the need for it, do we get from the status quo to another level, and what is the second level

that we're going to get to? It might be an SO/AC designator model. It might be a membership model.

You will remember the slides that we saw yesterday and also the communiqué that we put out last week said, "We are considering to go hybrid." But where we're going to go in the hybrid, we left that open. We have the flexibility of going either to a membership state status or to something else, which is potentially a designator model. Can we go back to the other first slide?

The other point that was made – and we tried to listen as much as we could to the community. [Raul], can you bring up the other graphic please? So we heard a couple of people raising their hand and speaking. Not only yesterday, but also before that. Some of which have claimed that the designator model doesn't have these unintended side effects for extra rights.

Robin, who is in the room with us, was very vocal on that. We heard Kavouss saying we should prioritize what rights we actually need. He said we might do with less than full enforceability on all the community powers. We heard Roelof saying over and over again that we should not look into all the enforceable powers, but that the dismissal of the board would be a sufficient remedy the community has. Malcolm has specified that he wants some remedy. I trust that he chose his terminology wisely because he didn't use the term enforceability for powers.

If you take that, if you take Cherine's intervention and Chris's interventions, we could go for less, and maybe we could make the

budget thing, which was one of the weaknesses of the designator model and try and budget responsibility and budget requirements in the bylaws for the IANA functions.

We took all that to heart. What we might get to at the second level is something which could be based on the designator model.

Let's now compare the membership model where all the boxes are ticked with what could be an enhanced designator model. Alan, did you say enhanced or improved designator model?

ALAN GREENBERG: Empowered.

THOMAS RICKERT: Empowered designator model. We listened to Alan as well as we did to all of you.

What we need to understand here is that we don't have such a nuanced enforceability system, so the community doesn't have the power to enforce each and every individual right. But I think it was Roelof who said at one of our earlier meetings, we need to replace the power, the historic relationship with the US government. So basically, we just need to have this big stick.

I remembered this big stick analogy. I've [tagged] this in our prep meeting. We have the power bar. We energize the community by giving it a power bar. So, ultimately, we would have—

UNIDENTIFIED MALE: [inaudible]

THOMAS RICKERT: Sounds more positive than the big stick, okay.

What I think we might wish to take away is that even though we don't have this nuanced set of enforceability, if we have the possibility for the designators to remove the directors and if we have sophisticated agreements that help us exercise that, and ultimately enforce by removing the board, then I think the community can have what it needs to have. And if we add to that the budget proposal by Cherine, you now see that there's a little tweak in this power bar, and that's the part where we have the enforceable rights for the designators to recall their board members. But ultimately, we could get our way.

I think it was also Roelof who said that once we have to exercise any of these powers on the left-hand side, if we need to go to court for the board to honor an IRP or the wish of the community, the relationship might have turned so sour anyway that we need to get rid of them. Where does that lead us to?

We would have the power bar that gives us ultimate enforceability for all the powers, yet less nuanced, and if you look at the problem side of things that we haven't shed so much light on yet, we don't have problems with statutory rights. We don't have problems with derivative action. We don't have that much complexities because the system is even more lightweight according to our understanding.

We think there is no risk of capture, or at least not that risk of capture, because even if we move from the voluntary model to the designator model, the ultimate authority – you will remember to recall the entire board – can only be triggered by one SO and two ACs or vice versa. Therefore, there's no risk of one single group taking out the big sledgehammer and removing the board.

This is what we heard you say. We tried to amalgamate what you have provided us with, and we've tried with the excellent, short-notice help of [Explain]. We've tried to visualize this for you to see because we see that the benefits are. We need to compromise somewhere, so we are less nuanced, but we don't have as many problems potentially both in explaining but also in [ring] sensing the side effects that arise from the issues in the lower part of the graphic with this proposal.

I think I should pause here. Looking at my co-chairs, whether there are any additions to that?

MATHIEU WEILL:

No. I was just about to remind that this is our understanding of the current conversation and what we've heard yesterday as potential ways forward, and so our intent in this discussion is to understand whether there are any feedback that this was not correctly capturing the issues or the potential tradeoffs that were put on the table, and obviously to get a sense of the room on whether this approach on the empowered SO/AC designator model is worth moving forward. Moving forward means handing it over for refined legal analysis, which we don't have at this point, and so which obviously, would be we need

some clarity on that and some form of agreement that it's worth considering before we proceed to the independent legal advice.

I see a queue is forming. I don't know if Fiona, who had sent an e-mail along those lines in a statement about the numbering community, could probably start by just ensuring because it's a very recent e-mail that is whether that's consistent with your statement or whether you see any gaps. Is that Fiona or Athina?

ATHINA FRAGKOULI:

Thank you very much for that, Mathieu. Yes, indeed. The ASO representative sent an e-mail to the group some minutes before the meeting starts because although the ASO and the numbers community have not expressed, let's say, their preference to any model so far, we believe that we have to sort this out as fast as possible in the simplest manner.

We hear that the only concern is a concern of enforceability. The enforceability can be achieved by different ways.

Enforceability, indeed, can mean like taking the matter before a court or not. Taking the matter before a court is a very extreme situation. We want to highlight to this group whether this small bit of enforceability is worth delaying the process, is worth creating a model that is vulnerable to misconceptions, or whether a straightforward model that addresses enforceability by different ways other than bringing the matter before a court can bring the exact same result.

That makes us recommend and actually push for the designators model. We believe that this is closer to the status quo. It's a model we all understand. It's a model that can bring the enforceability in a pragmatic and realistic way, and it is indeed inline with the model you just presented. Thank you very much for that.

MATHIEU WEILL:

Thank you very much, Athina. Before I turn to the rest of the queue, let me remind you what we said yesterday. We're at a phase where what is valuable to our working group is to make sure we have understanding. If there is questions about understanding and also to find a way forward. I would definitely encourage the speakers in line to explain exactly what they would tweak in the approach, or what requirement they would add or remove so that we can have a constructive discussion towards an enhanced approach and not just get back to this set of, "I have this position, and answer my questions," and so on and so forth.

With that, I'm turning to Malcolm who raised his hand first.

MALCOLM HUTTY:

Thank you, Chair. The first question you asked is whether this table correctly and adequately describes what was sought yesterday in terms of objectives so that it can provide a useful tool of analysis to see whether the two models on the table can deliver the objectives that were being sought.

I'm afraid to answer that by saying that I'm afraid it does not. Your table describes the community powers and provides an analysis as to whether or not the community powers developed in WP 1 are provided for adequately by these two models under consideration. But WP 1 is not the whole of our work.

WP 2 is a very important part of our work, too, and yesterday, we raised the issue of ensuring that the recommendations of WP 2 are available, the assurance that they were available.

Thomas, I'm afraid to correct the way that you were quoting me that there is a legal remedy if they are not. That should be part of the analysis, whether or not each of the models ensure and provide a legal remedy for the availability of those WP 2 protections.

The one I gave specific reference to yesterday was the IRP. I asked what could be done if the IRP was not implemented, or if IRP panelists were not appointed? That should be part of this analysis.

Now, it is possible to say, to take the view, that sacking the board is an adequate remedy for that. We can have a debate about this. But you should not exclude this is an objective – a distinct objective – from the analysis that you put before us.

I don't believe that it is right to state statutory legal rights in your list of problems. It should be in your list of objectives. The attendant legal complexities that may come with some of those can rightly be put in the list of problems to be analyzed against that. But I'm afraid this

analysis does not provide a correct description of what was being argued for yesterday.

Finally, I will say very briefly that I think we can say very quickly that having heard that the removal of the board is this awful nuclear option that would be so dreadfully destabilizing to ICANN that the very highest level of consensus must be reached before it can be carried out, to suggest that as the only unprincipled power to give effect to the accountability options that we are suggesting, is completely unwise. Thank you.

MATHIEU WEILL:

Thank you, Malcolm. May I say that I understand from your comment what I can take constructively is that yes, there is a requirement that the IRP is binding, and that's something we need to check across the models. I'm not sure there's a difference between the two models, but certainly, that's something we need to make sure of. That's certainly something we can add in our analysis further.

Sebastien is next.

SEBASTIEN BACHOLLET:

[French language]. That's French publicity, and I have the impression that it's where we are. I can't translate it. The big stick, an edit bar, and we are, again, working.

I just want to be sure that when Thomas said we didn't hear anybody against or arguing about the community power, it's not the truth. I am

sorry. At least, in some comments and in my writing comments, I argued on some of those community powers. I make a different proposal to do the same type of things, particularly the question of recalling the whole board seems to be, for me, too much and difficult to do it and to get it done if we need.

I have made a proposal for an alternative solution. It's very difficult to try. I want to make a process issue here.

We say that the board of 20 people is too much to work, and then we need to have a less important board, and here, we are more than 100 people to try to solve a very complicated issue. I hope that in Paris, we will be able to do work a little bit differently, and that the members of the group can have some standing, and we see who are the members of the group because here, I don't see. I have the impression to be pushed by right, left, and center to go in one direction, and I really feel bad with that.

MATHIEU WEILL:

Can we have a clock? We have a one-hour session, and I think with this pace, we're not going to get anywhere. That's what happened yesterday already. I don't want to get out of Buenos Aires having long statements and no way forward for our group. Our timeline is short. We have one hour, and I want to hear everyone express their views, but please in a concise manner.

Sebastien, if you've left out anything substantial, please do. Then we'll turn to the next speaker. No? Okay.

Kavouss, I have noted you on the line, but after Avri. Alan?

ALAN GREENBERG:

Thank you very much. I will be quick.

First of all, I ask for clarity again as I did yesterday. If and when the membership model is off the table, then it becomes less of an issue. But when we use the term hybrid, please say what we're hybrid between.

Over the last couple of weeks, we used it two different ways. We've used it as some groups empowered, some not; and also to be some are members, some are designators. We've used it in multiple ways. Let's be clear.

Just a note. We had thresholds that I think Mathieu or someone mentioned about either one AC or two SOs or one SO and two ACs. We may well not be in a position now as we've heard from SSAC and RSSAC that we don't have two ACs, so we may have to rethink about that.

Third point: I would like clarity on whether we can have a designator who does not appoint a board member. It's been said to me – and I don't know if it's correct or not – that designators by definition appoint board members, and the concept of an AC such as the GAC wanting to become a designator, and they don't appoint a board member may be problematic. I'd just like to get legal clarity on that.

Lastly, as with Sebastien, once we get into the details of any of these models, I will be proposing that we remove the spill the whole board. I believe that's an exceedingly destabilizing thing which would be hard to put in place a correct process to fix. We effectively have it by removing them one by one.

But I would like to remove the model where we have to explain exactly who is the interim board for the 12 months it takes us to replace them given our current processes. I'm not saying it now, but I'm asking people to think about it. Thank you.

MATHIEU WEILL:

Thank you, Alan. I think we have clarification on the hybrid model by Thomas.

THOMAS RICKERT:

Yes. Just to say that the hybrid nature of this is that we understand the community wants to preserve the status quo with no formal requirements to be taken, to be addressed at this stage. That could then transform to a designator model. Whether or not all the groups choose to be designators, that is a different question. Let's work on the details more.

But we would like to get your suggestions, criticisms, improvements for this. It was our understanding that there was a lot of traction for not pursuing the membership path because it has the difficulties that are outlined, but that people rather wanted to go the designator route. Let's try to keep it relatively high level. If we could get

confirmation for us leaning towards the right hand of this visualization, I think that would help us a great deal.

ALAN GREENBERG: Just for clarity, what I was saying is the word hybrid has been used in two very distinct, different ways within the last week and a half. So when someone says the word, perhaps we need some clarity. That's all I was saying.

MATHIEU WEILL: Thanks. Edward. Ed, where are you?

EDWARD MORRIS: Sorry. Hello. Edward Morris, NCSG/GNSO Council. I'm with Malcolm. I look at statutory legal rights, not as a problem, but as an opportunity.

Does everybody know that one of those rights is the right to document inspection? The rights that Karl Auerbach sued for and got? How can we make recon and IRP work without those absolute rights? That if ICANN decides not to turn us over records, we do have recourse to the courts.

Derivative actions. A lot of people have become expert in this room on derivative actions without really knowing what they are. They're the right of a member, in this case, to sue ICANN on behalf of ICANN. Not because there's a minor violation, but because you have a rogue board that's perhaps acting in the interests of a third party.

Statutory legal rights, derivative actions are not problems. Yes, we need to look for them. I would suggest that when we leave here today, we perhaps leave with no reference model. We do a detailed analysis of both models, so everyone knows what we're talking about. But to declare the statutory legal rights are a problem I think for me, is a problem. They're an opportunity. Thank you.

MATHIEU WEILL:

I think what's fair to say is that some in this group and beyond have voiced concerns about this. That other statutory rights, not the ones that are on top – the powers, the removal of the board, etc. – but these are the ones, and that's why we are actually capturing it like this, and we fully appreciate that thought.

A number of other community members, – these rights or at least some of these rights – are actually a feature, so that's perfectly right. Thanks for your contribution, Ed.

Jonathan?

JONATHAN ZUCK:

I'll be brief. My concern was with the question you just raised was about how this was representative of the issues.

I guess I feel like on the face of it, it presents a kind of a stark view of the membership model and kind of a rosy view of the designator model. It seems to me that we've got some long-lasting clichés in the problems section of the membership model, like everybody free

styling into the courtroom at will, and it seems like there's some very viable ways to control that.

Actually, looking at the likelihood of those problems is worthwhile. The ultimate backstop for the designator model, the ultimate empowerment of the designator model is still the courts. It's easy to draw a very rosy picture of that model.

I feel like maybe too stark a distinction is being drawn between the two models, and the challenges are problems that they involve. That's my objective to the document as pretty as it is.

MATHIEU WEILL:

Thanks, Jonathan. Avri?

AVRI DORIA:

Thank you. When I look at the notion of hybrid model, I'm taking from my starting position, which is that we already have a pretty good system, and we need to improve it. So looking at that respective versus some of the other perspectives, this, indeed, does look like a hybrid.

When I look at the improvements that we're going on reconsideration, on IRP, we're already going a long way in terms of fixing some of the major points. Work Stream 2 can hit a lot of the other minor issues.

On the transparency issue, there are already recommendations in front of the board on ways to improve transparency, on ways to improve the document release system. I'm hoping that perhaps they'll

take care of that quickly so that we don't need to keep dealing with that issue.

I believe that by internalizing the ATRT and the AOC reviews and making them sustainable and continuing, I think we've got a good thing.

I think I've already heard the bell go off, but anyway, I don't see the removal of the board as that nuclear an option. We see no confidence votes against governments all the time, and the world doesn't fall apart. Things keep going. There's a little blip, but you pick up, and especially, if we do designate a way to have a temporary board while we're picking up the pieces, I really don't see that as that nuclear.

The only disagreement I have with the picture is I really think the threat of capture is worse with membership than it is with designator. Thanks.

MATHIEU WEILL:

Thank you, Avri. That's well noted. I have Pedro.

PEDRO DA SILVA:

This is Pedro Da Silva from the Brazilian government. I would like to seek clarification on a statement made by council in a memorandum from June 16th, where it says it's unclear whether California corporate law also requires designators to be legal persons, and to avoid that uncertainty, council recommends that designators also be formed as legal persons. I think that contradicts the assessment that there are no

legal complexities related to that model, so I would like to seek clarification on that statement. Thank you.

MATHIEU WEILL: Thank you, Pedro. I think that Thomas will respond.

THOMAS RICKERT: Yeah, just briefly. This is exactly why this is one of the benefits of the hybrid model. We don't have to worry about the legal status of the SOs and ACs. They can exercise the powers as we define them, and only at some future point when a more robust system is deemed to be required, then the organizations that don't yet have the legal status can take a resolution or another means of obtaining legal personality.

MATHIEU WEILL: Thank you. Next is Kavouss, and then I will take Siva who raised his hand physically after Kavouss. But first, Kavouss.

KAVOUSS ARASTEH: Thank you, Mathieu. I have sent you an e-mail today, you co-chairs, and I raised important points. Thank you very much for what you're doing. Immediately after one meeting, you come up with another sketch and other things and bring new ideas very good and very appreciated.

The problem is the time. Our first proposal went to the community with the covering paragraph saying that this does not meet the

consensus of the group. If you want to send the second proposals to the community saying that does not have the consensus, you inject the idea to the community, there's no agreement. So what is the reason that we comment on that?

Moreover, if you prepare something, send it to the ICANN, to NTIA, and NTIA compares that with the conditions, and the first conditions that must have broader [subjective] support of the community. If there is no consensus and there is a variety comments, that would not be pass. So what do you have to do?

Between now and Paris, you have two weeks or two-and-a-half weeks maximum. What you're putting on the table is good. Membership model, designator model, hybrid, all of them good, but require time and require digestions.

The hybrid issue that you took was taken from the CWG, but CWG hybrid came after extensive discussions and legal assessment, pros and cons, against those versions which were in the CWG external, internal, in between hybrid. But you come up with the hybrid without being properly assessed, so you have to take another approach.

The approach that, Mathieu, I have suggested in this e-mail I sent you – and I make it hear for distinguished colleagues – [clearly that] to take something which is pragmatic, practical, and meet our requirement, and will do the following:

One, you take the accountability, the requirement of CWG and make every effort to find a solution for them between now and Paris. One

solution was found yesterday for budget of PTI. You put it in the bylaw. You look for the others. I'm sure we can find it easily between now and Paris if we put our thoughts together to find solutions for.

What is the next? The next one is what are the other accountability that are absolutely required for the transitions? I think among them would be maybe bylaw or maybe some others. We could address that, and then distinguished Mathieu, distinguished Thomas, and [inaudible] push everything to Work Stream 2. You need to further analyze, discuss.

What all of you have put on the table is good, but it is not possible to come up with the solutions. So prioritize, the action is required, do whatever is required for this first phase – [means transition] – and push everything for further investigation, examinations in the Work Stream 2. In so doing, every effort should be made to use whatever possibility exists to meet those priorities within the existing structure with some minimal changes.

This is a serious suggestion, distinguished co-chairs. Please don't reject that. This is the experience of people's working in similar areas for years and years. We have to find a compromise. We cannot push for one to the other. We need time to study, and we don't have that time.

On the other hand, if you miss that point, you miss the train. It's gone already. People complaining that one government controlling everything. That government wants is okay. [crosstalk]

MATHIEU WEILL: Kavouss, I see you've got. You've got to—

KAVOUSS ARASTEH: I give it to you. Yes, just about finished. I give it to you. If you don't have a proposal, that means it's gone, so you have to have a proposal. Please kindly seriously consider this compromise. Thank you.

MATHIEU WEILL: Thank you very much, Kavouss. I think this is precisely what we're trying to do. We're taking this very much seriously as we are focusing on the requirements. They're here and trying to find a compromise in the tradeoffs that enable us to get this consensus proposal forward.

I will go to Siva, and then turn back to the AC room queue. Siva?

SIVASUBRAMANIAN MUTHUSAMY: Sivasubramanian from India, from Internet Society India. [inaudible] participant.

The membership model is incomplete as a multi-stakeholder model. From what I hear and assume, GAC might not become a member, and this would effectively reduce the multi-stakeholder process to a two stakeholder process.

We have talked about a rogue board. We have talked about a rogue executive. What if there is a rogue registry, a very powerful rogue

registry? This is hypothetical, imaginary. That would be a dangerous imbalance.

I think we need to move beyond a membership model and a designator model and think of an intercommunity model or a unified house model where any decision that would have long-term implications would arrive out of a balanced house. Thank you.

MATHIEU WEILL:

Thank you, Siva. While this is not on screen right now, this is certainly one of the things we took from the public comment, and that is going to need some discussion within our group. It's taking into account that there are SO and AC accountability mechanisms in place and whether we need to enhance them. However, that's definitely – and I recognize it's not on the table or is in these discussions – but it's not something we are ignoring at all.

Turning back to the AC room queue, we have Roelof.

ROELOF MEIJER:

Thank you, Mathieu. I think both models would work, and both models deliver what we formulated sometime back. I think my sense if I listen to the feedback that we're getting from the community is, however, that the membership model will not make it. We will not get enough support for it to be implemented.

The designator model or the model that you present on the right has all the essentials that we formulated. Again, if I listen to the feedback

we're getting from the community, it has a high chance of getting accepted. We are so close as far as I hear and feel it.

It's now up to us here in the room and the people that are working with us remotely to not hang onto our personal ideas of what we think is the best solution, but to continue to listen to each other and to move closer and to come with something that will do the trick and in time. The most important thing for that is, I think, we listen to each other, and we kind of step back a bit from our own ideas, and we have to realize how close we are.

I so agree with Avri when she says dismissing the board is not the end of the world. In fact, I think not dismissing the board when it has ignored due process of the whole community, that might very well be the end of the multi-stakeholder model. It's a power we will never use.

I think we're also kind of devaluing what we understand to be a nuclear power. First, we only mentioned that if we were referring to IANA, removing the IANA function, that was the only power that the US government had formally. So removing the board is deftly a step down, and it's effective, and I'm sure, like I said before, we'll never need to use it if we have it.

MATHIEU WEILL:

Thank you, Roelof. Tijani?

TIJANI BEN JEMAA: Thank you, Mathieu. I am not a lawyer. I don't have any knowledge in the legal aspects. That's why when you say, Thomas, that we have to look at it at the high level, I cannot.

At the high level when I look to it, I have [sympathy] for this model. But I am sure on the details, and especially because in the previous discussions, we had advice from our legal advisors a memo about the designator and the membership models. I remember very well that there was a document written which said whatever you choose, membership or designator, you will need to be UA.

I don't want to come back to this, but I have to have all the details, the legal details, for everything in this model so that I can say it is good or not good. Thank you.

MATHIEU WEILL: Thank you, Tijani. I have Eberhard, and I will close the queue after Jordan to recap.

EBERHARD LISSE: I just want to make some observations on the process being used yesterday and today.

I think it's not acceptable for the chair to interrupt speakers who have the floor. It's not acceptable to extend the times of meetings on short notice unilaterally without debate. I think it is not acceptable to tell speakers that they're members of the group to tell them that their interventions are not on point. This is not the way to foster and to

stimulate discussion, in particular among the people who have to vote on this.

MATHIEU WEILL:

Thank you. I think this is noted on the record. I have Chris next.

[CHRIS GIFT]:

Thank you, Mathieu. My understanding was that this group had agreed in principle, at the very least, there's some consensus around these community powers, and we had actually put in a document that whilst there might be some of us who think that the budget is not necessary, etc., that there was a basic consensus around these community powers. The model we were trying to create was a model that would help us to have these community powers.

I'm slightly concerned to hear that some of us in this room appear to think that statutory legal rights is something that we want as a group, and that we should, therefore, have a model specifically because it gives us those. I want to say that I don't believe we've ever had a discussion about that. I don't think we have any consensus around it, and my understanding is that we haven't told the rest of the world that that may be something.

I raise the issue about statutory legal rights because it was specifically something we hadn't discussed, something which I was concerned about in respect to the membership model and remain concerned about. Thank you.

MATHIEU WEILL: Thank you. Next is Jordan.

JORDAN CARTER: I want to thank the co-chairs for the way they've handled this meeting, and I want to thank them for the work that they did on pulling together this kind of summary material quickly.

As someone who's been pretty clear about the need for an enforceable framework for ICANN accountability, I think we all have to accept that there are degrees of enforceability. What we need is very clear information about the sorts of tradeoffs that we need to be doing because this is a process of negotiating to a consensus in our CCWG. That's what we need to do.

That's why yesterday in the giant meeting, which I thought was a horrible format to have a meeting of this group, that's why I said at the end of the meeting, we need to not start entrenching positions. I'm pleased. I think that while people have been reiterating that the underpinnings of their positions in the conversation that we've had, the tone feels a little bit better today. I don't know. Maybe I'm just being wishful thinking. But people feel a little bit less tense about it.

I think what we need to do is we need to really understand some of the dimensions of those problems and the ways that we can solve them in one model of the other. If we have a set of desirable things in the membership model that creates problems that we can't get around, but we can get almost all of the way there with designator, then we

should. The question will be that that spectrum of enforceability option.

The thing that I'm just going to say is going to be really challenging is getting that set of information in front of us in time to have a meaningful discussion in Paris. Here's hoping we can get to that.

MATHIEU WEILL:

Steve, I think I had closed the queue, but for you, I will make an exception.

STEVE DELBIANCO:

Thank you, Mathieu. The task in front of us for the next three to four weeks is to create a second draft of our document.

The good news is that the powers, the bylaws changes necessary for the powers, the affirmation review, the core values and mission statement are all very clear-cut, and we can actually complete that work very quickly.

The challenge is the section of our document called enforcement, authority, whatever you want to call it, and therein lies this tradeoff between the two different models of enforceability. We simply need to cabin that tradeoff between enforceable powers and potential problems and remedies into one section of the document, and we can, in fact, focus a subset of this group who have legal expertise to dive into this section on enforceable models.

The rest of us actually need to get these bylaws changes for the affirmation reviews and other commitments and the IRP done. All of those changes are the same, whichever model is used for enforceability, because the bylaws, again, are the powers that the community has to vote and exercise.

Let's try to segment the tasks in front of us since we have a very short goal. I won't call it a deadline. We have a goal of producing another document for public comment. Thank you.

MATHIEU WEILL:

Thank you, Steve. Thomas is going to recap this.

THOMAS RICKERT:

Yes. I'm not going to recap all the arguments that have been made, but I'd like to highlight three points that have been made. That is we need to compromise, we need to analyze, and we need to be conscious of timing to not lose the window of opportunity that we have.

This is well heard. Some of you have made suggestions. For example, Ed said that one of the statutory rights to get access to documents is very important to him. I think maybe we can use that point and maybe prioritize the work on the [DIDP] for Work Stream 1, so that his needs are set aside there.

Please, all of you, all of you who have criticized one or the other model, do use the opportunity between now and Paris to see where

you can compromise, such as the example that I gave on Ed's point. Finding compromise now is crucial.

We think we should maybe use this comparison, further refine it, so looking at the statutory rights in more detail is certainly a point that is worthwhile exploring for us all to better understand what we have to do.

I'm looking at external council. We need your assistance in fleshing this out, so please let us know whether there is any information that you're missing to help us with this analysis.

But I think between today and Paris, we will do our homework and make sure that everybody has sufficient information to then ultimately opt for one or the other options. I think I should leave it there and turn it back over to you.

MATHIEU WEILL:

Bruce's hand was up, but I don't know if you still want to add something.

BRUCE TONKIN:

Thanks, Mathieu. Just reflecting on Steve DelBianco's point. I think what you are talking about is the topic of enforceability, and then if you'd look at that topic, you've got a couple of models. There's probably a third model in there as well.

What I suggest you do is use a technique called a SWOT analysis, which I think might help clarify things a bit further. First, in a SWOT

analysis, you define what the model is, then there are some strengths of that particular model and then there are some weaknesses, which I think that I see a lot of debate going on in the room, which covered those two points. But then also look at the opportunities and the threats.

A particular model can create some opportunities, like maybe the membership model creates some new opportunities regarding the statutory legal rights. But it also creates some threats.

I think if you use a SWOT analysis on each of your models and just set those things out into those four terms; strengths, weaknesses, opportunities, and threats, then I think people can then read that and then debate the pros and cons at that point.

MATHIEU WEILL:

Thank you, Bruce. Kavouss, was that an old hand? Yes. Okay.

Closing this, I think we have two models on the table. I've heard some feedback around some requirements of the empowered SO/AC membership model that would be left out from the others. Definitely, those two models need to be fleshed out in order, as was said earlier, for us to have a fully informed discussion in Paris where our goal should be to decide which of the models goes into public comment number 2.

That's I think our way forward on this discussion, and I think this has proved very useful to flesh out the various items that are of concern about disclosure, derivative actions and so on where obviously there

are some different views and also a number of concerns about not being able at this stage to grasp all the subtleties between the models. That's perfectly normal.

We will task independent legal advice to further flesh this out, so that now that we have a better understanding of our requirements, those that we were expressing from several months ago, as well as the ones that we've discovered we've had when we started discussing the proposed models, I think we can have this informed discussion much better now than we could have had it in the previous weeks.

We have the other items of work. Steve was mentioning that. We have bylaw drafting to do, and we'll take the discussion further about how we're proceeding with this.

We have some substantial discussions to have on the items that were raised during the public comments, concerns, and what we put into Work Stream 1 versus Work Stream 2, taking into account that our timeline is very short, that we need to be careful not to add too much to Work Stream 1 because the community ability to find consensus will be very limited in such a short timeframe.

But we owe the community this response, so we need to start organizing the work further. That's what we are going to be proposing probably during our call next Tuesday, and we will be looking for your contributions to work on these issues.

We have Work Party 1, which is well defined and needs to be pursued on the number of key topics. And we have Work Party 2. It has a lot of

work on IRP still going on, and we have these new concerns that we need to address.

I would encourage all of you to keep thinking about this. The model thing is obviously a big building block in our architecture, but it's not the only thing we have to tackle. Let's not forget the other ones.

I think, at least, what we have achieved now is sufficient fleshing out that we can go to legal advice. We've made no decision, but at least I think we've really moved this discussion a long, long way.

If you go back one week ago before we had this face-to-face meeting in Buenos Aires – where we still are by the way – I keep forgetting it. It seems like it was ages ago. We now have at least two models where we see that there is a balance, and we can flesh them out with independent legal advice. I think that that's already an achievement.

I think we will close this agenda item here. I'm turning to my fellow co-chairs if they want to add something at this point. No.

We move to the next agenda item, which is how do we respond to NTIA's letter. Who's chairing that one? Is that you, Thomas?

THOMAS RICKERT: León.

MATHIEU WEILL: León is volunteering. Thank you, León.

LEÓN SANCHEZ:

Thank you. Well, we received this letter from Larry Strickling, Secretary of the NTIA. I don't know if we can have it on screen.

But it basically tells us that we are most likely not to be able to conclude our work in time by when the actual contract with the NTIA and ICANN which finishes this year in September 30, 2015. He's asking not only us, but also the ICG and the CWG, to have an estimate time to which we can carry out the many tasks that we still need to conclude. For them to consider this timeline, and in consequence, extend the contract with ICANN.

This could be really easy for them. They could just extend the contract for another two years, but that, of course, would send a very bad signal to the outside ICANN and the wider community world because it could be interpreted in many ways.

Their intent is to come back to us, ask us for, as I said, an estimate time that we need to come back with an answer for that question. How much time do we need to, first, conclude our work within Work Stream 1, to begin implementation, of course, and which would be this timeline that could let, not only have these safeguards that are meant to be Work Stream 1, but also their implementation so the transition can actually take place?

The question is that. How much time do we need? Our timeline, as you may know, is to have a second draft proposal by the end of July, so we can open our second public comment period for 40 days, and then hopefully have – well, of course, review these comments that we receive in the second public comment period.

If there are no major changes to our proposal, then we could say that we would be forwarding our final proposal for the chartering organizations to review and vote and hopefully, approve this final proposal by our Dublin meeting. This is like the world we want to be in, but we have to keep in mind that there might be things that go wrong along the way.

Then the question again is how much time do we need to have our proposal finished, begin implementation, and make sure that these safeguards and these measures that we're trying to put into Work Stream 1 can be at least, if not implemented, fairly or deeply committed by ICANN so the transition can take place? I would like to open the floor for comments and views on this timeline.

You want to add something, Thomas?

THOMAS RICKERT:

Yes. I guess we've heard from other groups that they are toying with the idea of going mid-year next year. So, while we appreciate your views, I guess it's the co-chairs recommendation to give us some discretion in liaising with the other groups so that we will end somewhere between June and September next year. But that's to be further fleshed out.

LEÓN SANCHEZ:

Yes. Alan Greenberg's hand is up. Alan, can you please take the floor?

ALAN GREENBERG: Thank you very much. I'm not going to address the timeline directly, but I'm going to add something else into the equation, which I think will influence it.

[Jan] has told us many times, we have to factor in community accountability. Larry has now been saying that routinely. We keep on saying, "Yes, we'll do it sometime."

I think we have to put together a group, and I hope [Jan] can not only warn us that we're not doing it, but give us some suggestions on how we do it, how we attack it. Putting off to the end is only going to give us a big thing at the end that's in between us and submitting something.

I'd like to see some work going on in that actively as we go forward. Thank you.

LEÓN SANCHEZ: Mathieu?

MATHIEU WEILL: To answer that – and that's inline with Siva's comment earlier – yes, that's the kind of recently raised concerns that we need to address because maybe part of it might have to be Work Stream 1, or at least, we will need to explain how it's going to be addressed within Work Stream 2. That was the idea behind the discussion papers that were shared on the list during this week. Obviously, we didn't want to rush

this discussion forward as we were focused on the member model discussion.

But there might be a need for creating a small group, whether it's a Work Party 3 or something that addresses this, so that in Paris, we can have a substantial discussion.

You've given me the opportunity to say maybe we will need volunteers for that work, and so do consider this where we will have to come back in Paris with substantial discussions on this.

ALAN GREENBERG:

Just one thought. If something has reached our mailbox in the middle of this week, it may disappear into the morass. We may want to resend it again at the beginning of next week.

MATHIEU WEILL:

This is very surprising and disappointing.

LEÓN SANCHEZ:

Thank you very much, both. Next on the queue I have Steve DelBianco. Steve?

STEVE DELBIANCO:

Thank you. In terms of getting discretion, this is to the chairs request about having discretion about setting up the date that you would report back in the letter. I think you have to explicitly include in your reply two assumptions.

The first of the assumption that secretary Strickling gave on Sunday night, which was the assumption that there's no magic to the date because both NTIA and ICANN can mutually agree to terminate earlier than the date that gets put in the letter.

For instance, a one year extension to September 30, 2016 could be terminated earlier, so we would have to put that assumption in there that we're giving sort of milestones for the renewal or the extension knowing the termination, if it's mutual, can happen earlier.

The second key assumption is that the US Congress has moved in a very positive direction and stayed away from arbitrary dates, stayed away from an appropriations based limit on NTIA. But instead, wants to have a thoughtful period of consideration of NTIA certification that they've met the requirements and implemented the bylaws changes. That was the bill that the House passed overwhelmingly the other night.

That suggests that once the certification can be made that we met the requirements, that it's a relatively short period of time over which NTIA and ICANN can mutually agree with congressional approval to terminate the agreement.

You asked for discretion, and that's fine. But I believe that exercising that discretion in coordination with the CWG and ICG explicitly include those assumptions. The reality of the need for mutually agreement between really three parties. The US Congress has to agree with NTIA, then they agree with ICANN, and that allows you to terminate the IANA

contract well within the windows of these one or two year bracketed renewal periods. Thank you.

LEÓN SANCHEZ: Thanks, Steve. Next on the queue, I have Avri.

AVRI DORIA: Thank you. I wanted to make three points. One, on the discretion. I think that's fine, but within limits, similar to what Steve was saying. Larry did tell us about needing at least a four-month lead to do what he needs to do. I really do recommend that it come in before the election, and I don't really think it's a good idea to slip more than a year.

The other points I wanted to make is that by using a model closer to the one we've been living with, I think we do move the bar on needing to prove the levels of stakeholder accountability, and also, while we're remembering to deal with things that our advisors have put on the table, I want to remember the comments made by both Willie and [Jan] about our human rights and corporate responsibilities additions to the bylaws. Thank you.

LEÓN SANCHEZ: Thank you very much, Avri. Next is Kavouss.

KAVOUSS ARASTEH: Thank you, Mathieu. In ICG, we have discussed a draft of the letter to NTIA dealing with the CWG, which has undoubtedly connected or interconnected independent with the CCWG. We put some conditionality on that. However, I have asked the ICG chair not to send the letter until you have some idea in order not to be in conflict with what you are sending.

But my question is that. Would you able to have a time in the letter? Although you are discussing which model you take, I have some doubt that. You cannot say any time because it is not clear which part you will take, unless you have a compromise version. Thank you.

LEÓN SANCHEZ: Thank you very much, Kavouss. I have on the queue – do you want to answer that?

MATHIEU WEILL: Just to answer whether the discussion we've had on the model actually changes the timeline. I think none of those models have different timeline implications. What is clearly the decision we have to make at some point on which model we're pursuing or proposing is on the critical path.

But the fact that we haven't reached a decision at this point, to me, does not jeopardize the whole timeline. If it's designator or membership, I don't think the timeline in terms of implementation are going to be drastically different. That's why I think we are in a position

to provide an estimate. Of course, it's still an estimate. It's a tentative timeline for the NTIA to consider.

LEÓN SANCHEZ:

Thanks, Mathieu. We have two more speakers. We have Jordan and Athina. I'm closing the queue with Athina. Jordan, could you please take the floor?

JORDAN CARTER:

Just really quick points. I can't see the right page of the letter, but they're asking us when we'll be done with our work. We don't need to decide when they should end the contract.

But I hope we are all aware that we have to finalize our proposal and get it out to SOs and ACs to adopt in Dublin. I hope everyone is aware of that.

That means we've got about four weeks until we launch the public comments, and then once it's finished – 40 days, we've got about four weeks to get things through – and in between, we've got the 40 days. That is it. We are going to be crucified by the other parts of the community if we don't have something ready to go in Dublin. Let's just be really, really clear about that.

Tabling new items to solve in Work Stream 1 is the wrong way to go. I don't think it would take any longer to do the bylaws changes for a member model [inaudible]. Everything that we've been talking about that's in our first [PC] report can be done in that timeframe unless we

can't bring ourselves to do the consensus concessions that are required.

Let's not add new issues like trying to fix the Work Stream 2 stuff about ICANN's board of participation and accountability. Let's tell them that we'll be finished by Dublin, at least in the proposing part of it, and the bylaws, we need to keep talking to ICANN legal and so on about how practical that is.

LEÓN SANCHEZ: Thank you very much, Jordan. Last in the queue is Athina. Athina, please?

ATHINA FRAGKOULI: Yes. Thank you very much. I think it's very good that this group takes into account the timelines communicated to the NTIA by other groups. I'd like to clarify that the CRISP team that is responsible for the proposal on behalf of the numbers community has given their timelines to the NTIA, and the deadline for the implementation is September of this year, not of next year. Thank you.

LEÓN SANCHEZ: Thank you very much, Athina. Well, I'd like to hand the meeting back to my co-chair, Mathieu, for the next part of the agenda and the closing remarks.

MATHIEU WEILL:

This is where we end at Buenos Aires, long list of sessions related to the accountability. This closing remark is very much to get everyone on the same page about the next steps.

The next steps are to review, independent review of the models so that we can have a meaningful discussion on that matter in Paris. And we have some new topics to address, but with very critical lead time and minimal change requirements. But we need to address them anyway, taking that into account, such as SO/AC accountability and so on because parts of the community have told us that's missing, so we need to have an answer for that. We need to consider that. That's something where we will need volunteers to tackle this, so that's action items for a volunteer to step up on this.

Work Party 1 and Work Party 2 will reconvene. I think are up for a couple of very, very intense weeks, so we will work with the rapporteurs to re-establish your schedule of work that enables all the outstanding items that we've received from the community to be refined so that the public comment to proposals can be discussed in Paris.

I see Becky and Jordan's shoulders are just like this. But I know they will lead their group efficiently.

As co-chairs, we will coordinate with the other groups to prepare a response to NTIA on the timeline discussions. These exchanges have been very useful. We will also acknowledge Bruce's proposal on the way forward to draft the bylaws, discuss within this group whether we have to adjust this proposal, which is very valuable, and then we need

to kick-start this [final] drafting exercise without any further delay for some of the blocks where we feel that we're ready. Probably the AOC review incorporation would be my best candidate for that because that's where there's the highest ability in the proposals.

That's what we have in front of us for a very intense month of July. I know we're going to get into a phase where we sort of, "Whew. Buenos Aires is over. It's behind us." But don't relax too much.

We'll reconvene as early as Tuesday for a CCWG conference call at 6:00 UTC. I know this makes a lot of you very pleased. We don't have time to just get a week off or something. We need to get this work going, so that's certainly what our focus as co-chairs is going to be on.

But what we can take back to our respective communities and the outside world after this meeting is that the community model discussions, we've made tremendous progress. We've made tremendous progress in fleshing out what's acceptable and actually surfacing the underlying concerns that were voiced in very vague terms, but are now more precise and now enable us to patch the models to find the tradeoffs and discuss these tradeoffs in a constructive manner. I think this is not to be underestimated in terms of progress across the week.

I will also keep very fond memories of all the exchanges that we've had together, and the atmosphere we've had in this room. Not the room yesterday, this one. I know this is also a key asset for us.

I would like to thank staff for the outstanding support and the [Explain] guys for being so reactive in helping us.

Fiona wants to speak, and it seems to be an emergency.

FIONA ASONGA:

Not really. But anyway, just as you were mentioning the work that needs to be done on the review processes – the SO reviews – I wanted to make intervention that I think it is to help us move forward appropriately and in sync with everything else happening within the community.

ICANN staff yesterday had a panel where they were giving an update on the organizational and SO reviews, and I thought that what they have can easily plug into what we are doing if we could probably have representation from that part of ICANN staff working with that as you're looking at the reviews because they've had a call for public comments to give them input on the structure of the reviews on how they should be organized, both the organizational reviews in the bylaws and the reviews that are within the ASO. We've been sitting down and working on reviews, but it looks like our input has not quite been getting to them.

I'm thinking that they need to at least start looking at what we are working on and what we are proposing in terms of review mechanisms, review activities that need to be incorporated [inaudible] and the bylaws within the organizational reviews that need to be looked into so that we are synchronizing our effort, because

they've had a public comments period that closes on the 30th of July, and they have zero comments. Yet, we have had so many comments on what needs to see happen in terms of review processes, and they've not had a look at them.

I think we need to find a way of synchronizing that. My proposal is if ICANN staff can have someone from that section to at least work with us through this. Thank you.

MATHIEU WEILL: Thank you, Fiona. This is very useful. I see Sam has raised her hand.

SAMANTHA EISNER: Hi. This is Sam Eisner from ICANN. We can surely take that back.

Just to be clear, we work closely with the team that's doing the review assessment. In my conversations with them, I've continually pointed them to the works of this group. They're very interested in the input as well, so I think that there's an opportunity for people from this group to make public comments to reference the work that's going on within the CCWG.

I know within staff, we are very cognizant of the potentials for impacting overlap on the issues, so whatever we can do to help bring that here. But I think that there is also a place for the CCWG to maybe put in a comment to express within the comment period itself the linkage between the work that's going on here and the work that's being proposed in the review.

MATHIEU WEILL:

Thank you, Sam. This will be adjusted in the action plan so that we coordinate appropriately.

I'm seeing no other hands, so this time, I want to acknowledge the wonderful support that we're receiving from staff – Harry, Alice, Adam, the technical staff – who have been outstanding in providing us rooms at the last minute as well as every facility that we needed, and our hosts here in Buenos Aires starting with Olga who we are very honored to have as a member. I know she spared no effort so that this meeting was a great success for everyone.

For all those of you who will be heading home after this meeting, have safe travels back. Don't forget there's a lot to do yet. I certainly look forward to seeing all of you in a couple weeks time in Paris. Thank you, and have a nice day.

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