

ICANN

**Moderator: Nathalie Peregrine
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8:00 am CT**

Tony Holmes: Good morning everybody and welcome to the Commercial Stakeholder Group meeting. I'm aware that a few of our people I think off hunting coffee but I think we should make a start regardless.

We've only got to an hour 3/4 and then we have to stop at 10:45 to make our way to the room where the Board are to have the session with them.

So to just provide a quick update for anybody who hasn't been involved in the discussions within this group across the previous few days we have managed to do the preparation for the Board. So we don't have to spend any time during the session doing that other than to say that it takes a slightly different format.

Each of the three constituencies will have 30 minutes with the Board. It takes the form of a roundtable session where there will be approximately six people from each constituency and six people from the Board will be filled at the top table.

The intention around that is to try and get more of a dialogue between the various constituencies and stakeholders and the Board and to try and create an atmosphere where it's perhaps a little less confrontational than it has been or it has appeared to be to some people in the past. So we need to see how that format works out.

One of the things we need to watch is that if we adopt that format we still have the full Board there that we don't end up with just a small subset for the sessions that we had. So that is a concern that I hope doesn't materialize.

In terms of the agenda for this morning the fact that we have prepared for the session with the Board and we've managed to have two sessions prior to today to do that means that we have some additional discussion time around the issue of IANA stewardship and accountability.

And that's going to be the focus of this meeting up until we're joined by members of the GNSO review team.

They will be coming in and whilst they will be quite open to giving a presentation we only have 15 minutes scheduled with them. And I would suggest we try to utilize that time to maybe raise some specific issues and questions with them.

I hope most people have had an opportunity to actually look at the report from Westlake beforehand.

And then finally to end the session we have we have an item where Chris Gift is going to join us and provide an update on the digital services.

So with that I'm going to hand over to the two people who have represented these constituencies in really an exceptional way during the work on our IANA transition. And I think we all owe them both a vote of thanks for the dedication and the hours that they put into this.

And I'm going to ask both Greg Shatan and Steve DelBianco to bring us up to date where they see issues have arisen during this ICANN meeting on both of those items. Because I think this is an item that's on the agenda of all of the constituencies for the discussions when you make in-house later.

And one of the key things if we're going to move down that path quickly and certainly get to a point where we can respond on the accountability issues is to understand not only what's happened prior to coming to Buenos Aires but some of the developments here as well.

So with that Greg let me hand over to you to start that debate. Thank you.

Greg Shatan: Thank you Tony and good morning to the members of our combined constituencies.

I think as you've seen with regard to the IANA stewardship proposal frankly I think we're now in pretty good shape.

We have, you know, listened to the community in changing from our first and second draft and we refined the draft that went out for comment quite a lot between the - after the second comment period where there was not so much a, you know, any significant changes in policy or approach but just a lot of cleaning up all the loose ends that were noticed, inconsistencies and the like.

Within the commercials, within the CWG there's really not any significant divergence at this point. There is except on a one point which is the future home of the IANA trademark and domain name which is right now owned by ICANN and controlled by ICANN.

The numbers community in their proposal proposed that it be owned by a neutral party. And they nominated the IETF trust to - for that purpose. The Protocol Parameters Community was basically said they didn't care but they were (unintelligible).

Okay. That is the remix of my speech. So I don't know what I leaned on but in any case, the Protocol Parameters Community said they didn't really care as you heard and the - but and they were happy to nominate the IETF trust which they felt would be capable of managing the trademark on behalf of all communities.

Within the CWG itself there's a broad diversity of opinion whether the - whether to remain with ICANN, be moved to PTI the subsidiary where the ICANN - where the IANA functions operators staff and assets will be moved or, you know, give it to the IETF trust to manage or something else.

I think it'll be resolved basically by punting and looking to move it further down the road because it is not a mission-critical issue. It's an implementation detail which doesn't mean we're leaving it to staff.

But it does mean that we can - we don't need to resolve this issue in order to send our proposal up to the ICG.

And as everyone is keenly aware while getting it right is much more important than getting it done fast getting it done is important. And we know that the US government wants us to be - to move along. Everybody wants to move along.

So what I'd like to do is unless people want to walk through the proposals just see if there are any questions or issues that or concerns that people have about the stewardship proposal.

Obviously one important wildcard is the linkage between the stewardship proposal and the accountability proposal where we are ably represented by both Steve, especially Steve DelBianco our member representing all three of our groups and also one of the three rapporteurs who are doing so much of the heavy lifting and cat herding in the group.

And Jonathan Zuck and myself and Malcolm Hutty is all, you know, have heavy or I should say, you know, very, very active participants in the group.

So that's kind of a subject for we can - obviously where it's a - if, you know, we can have a free subject. But it really has a lot more to do with what - whether the accountability proposal meets the needs of the community and then meets the needs of the CWG. Those are really to my mind kind of the only two open issues.

But we can - I see Anne's hand and, you know, we can take a queue see what the questions people have.

| Anne Aikman -Scalese: So Greg are you recognizing me? Just very quickly I think that in the accountability phase that that team needs to take care of a fully blown contract rather than just a term sheet.

I think the essence of the transition out of the US government to ICANN is in fact the contractual obligations between PTI and ICANN.

And I think that NTIA should be presented with a full-blown contract that the Board itself has approved and agreed to enter into.

I do not think that the contract that governs IANA is an implementation detail. And so I think accountability because it's linked to accountability that the accountability should address that, the team should address that.

And then I think yesterday when I spoke with the attorneys from Sidley & Austin they did recognize that if there's an employee called the managing director who reports to the Board of PTI that ICANN doesn't necessarily control that vote.

And so they're looking at that. And they think that's something that they can fix.

And I do understand that the PTI is a member controlled affiliate but when you have an employee who reports directly to the PTI Board that vote is potentially controlled by the PTI Board, not by the ICANN Board. Thank you.

Greg Shatan: Okay. Thanks Anne. I'll respond to that first really kind of two pieces to that the first being the contract.

I didn't mean to imply to minimize important of contract by calling - and I didn't call it implementation detail. The...

((Crosstalk))

Greg Shatan: ...of the trademark.

| Anne Aikman Scalese: Oh I'm sorry. That wasn't about you. Jonathan - and Jonathan's the best. I mean he's - I have terrific respect and he is fantastic. He's done a great job.

But he said he thought that's something that could be taken care of in the implementation was the contract. And...

Greg Shatan: Well...

| Anne Aikman-Scalese: ...I think it should be addressed by accountability. That's my only remark.

Greg Shatan: Yes. The contract wouldn't be addressed by the Accountability Group. It would be addressed by the stewardship group or by whatever body exists after we hand the issue up to ICG.

If we were to tell ICG that we're not going to hand the proposal to them for another six months or three months in order to negotiate the contract I think that would be a serious mistake.

However given that the Accountability Group is in essence one cycle behind the Stewardship Group I believe that the plan is to send up what we have either with the current term sheet attached or to, you know, refine or maybe even remove the term sheet frankly because it is in - it's a form, it's an indicative form that needs to be negotiated.

And some people have taken too much from the positions in it and to send - because we need ICG needs to begin its work with three proposals in front of it. This is what they've been waiting for, for six months.

And we can't - if we tell them to wait another three months while we try to, you know, hash out a full-blown contract that's really not going to - it will derail the entire process, possibly send us way out of any proposal that, you know, what happened during the current administration which means it may not happen.

I'm not looking at political expediency but rather I believe that during the period between now and Dublin that we will be working on working from the term sheets and turning it into a contract.

| Anne Aikman-Scalise: Great. Fantastic. That's great.

Greg Shatan: And so not sitting and waiting for some post NTIA. I guess implementation, you know, is a vague term. It's also a loaded term.

There's the implementation that will take place after the NTIA approves this. And we have, you know, we're in kind of in our brave new world.

There's also the implementation that needs to be done before the proposal can actually be put into place and go live. Clearly the contract is integral to that. There's no way the PTI can essentially be put into business without a signed contract. So that has to go - that has to take place.

So I see Steve your - on this point I'll give Malcolm the...

Malcolm Hutter: In the town hall yesterday I raised a suggestion that we have been discussing in ITCP which is that the Stewardship Group should remain in existence until the completion of transition. This seems relevant to this particular point.

I completely agree that saying to the ICG we're not going to get to deliver any report to you until we have got a contract negotiated is destructive to the process.

But it is possible that the stewardship could deliver to the ICG a report that said it is part of our recommendation that we remain in existence for the purpose of negotiating this contract according to these terms that we are delivering to you now.

Greg Shatan: I think that's absolutely right. There's contract and there's the related SLEs, SLAs which are really part of the contract but also part of a separate discussion being led by Paul Kane primarily. And both of those need to be implemented.

And I agree that we either we should - the easiest most straightforward way is just to leave the CWG in existence.

The other possibility is to put in place an Implementation Review Team which would probably vastly remember the CWG so at that point it's just semantics.
Tony?

Tony Holmes: Yes. I just wanted to make the point on that and as Malcolm said this is something that's been discussed and is going to be discussed later today in the ISP group.

If we are going to support that I would urge that the constituencies also put in some comments firmly supporting that move as well.

It may not be enough that that group itself just as we think we need to stay as a group for the next phase. It needs to get some community backing for that.

So I would urge you if you do think that is a good way to go that maybe from the constituencies you could reflect that in a message back as well. Steve?

Steve DelBianco: Thanks Tony, Steve DelBianco. During this phase of the discussion on the CWG stewardship transition the observations and comments that are being made and Malcolm and Steve made a couple yesterday in the afternoon I'd like to understand the degree to which your concerns should be reflected anywhere in the council motion that will be voted on tomorrow.

As all of you know there's a motion to simply have council approve the CWG final proposal and send it on into the ICG. It is not a very long motion.

I put a link to it in the chat if anybody wants to bring it up. But it endorses the proposal and makes a point about implementation and timing.

But are we comfortable that the concerns that have been raised so far by three of you can be worked out during the next public comment which will occur in late August in September or are they things that need to be reflected in council's motion someplace? Thank you.

Tony Holmes: Steve?

Steve Metalitz: Well as to - this is Steve Metalitz. As to the issue that I raised which is the lack of any review process for a ccTLD delegation and re-delegation actions I got the answer pretty clearly yesterday afternoon that that will not be fixed.

So I guess the short answer is no, it can't be reflected in the motion because it's not going to be fixed.

I, you know, I know there's an enormous amount of effort put into this to try to substitute for the NTIA role in overseeing the IANA functions.

But I - my hope has always been that this could also be an opportunity to improve that through greater transparency.

And, you know, this is an opportunity that will be missed here because that has simply been turned back over to the CCs to come up with a review process when and if they feel like doing so apparently.

So I think it's a flaw and I don't think I'm - I don't know how serious a flaw it is in the overall picture but it's clearly not going to be fixed.

Tony Holmes: Steve DelBianco?

Steve DelBianco: I'd like to follow-up on that. It's Steve DelBianco. I was the author of the stress test and the infamous Stress Test Number 21 is exactly what Steve Metalitz just described.

It asked the question what would happen if a ccTLD manager were revoked without the actual support of the registrants and users in a given country or if it was reassigned without the support of users and registrants in the country? And what would be the appeals mechanism?

We went through this extensively and trying to design in the stress test a way to use the Independent Review Panels and mechanisms that we had. We needed a standard reviewing standing.

And this came to a head in the Istanbul face-to-face meeting where the government representatives and the GAC as well as ccNSO took it away.

It wasn't is if Steve, that the CWG or the CCWG dumped it to the GNSO. Let me be clear, they snatched it away.

They did not want this transition group try in any way to interfere with a process they felt they were long in the process of. For instance the framework of interpretation was presumably the way they were going to work out the degree of consensus that was required to make this reassignment. And they did not want us to interfere in that.

The GAC was a little bit confused saying that they were generally were okay with the framework of interpretation. And they didn't know to what extent the GAC would participate in the ccNSO's process of coming up with the implementation of those rules.

So this wasn't an abrogation of responsibility. We wanted to tackle this and were told hands-off.

Tony Holmes: Anne?

| Anne Aikman-Scalse: Yes thank you. I don't know much about this, cannot comment on this particular issue. But with respect to Steve's question as to whether the motion needs to be amended I think yes, it should be and not in an

obstructionist way not to stop it but just a friendly amendment that, you know, the community recognizes there are as Greg said implementation issue that should be accomplished prior to presenting proposal to NTIA and that the CWG should continue and continue to work on those issues including the contract.

Now the most efficient way to state that would probably be a very short amendment to the section that now talks about I think and when the GNSO reviews accountability it'll let everybody know what it thinks about it. But there's some kind of a conditional section in there where I think the motion should be amended.

I'd be happy to help work on it if there's agreement to amend it.

Tony Holmes: Thank you for that help. Right, I think it would be very helpful for certainly counselors and yourself to - and probably a few others - Malcolm, Greg, Steve to actually put some effort into doing that.

And we'll try and circulate something to council ahead of the council meeting.

Okay. Steve did you want to pick up on the accountability issues from here?
Thanks.

Man: Before you do that on that last point if this - this is going to be GNSO council so other parts of the council should have advanced sight of any proposed amendments we're going to put.

Tony Holmes: That was my point that we do something and get it to them in advance. Yes we need to give a friendly amendment in advance and give them some time to consider that. That is for sure. Thanks. Steve?

Steve Metalitz: Thank you Tony. As your representative on the CCWG for accountability I've had plenty of help. And you can't imagine how helpful it has been to have Malcolm and Greg and Jonathan Zuck weighing in time and time again to try to keep the ship on course.

And by banging on course I'm simply saying that we talked a year ago in this community about what we thought needed to be there to replace the NTIA stewardship role. And that was to empower the community.

And if you recall this group we put comments in a year ago about the kind of powers that were necessary, the powers to block by law, block a budget, block a strat plan, spill one or all of the Board members and improve, dramatically improve independent review and redress procedures so that anyone would have standing. They wouldn't look just at whether the process was followed but look at the substance.

And we wanted to find ways to limit the scope of what ICANN can do and bury that in the bylaws in a way that it couldn't be violated in a trivial manner.

So all of this a year later has come to pass where we have fleshed out the details behind that plan, found out from the lawyers supporting the CCWG after \$1,500,000 in fees find out that yes all that's possible under ICANN incorporation as a public benefit company in the state of California.

And then fact the powers that we talked about just now are all going to be enforceable if the need should arise to be enforceable.

And there was quite significant consensus around that in support in the public comments except when it comes to enforceability.

That led the CCWG along the way to think that the enforceable part was available to us if we simply converted ICANN to an organization that had members, members in the California public benefit corporation law sort of way. And we didn't see that as a significant step but many people did.

And I think it was our mistake not to really imagine how that could be perceived and misperceived by folks around the world who are not a lawyer, not lawyers and many in the group who don't use English as their first language.

The presumably trivial step of looking at each of the ACs and SOs in the ICANN structure think of it, in AC the C is for committee and then SO, the O stands for organization. So committees and organizations aren't really legal entities. They're groups that the bylaws created, understand?

They weren't groups that were pre-existing that pulled into the vortex of ICANN. ICANN created us and gave us different kind of names.

So that's really not sufficient standing to say under California law I'm enough of a member even if I'm identified in the bylaws. I need to be enough of a person that I could exert my legal right to force the company to follow its own bylaws.

So we thought this was a relatively trivial step. And I think we drank our own Kool-Aid too much because it looks to the rest of the world like the need to register as an unincorporated association under California which is a \$25 fee. I think Malcolm offered to pay it for everyone so the money wouldn't be a problem to register.

It's a one-page form. It just completely set the alarms off around the world, members of different government, folks in the ALAC. It contributed to the perception that somehow we've created something that was inordinately complex, legalistic, would involve courts all the time.

And fortunately within a few weeks of our first draft going out we got the message loud and clear. And last Friday really at the leadership of Becky Burr who was there at the creation of ICANN with Marilyn, Becky said, "You know, what, we don't really have to require anybody to register anything." "In fact nobody has to acquire the status of legal personhood unless and until the start day comes that we have to ask a court to enforce one of our community powers."

And for that I would ask (Ozon) if you would put up Slide 18. These are the community powers that we're speaking of, the ability to spill the Board and so on.

And then go to Slide 19. In Slide 19 we talk about how these powers are exercised. The powers are exercised by well, empowering the existing ACs and SOs. You see it in the circle in the lower left-hand corner.

This wasn't difficult for the CWG. We looked at the existing bylaws and structure of ICANN and said don't change anything. Let each of the ACs and SOs simply acquired powers to vote to block a budget, to block a bylaws change, have the fundamental bylaws be subject to approval, et cetera.

And we defined supermajority thresholds largely in the area of 75% and most of the public comments supported that.

And the notion here if I were to go through an example is that if we were to have a Board that wanted to change a bylaw we think is vital and the Board wanted to change it in a way that the community 75% of the votes in the lower left-hand circle said we don't believe this is a bylaw change that should go through.

And we simply hit the Send button on our email and the GNSO sent in our five votes and ALAC sent in their five votes -- no structure here, just simply voting.

And the Board said "Well, you know, you're at 80% and I know the bylaws say that you can block this bylaw." "But we feel it's in our fiduciary duty to do it so we're going to do it anyway."

If that happened and only if that happened any one of those organizations around the circle can pass a one paragraph resolution saying we intend to come together for the purpose of exercising our rights and powers as a member of a California corporation, public benefit corporation as explained in the bylaws.

And passing that resolution is sufficient evidence that that entity, GNSO in my example, has legal personhood necessary to go to court and force the Board to follow what the bylaws say they're supposed to do.

So I'm not a lawyer so it - that explanation is probably inaccurate in ways that Greg is just itching to correct for me.

But Greg if it's close enough for comprehensibility I'm going to appeal to you not to try to correct it all. Add to it please. Let's not try to correct at all.

Because I'm really just trying to make the point that we are not turning to courts. Courts are not involved in any of the processes you see on this slide.

This slide is about the community, a few times a year having the ability to question and challenge the Board on a decision they've made.

Another example would be singular and plural. If you recall the dilemma we had on Singulars and plurals. We had an inexplicable expert panels on string similarity, made decisions that way that were inconsistent even within the same string.

We didn't have standing as the registrants and users in the community to challenge a decision. And if we had they would have only looked at whether the process was followed. And if it was the reconsideration in IRP would have gone nowhere.

So we in this proposal have made significant improvements and enhancements to the Independent Review Process. And the Independent Review Process would have allowed us the way we redesigned it would've allowed us to challenge a decision like the singular and plural panel.

But the standard of review would have been well take a good hard look at the bylaws and the substance of the decision with regard to the bylaws.

Who can say whether we would have been able to overturn the ridiculous string similarity panels. That would be up to the arbitrators to do that.

But we are suggesting that the arbitrators themselves would be a permanent panel of seven that are paid by ICANN. They're a standing panel from which one to three would be selected to hear cases.

So they would be far more schooled in the arcana of ICANN. There would be the ability to rely upon precedent from previous decisions. And most importantly their decision if they overturn is a binding decision.

And that might be an area where you go to a court to enforce a binding decision but it doesn't require anybody to become a member status.

So I'll conclude just by saying that we think we made a breakthrough on Friday at the face-to-face meeting when we realized we don't have to activate the membership gene in the new ICANN organism.

It just has to be there latent in the bylaws so that if any of the ACs and SOs decide to activate membership there's the ability to hold ICANN to the powers that the bylaws will reflect.

That means there is really no change at all from an empowered SO AC model unless and until the day ICANN doesn't honor the will of the community.
Thank you Tony.

Tony Holmes: Okay thanks. Ellen?

Ellen Shankman: Ellen Shankman. I'm deeply impressed by all the work that you've done and the breakthroughs that you've made. And so my question is coming from a place of complete ignorance. And if it's totally off the wall just ignore it.

But when I hear this is somebody who doesn't live in the United States the minute I hear that something is giving teeth to give somebody standing in court I understand the reason we want to do it. But I'm a little bit concerned about are there any unintended ramifications?

Are you suddenly saying that well the good news is, is we'll have the standing so we can go in when we want to have the power to do something against ICANN or challenge some decision?

But are you suddenly giving some kind of legal standing to all these people who by the same token now can be hauled into court into the US from abroad for just anything kind of saying you're actually this kind of member, you've become processes service or something like that?

Steve DelBianco: Thanks for that question. And Greg will answer the part of it about standing.

Let me suggest to you that the IRP has nothing to do with legal personhood. The IRPs, you know, are going to be written in the bylaws that they can be exercised by any aggrieved party or the ACs and SOs whether they're persons or not.

So the only question would be that if someday though Board ignored what the bylaws say the powers are and only then is this issue of asking the court to enforce it.

So your question was does that personhood and suddenly create a potential for standing or being sued? And I'll turn to Greg for that.

Tony Holmes: Okay. Before we go down that [Mike](#) did you want to add something to it?

[Mike Rodenbaugh](#): Yes thanks. So I have a question. Since I've got quite a bit of experience dealing with ICANN and IRPs right now and I'm aware that the last IRP went through there was about \$150,000 in attorney's fees that were allocated and costs.

How is the SOs and ACs supposed to enforce these rights against ICANN?
Who's paying for that? Where does the budget come from?

Steve DelBianco: [Mike](#) if a supermajority of the community agreed we were going to pursue an IRP ICANN would pay all the fees otherwise the...

[Mike Rodenbaugh](#): For arbitration fees but what about the lawyer? Who's going to represent us?

Steve DelBianco: The...

[Mike Rodenbaugh](#): Who pays for that?

Steve DelBianco: All right we only have our first draft out. And it would have been helpful to have comments in the public comment period but it would be great for you to share that this week.

A number of us believe ICANN should pay the legal fees if the community had a supermajority of those 29 votes bringing an IRP challenge.

We think - and this has been discussed but it wasn't flushed out in our first draft. Our second draft should try to address that and I personally agree with you.

Tony Holmes: Marc?

Yes. He's going to comment but Marc go ahead.

Marc Trachtenberg: Marc Trachtenberg for the record. I mean further to Mike's comments I'm just really struggling to understand how a stakeholder group could sue in court?

Who would represent it? Who would be the client, who would make the decisions to the stakeholder group? Also who would pay for it?

Are you suggesting ICANN's going to pay to sue itself and somehow be the client that is being represented against itself?

I mean I'm just really struggling and, you know, I don't have the background of being involved in all their meetings but it just seems to me from a practical perspective I just don't understand how it could possibly work?

Steve DelBianco: Yes. That's the danger of having too many lawyers in the room because you went straight to the very end result that may never happen which is to get enforcement of a community power in the event that the Board said no.

That enforcement action is the only time courts are involved. Are we clear on that right? So we might exercise these community powers for 15 years before any Board stands up and says you know what, we're not going to listen to the community.

And then and only then is it necessary to ask a court to force a company to do what the bylaws say the company had to do.

And I have no idea what those legal fees would be but I'm never - I don't want to ever be surprised at how much it can cost.

But just so we're clear at when Greg answers your question about that it probably isn't ever going to happen that we need to go to court.

And if we did we'd only have to do it once because then it would become clear that the community can enforce the bylaws in court. And I don't understand why the Board would continue to identify us on another topic that comes down the road later on.

Marc Trachtenberg: I'm not questioning the rest of the proposal. But if a proposal is founded upon in this, these teeth of this enforceability at the end then that kind of puts into question other parts of their proposal if the whole thing is based on this power and ability to enforce when that power and ability to enforce is not actually there.

And I know that you say well it probably would never be needed but again it seems to me that the entire model is based on having the ability to do this which I don't think that you could.

Tony Holmes: Greg?

Greg Shatan: Sure. I can't say that I have necessarily all the answers but I think first off the way this is contemplated is that if and only if we needed to have a legal person formed to essentially represent or act as a wrapper around the SO AC then that would happen at that time.

For example, and I'll use some words in this room which give other people itchy fits, but it's the easiest way to express them among people who can rationally listen to legal terms without breaking out in hives.

The, for instance if the GNSO wanted to take this step they would enter into this resolution which is sufficient to form what would be called if it were to make a profit a general partnership or if it were a nonprofit, a unincorporated association which is kind of the most minimal element of a legal personality that one can wraparound.

So there would be this little unincorporated association, this little legal entity that would be formed and that would exist solely to take direction from the SO AC.

And that - that entity would be the member of ICANN. It would take the actions. If we were to use a California unincorporated association to do this that is recognized under California law as a legal with limited liability protection for its members. So, you know, that's one of the advantages of that particular form.

Other groups might choose other forms. It's really up to each of them to decide whether they might be a Swiss Verein or a Japanese whatever it might be.

But as long as it's something that can attain legal personhood without a lot of structure that would be the intent.

And similarly it's on to the next question I believe in terms of who pays? It's not all uncommon in contracts and indemnification provisions to say that among the things that are being indemnified are challenges by one party to the other party.

So the idea that ICANN would pay to have you sue it is not far-fetched in terms of precedent. It's far-fetched maybe in terms of ICANN being happy about it but the alternatives are limited.

So in terms of going to court in terms of - because ICANN is in California the easiest place to sue it is in California. And frankly it wouldn't necessarily need to be a California unincorporated association that was formed.

Indeed one might argue that depending upon what the cause of action is and other factors you might want to create diversity by having a - the legal entity come from a state other than California. But that's the kind of very, you know, low-level detail compared to what we're talking about here.

In terms of who might be amenable to getting sued at that point once you formed that entity it ensures that that entity could be sued but the individual members of the SO AC or even the SOA itself should that be open to suit under that kind of model.

And I'm a, you know, I don't litigate much anymore if ever and so I'm not going to hold myself out as a world foremost authority on that. But the general understanding is that if you form an organization with limited liability that that's what would be sued.

And that we also have to consider, you know, what are the causes of action here?

And secondly I know there's something that none of us actually wants to think about which is are we all amenable to being sued for the decisions and actions that we take in our groups which are not limited liability organizations?

Although we are all under the big umbrella of ICANN that may be what protects us. And there's certain volunteer statutes that also protect people who volunteer.

But the fact that we don't form an unincorporated association doesn't somehow mean that we're immune from suit.

You know, one of the great things about the US and terrible things about the US system is anybody who wants to sue anybody or anything else can at least give it a try.

Tony Holmes: Before I turn to you Alan, Malcolm?

Malcolm Hutton: Thank you. Can I try to give my own answer to...

Woman: (Unintelligible).

Malcolm Hutton: Maybe if I speak more closely to it? Can I try and give my own answer to the question of about how we would actually go about exercising these powers?

How would the GNSO if the GNSO were the SO that were choosing to sue ICANN to enforce these powers how would it actually go about hiring lawyers, appointing lawyers, briefing those lawyers, paying for those lawyers? Those are the questions I think that we just had.

Quite frankly we don't have the answers to that yet. What you've heard from my colleagues here I would characterize as speculative approaches to how we might decide it in the future.

We don't know the answers to those questions but what I'd suggest is we don't actually need the answers to those questions at this stage.

What we are discussing at the moment is whether it should be possible for the GNSO to in lieu of another SO to engage in such a suit whether it should have the right to do so?

So that it could then if it chose to do so at a later stage decide for itself how to organize itself so as to go about that. So, you know, we might end up just passing the hat around.

We might end up asking ICANN to put in place an advance a fund to support such activities.

We may end up within the council creating a structure for the purpose of ensuring that we're the legal committee, you know, or something. All sorts of things could be done.

We don't know this yet. It's not part of the current proposal at least as it is developed.

What must happen though, what can't be delayed is the decision as to whether or not an SO AC should help the right to bring such a suit however it was so organized later.

That decision must be taken at this stage. And that is really the key decision that the CCWG is grappling with at the moment between those of us on this side of enforceability were saying yes. And we can make this lightweight and we can make this so that it is as non-disruptive to the current structure as

possible versus those that say we can do without enforceability. That's not a problem.

Tony Holmes: Ellen?

Ellen Shankman: Thank you. I think you touched exactly on what I'm trying to get at with my question. Because as people have heard me say probably way too many and only less than (unintelligible) which is what are the what's that we're trying to achieve and then how are the haws that you can get there? And then every how by definition has its pluses and minuses.

So I'm trying to understand what here are the "what" questions and what are the "how" questions?

So I see on the table a "what" question fundamentally being. We want to make the Board listen to us when they don't listen to us. That's the situation we got in whether it's super majorities and playing with the numbers or what to do.

But the scenario that Steve did - and excuse my language -- is what do we do when the Board says (fuck) you and goes ahead anyway? Okay, so then there to your questions.

You either come up with a ICANN style model that says we're going to do everything but litigation and contracts and go down that route, you know, the same way that the Internet has worked until now without litigation in contracts.

And we've also said putting governments isn't a good idea. I think we have to ask ourselves fundamentally are putting contracts and litigation into that model the right way to go?

And my question about well is it going to drag somebody else in goes to the question of well if you do that remember what's good for the goose is good for the gander.

It may give you the teeth to do what you want to do but it may have unintended consequences about our own liability if we introduce that idea into a model that hasn't been based on that.

Once you decide that fundamental question and yes we want to go down the contract/enforceability/route whether you actually choose to exercise it or not then becomes a strategic question.

But if you go that it has to work because you can't say well I want to put it in there but I hope I never have to use it.

The how then becomes, you know, questions on who's going to pay for it? When do you try to exercise it? But those as far as I'm concerned our haws?

And as I said every how has its plus and minuses. And at that point you might decide well the how will be that I will hire this law firm or I won't hire this law firm or we'll pay for it this way or we won't.

But I think that the idea of saying that because we can't get there now with voting numbers or what else we want to introduce contracts and litigation into this ICANN Internet model as our concept of accountability as opposed to other oversights or other organizations or other people who have super veto

powers over a Board that's not listening to us I think is a very fundamental question that needs to be faced on do we want this animal in here?

Tony Holmes: Thanks. The lady on the right surely I can't remember your name and then Marc and Jonathan.

(Karen Ash): (Karen Ash) for you there. I'm from Google on the Business Constituency.

I understand there's concern about these enforceability issues. But I think it's important to look at this in a broader picture; right?

So let's say for example that we are very unhappy with a decision, we try to enforce it in court or we have an arbitration, arbitration's successful in the broader community, we try to enforce in court, litigation takes in my experience, in civil litigation it takes a long time.

Probably in that circumstance even if litigation is an option a lot faster to just try to recall the Board members we don't like.

I think in general the powers that we're going to have within the community are going to be more nimble. And I'm not saying we shouldn't have litigation as a last resort but it's important not to lose the forest for the trees.

Marc Trachtenberg: I will make my entire point again but again the more I hear about how this is going to work the more questions it raises.

And I just can't see any practical way that it would work. I mean even who is going to be deciding what council to select to form the entity itself, I mean there's just so many questions. And from a practical perspective it just seems very difficult to implement.

And so if the goal is to have some sort of actual enforceability and a worst-case scenario I think then we should create a situation where it might actually be implementable.

And in this situation it's so - seems to be so theoretical and so complicated that so as not to be effective.

And I would only suggest that a simpler model that doesn't involve forming an entity in litigation in court be considered instead of something that is mentally theoretical and probably not implementable on a practical level.

Greg Shatan: Can I just respond to that?

Man: (Unintelligible).

Greg Shatan: I just, you know, we've talked quite a lot about this and I've have been, you know, internally one of the skeptics beating up on the point.

And I do actually think it is implementable especially if you're looking at an unincorporated association really needs nothing more than a one page resolution.

We - the idea would be that all of the governance would take place within the SO AC, not that you have to create this whole second robust membership organization. That's really what we got away from.

That was - and I agree with what if you think about creating a complex organization as a second kind of alter ego the - then you have a lot of issues.

The idea is to use the member as basically just a point of delivery for the decisions that are made in the SO AC.

So the answer is the decisions would be made the way the GNSO makes decisions. Now that, you know, we can talk about how - whether the GNSO council is a great process for managing a litigation. That has its own level of discussion but I think that's a next level type of issue.

Man: I mean for every time lawyer has a question they're going to go through the process of the SO voting on it. I mean again I mean think about what you're saying.

Greg Shatan: Well let me tell you about the way we've handled dealing with the lawyers in both the CWG and CCWG which is that we formed small legal sub teams that dealt with the lawyers.

And basically the combination of the legal sub came and the co-chairs dealt with the lawyers on significant issues. And the active and engaged members, you know, often, you know, were involved.

But we basically agreed that there would be a legal sub team just as you might with any organization you delegate to a subgroup which is itself accountable to the rest of the group through that group's mechanisms for accountability.

So then you can say well how accountable is the GNSO council either to each other or the rest of us? Again that's another question.

But I think the point is whether it is feasible in the eyes of the Board for us to take this hammer out if we need it.

This is the Hammer of Thor. I don't read a lot of Thor but I don't think he takes the hammer out unless he needs to. And I think the idea is hopefully we would never need to.

And I agree with Aparna that we have a number of escalations that are also in a sense last resort escalations for this last, last resort.

But the belief is if we can't ever use the powers, have actual powers to enforce regardless of the disagreement that the Board may have that in - that without enforcement there really is no accountability.

So counting on the Board to trust to abide by our decisions is actually exactly what we're hoping for. We hope that this never happens. We hope that they never call on us to create such an entity.

But I think it's eminently doable when we get there. And whether it ever happens I don't know.

Tony Holmes: Jonathan?

Jonathan Zuck: Yes I know several hours ago I had thought of something to say. I'm trying to come back to it.

But I mean I was recently in a trademark dispute over an organization with one of the founders of the organization.

And rather than negotiate she hired a lawyer and so we had to hire a lawyer. And by the time we were done we came to a resolution that neither one of us was happy with and we had spent more money than it would've taken to make her happy in the first place.

So my view of lawyers and legal proceedings is quite Shakespearean in many instances. And so if there was some other alternative of enforceability that didn't involve going to court no one would be happier to hear about it.

So what I do - what I would like to do is challenge the lawyers in the room to suggest an alternative for enforceability that doesn't involve going to court because that would make the entire international community thrilled.

That being said we didn't think of one. Our lawyers didn't think of one. We did somehow manage to figure out how to acquire legal counsel for the CCWG. We did find out how to interact with them.

We may have spent more money than we would have liked. But, you know, the people that are involved in the community have money. There might be the potential to get it from ICANN.

But I think that we need fundamentally to build enforceability into this. So if you're making the argument let's find some other mechanism for enforceability I'm all for it because that will eliminate most of what we're fighting about with the rest of the community.

But I haven't seen it. And I'm personally not willing to accept a solution that doesn't involve enforceability at some fundamental level because otherwise I feel like this is a waste of our time.

So yes, the ability the standing as a last resort to go to court and figure it out when that happens -- these are bunch of smart people -- I think has got to be an essential part of this unless there's really a viable alternative. I just haven't seen it.

We need the leverage in order to have the powers that we're listing to work.

Jimson Olufuye: Yes my name is Jimson Olufuye, BC. I think there has to be some measure of enforcement as a last resort.

Basically I felt that within the community and this on the bylaw who have been so possible that once the community of a decision firm decision then it should be binding. But there has to be some form enforcement.

No the introduction of the issue of court is a - may not give a lot of confidence to people from my side of the world when it comes to resolving very (unintelligible) patterning to global Internet because in my part of the world they usually discourage you to go to court because a court case could take about seven to 15 years. And I think there should be some time bound concerning what we want to resolve.

And also you there is a concern that would that they a special court? Usually you have tribunal may be within three months it does its job.

So unless there's some formal safeguard like that to say okay there has to be a special court that that will take this within this time period and to resolve it the matter, then there will be a lot of confidence in the part of court from the point of view of maybe developing nations of the world.

Tony Holmes: Okay, thanks. So we're going to have to wrap this pretty quickly because we have a presentation on human rights. But Phil and then Steve also wanted to reply. If we can make it very succinct that would be helpful. Thanks.

Phil Corwin: Yes, Phil Corwin, Business Constituency. Seems to me this court option is a bit like haven't a nuclear weapon. I mean you want to further deter an effect but you never want to use it because it might result in mutually assured destruction.

When you think about the divisiveness and protractive nature of litigation it could tear the organization apart if it's actually exercised.

I had one question. Does California law permit and was a considered shot of as an interim step before litigation, mandatory binding arbitration which sometimes is less, you know, much faster certainly than litigation?

Greg Shatan: I think the mandatory - the IRP that we are putting in place would be turned into a form of binding arbitration recognizable as binding arbitration under California law which includes the ability to enforce it under California law.

Tony Holmes: Okay Steve to wrap up. And that I'm sure there's going to be a lot of discussion in our constituency meetings around this.

Steve DelBianco: That's great. And the co-chairs are visiting with the BC and the IPC today. And since you've seen the presentation parts of it here today and you saw many - many of you saw it yesterday in the Town hall I would encourage you to have interactions with the co-chairs in the nature of what this discussion is.

And but I would ask you to keep in mind that the breakthrough that I was describing earlier is that to empower the SO and ACs we already have means to change the bylaws and give us certain delineated powers that the entire CWG for our IANA transition is counting on.

This slide I put up in front of you is the linkage or dependencies between the two. These six elements on the slide are part of the CWG proposal, the final proposal that we're all about to vote in Council to approve tomorrow.

They are counting on us putting these enforceable powers someplace in the mix. And that's a dependency that we are determined to honor and meet.

So far the proposal we have will do that. But if there isn't any enforceability I don't know whether they would go back and rethink whether they truly have the kind of separability that they wanted for IANA or that they have the kind of powers that they need.

So enforceability, dirty word hard to get your arms around if it's a requirement. There has to be a mechanism to trigger that.

The breakthrough we had is that as long as the Board listens to the powers of the community there is no need to consider how to enforce. And all we need to do is to put a latent passive capability to turn that on.

The trick is as Jonathan Zuck explained if we wait until we need it you won't be able to get that power to enforce.

The only leverage point we have is the IANA transition. And we want to bury in the bylaws the simple explanation that ICANN is a membership corporation like my trade association, like many associations are and that as such those members have the power to enforce the bylaws. It's as simple as that.

And if we bury that in the bylaws now I hope we never have to use it but when and if we did it would be simply to enforce the powers of the community.

I wanted to close Tony by suggesting that we had another surprise on Friday which was that the ICANN legal team through the Board submitted a list of 156 questions to us. I described this in an email that I sent to each of you on Sunday. And many of them were very “gotcha” type questions.

Have you considered the effect on the ombudsman? You know, have you considered who would pay for...

Man: Overwhelming they - have you considered whether this will overwhelm the ombudsman so the image of the ombudsman dissolving in a puddle of tears?

Steve DelBianco: Yes. And there a lot of “gotcha” questions. And have you considered the effect on insurability and have you considered whether these changes would endanger ICANN status as a nonprofit corporation?

Well some of these questions I just want to answer well know but I will bet you have. And we want ICANN to explain what concerns they have and not just give us gotcha questions.

And we’re going through that conversation. I’m happy to report that on Sunday afternoon when the CWG and CCWG met with the ICANN Board they kind of walked that back a little bit and suggested that the questions were meant to be helpful and that they didn’t have any expectation that we’d answer them all in great detail.

So I’d like to take them at their word on that and we’ll move ahead on the 156 questions in the week ahead.

So Tony that's about it for now but we're here all week and can answer questions. Thank you.

Tony Holmes: Okay. Thanks once again to you two guys in particular for doing the heavy lifting on this. Neils if I could ask to come to the front.

So we're going to turn over now to the subject of human rights. We're pretty tight on time because we do have to finish in time to get to our session with the Board.

So we'll have this presentation and then go through GNSO reform and finally the update on digital services. Over to you when you're ready.

Neils Ten Over: Thank you very much Tony. Would be five to ten minutes okay or is it too long?

Tony Holmes: That would be wonderful. Thank you.

Neils Ten Over: Excellent. I've created a - first thank you all very, very much for allowing the Cross Community Party, working party on ICANN's corporate and social responsibility to respect human rights to present its work here to you.

And in the spirit of it being a cross community I really hope we can work together on this issue.

I have prepared a presentation but I see there's no projector on right here.

Man: It's here (unintelligible).

Neils Ten Over: In the meantime I'll go ahead and perhaps it could be distributed by our mailing list because of time.

The Cross Community Working Party on ICANN's corporate social responsibility to respect human rights builds on a discussion that has been in the ICANN community for a while but wasn't congruent in the ICANN 50 meeting in London by a report by Thomas Schneider and (Monica Sangucci) which was facilitated by the Council of Europe.

Then at ICANN 51 session in LA there was a session on the ICANN's corporate responsibility to respect human rights and then at ICANN 52 in Singapore for the Cross Community Working Party to the established just as the GAC Working Group on human rights and international law.

And then there was also the first report, the report on this published by Article 19.

And here we are at ICANN 53 in Buenos Aires where yesterday we had - I mean there was a meeting or a session on the GAC Working Group on human rights and international law.

We have a public meeting and a working session of the Cross Community Party, working party on ICANN's corporate and social responsibility to respect human rights.

And we have luckily meetings like this with different constituencies to elaborate a bit on our work.

And we also have a new report out which was published by Article 19 and which might be adopted soon by the Cross Community Working Party.

You might ask why are we doing this? So in Article 4 of ICANN's articles of Incorporation it reads that ICANN is bound to operate for the benefits of the Internet community as a whole carrying out its activities in conformity with the relevant principles of international law and applicable international conventions.

And so while ICANN policies and operations have the potential to impact human rights we would need to see how it does this and create the framework to that to ensure that ICANN lives up to its obligations.

To do this we work off international standards for this kind of work. And first of all we start from the UN guiding principles on business and human rights. And for the corporate and social responsibility work we work on the UN global compact probably known to several of you in the commercial sector.

And then there's also there are also the UN guiding principles and business and human rights for the ICT sector which are even more specified for the ICT sector.

I would like to really make clear that with the Cross Community Working Party we're not aiming to expand ICANN's mission in any way, form or sense.

We're just trying to ensure that ICANN's policies and operations are aligned with human rights. So we managed to establish a charter for the Cross Community Working Party as a reference.

I will shortly map the highlights from the charter. First of all it's raising awareness in the community on what this could be, met policies, procedures

and operations that impact human rights, provide information, suggestions and recommendations to a chartering organization to ICANN community, propose procedures and mechanisms for human rights impact assessments, develop and explore CSR guidelines that are in place or should be created and produce position papers and statements where appropriate.

Our final note I would like to very much invite you to the - to join or follow his work either on the public session on Wednesday from 9:30 to 11:00 or during the open working session from 5:00 to 6:00 on Wednesday or join the mailing list.

And you can find the mailing list and the reports and more information at the Web site that you can find by a short URL [tiny url.com/cc human rights](http://tinyurl.com/cc-human-rights).

Tony Holmes: Okay thank you very much. I will open up for questions in a second. But just for clarification what is the current status of the group and the status of the charter? I was a little bit confused by that. Can you clarify that?

Neils Ten Over: Thank you very much for that question Tony.

Since we're working off a Cross Community Working Party and not a Cross Community Working Group the Cross Community Working Party's a relatively new and informal instrument to go ahead.

So the charter is more of a terms of reference as we agreed on with everyone who was on the mailing list to agree on the work that we would be doing and to guide that.

Tony Holmes: Okay thanks. That's where my confusion came because I wasn't quite sure in my mind where the working party came from and how it operated.

Okay thanks. Anybody want to pick up on this at all? Greg?

Greg Shatan: Just to follow-up for my education which is where in the ICANN policies it sets out how Cross Community Working Parties are put together and also do you - how a drafting team was put together for this charter and who the charting organizations at ICANN would be that would actually charter this? And thanks.

Neils Ten Over: Thank you very much for that question Greg. We had this discussion in the last public session in Singapore. And we asked ourselves should we go ahead and form a Cross Community Working Group and then have official chartering organizations and go ahead like that?

But then it was said that with the current work on the IANA and on the accountability it might be too much of a - of work to set up a formal cross community working group.

So we went ahead with a cross community working party and we had members from different parts of the community work on that.

So we tried to see how much interest is there in this? How much work can be done before we see and if it's necessary to come up with a Cross Community Working Group?

Greg Shatan: If you could answer the question about where in ICANN's policy and procedures or the GNSO's policies and procedures where it sets out how a working party is formed?

Neils Ten Over: It is not the defined. It is therefore informal, an informal working form.

Tony Holmes: Okay, all right. Thank you. David?

David Fares: Thank you, David Fares. A few questions, first could you share the terms of reference with us because I don't think that I've seen the terms of reference for the working party?

And could you also when you share that identify how we might be able to have colleagues join you? Because I think that several of us from the business community do look forward to participating in the work.

And now my question from on a substantive perspective do the terms of reference address the human rights that you're looking at and are they focused on globally recognized human rights in the entire set of globally recognized human rights that might impact the DNS?

Neils Ten Over: Thank you very much for that question. So first of all I shared the last report with Tony that could perhaps share it over your list. And as an annex there is the terms of reference. So there you can find that.

And I would invite you all also to join the mailing list and the discussion which is completely opening and completely public as are the archives. So you can join and work on the - join our work there as well as during the two public sessions, the open working session.

Where we are in terms of which human rights that this will work on and that will be adaptable, that is still - we're still scoping where. We don't - we did not want to start off with assumption and presumptions.

That's why we look at established standards for doing human rights impacts assessments. And in the last report we saw what are the different standards that are used in industry and in practice and in the guiding principle to make a proper analysis?

We didn't want to come off with this off the back and just try to reinvent the wheel because as you probably know many big companies do these kind of corporate social responsibility impact assessments, human rights impact assessments. And we want to learn and build on the existing practices.

But of course ICANN as you all know is a very unique environment. So we'll try to how do we match those two? And that is currently on the top of the list of the discussions in the Cross Community Working Party.

And then subsequently where do we stick that exactly within the work? So do we - should there be an overall human rights framework?

Should it be put as part of the PDP? What are the - where should these different things be put? Who should execute them? How should they form the public comments on that and how do we force implementation?

So we're at that stage. And we would very much like to benefit from your experience and knowledge on that as well.

Tony Holmes: Okay thank you. Before we switch topics last question Steve please?

Steve DelBianco: No, I'll pass.

Tony Holmes: Okay. Okay so I think because the pressure of time I'd like to thank you for coming on. Certainly I think this is going to stimulate some discussion within the Commercial Stakeholder Group I'm sure. So thank you for that.

And if I could ask Charla or whoever's going to present on the GNSO reform to come along to the top table that would be helpful. Thank you.

Okay so just whilst you guys getting organized I would suggest we - we've only got a small swat here of around about 50 minutes.

And the important thing I believe would be to focus down on the recommendations that come out particularly some of the elements where we had some discussions earlier certainly in the context of the GNSO meeting.

But if we could focus on the recommendations and get straight to that then I think it's the best use of our time so thank you.

Richard Westlake: Thank you. My name's Richard Westlake from Westlake Governance with Colin Jackson. We've had that many of you.

So could we possibly then move in the slide deck please firstly to the Rick to the page which has the four themes of the recommendations?

As background the - our draft report is now open for public comment. Those - that remains open until the 20th of July. So if you haven't had a chance to have a look please take that opportunity.

And it's the - that one there, right. What you'll see on the screen in front of you then is that we've come up with 36 recommendations.

If you haven't read our review you might want to read Section 1 which is the report summary which gives you a quick overview without the depth of analysis. But it does include a full set of the recommendations at the end of that. And those recommendations are grouped under the four themes.

And as you will see the number of recommendations per theme varies quite significantly.

So the first theme we decided very simply to call it participation and representation. And there are 16 recommendations around that of which in our estimate there are approximately five which we would see is the overarching ones with the others following in underneath.

That's not to say they're optional but that the ones that you would perhaps focus on first would be those five.

Then the second theme is continuous development process improvement including some amendment to the PDP process or the PDP sorry, as tautology with 14 recommendations in there.

And for those who are involved in policy development which I assume some stage is almost all of you there are some recommendations in there.

Transparency because it is very much part of the ICANN ethos and values we do make full recommendations there.

And because the GNSO doesn't work in a vacuum but as a part of a ICANN whole we've made two recommendations in this area which go to making sure that there is an alignment to the degree that is practical and feasible balancing the resources available being people as much as anything else, people and

their time with the strategic direction of the whole of ICANN to try to make sure that they are - that what the GNSO are doing is at least consistent with delivering on the strategic plan the ICANN Board has approved.

You all have access if you want it to the various individual recommendations. I don't propose that either I or my colleague goes through those one by one unless anybody would like us to.

Very happy to take questions on it otherwise I would also like to leave sometime for (Larissa) to talk about what happens from here.

The process is that the public comment period stays open until the 20th of July. So you have approximately another four weeks for those who wish to submit public comments for those who haven't already done at various stages of the process.

And after that we will then produce our final version of the report by the end of August after which it is over to ICANN. It'll be submitted to start then going into the process for whether it is accepted and if accept it onto implementation. Thank you.

Tony Holmes: Okay thank you. Questions on the story so far? Heather please?

Heather Forrest: Thank you very much, Heather Forrest. I'm not sure if this is exactly the right time to ask the question.

For those colleagues who weren't involved in the GNSO Council working sessions over the weekend a question was raised in that session. And forgive me if I remember the number incorrectly, some 100 odd comments made as to

structure many of those expressing a degree of negativity around the structure on workability -- this sort of thing.

And there's language specifically in your report recommending that the current structure of the GNSO be maintained. Could you speak to that please for those who weren't in the weekend session?

Richard Westlake: Thank you Heather. Yes, you're exactly right. And we did have that discussion before. We've also had quite significant discussions on previous sessions.

And one that I'm very happy to comment on it but I would certainly suggest that we don't get bogged down in that because that was not within our terms of reference.

So I would've thought that maybe more productive time spent in this and other meetings in matters that were and then the deliverables that came from there.

But certainly in answer to your question if I could Heather first, I will answer your question if I may. Yes there were approximately 120 comments unsolicited.

They recommended - well no, they recommended raise issues of problems that some people detected, some dissatisfaction that people had.

But from our recollection I can't remember anybody coming up with any alternative solutions as to what would be a better system.

So what we said was two things. First of all that we are very conscious that structural change can be enormously time-consuming and distracting and in our view would not address the substantive issues which are covered by our 36 recommendations.

Heather Forrest: Apologies. May I - Heather Forrest. May I just clarify my question. In light of as you rightfully pointed out the limited scope of this review can you comment as to why you made positive affirmative statements in the report recommending that the current structure be maintained?

Richard Westlake: Certainly, Richard Westlake again. The reason we said that we believe that it was appropriate to maintain it at least for the time being was we're aware of how difficult and hard fought it was and hard argued over several years to get to the structure you now have.

And therefore if anybody is thinking of perhaps taking one card out of that pile of a very complex structure we would caution against doing so until you have agreed among yourselves or had agreed upon you if must something that will replace it that will be certainly no worse.

But until that happens it is functioning. It may not be efficient. It may not be simple. It may not please everybody but it probably displeases most people about evenly.

Everybody is to a degree discontented with it. Well I wouldn't - that's a generalization. It's not absolutely true.

But in our view there has not been any consensus as to what would be a better structure. And therefore in order to address the substance keep at least one of

the known factors constant until those are in. And then the point that we also made Heather was post that it's over to the GNSO itself.

If it chooses then to say well the structure we have is not fit for purpose or there is something better there is absolutely nothing preventing the GNSO taking that initiative. Indeed the Board has said exactly as much.

If you've got better ideas for structure go for them.

Man: Oh, sorry, yes. If I may just add something to that, it is true that there was quite a number of unsolicited comments that were adverse comments on the structure.

On the whole people weren't asked to comment on the structure. So those who might have wished to comment positively on it didn't do so.

In our interviews we did receive quite a lot of positive feedback on the structure as well. So I'm merely deducing that to show that there is a balance to be had here. It's not - the structure is not uniformly loathed.

The other point that you will notice in our recommendations is that whilst we say that we believe you should continue with the current structure and try to make it work that we do recommend liberalizing the process for creation of new constituencies which will have an impact, would have a structural impact if that is to go ahead. Thank you.

Richard Westlake: Okay, thank you. I saw two hands but before I go there could I just ask one clarifying question? You made a statement that you felt the degree of dissatisfaction was pretty widespread yet you received 101 comments.

Did you do any analysis of where those comments come from to substantiate that is the case? Because my own belief is that you will find a huge degree of dissatisfaction within the stakeholder group and within non-contracted party's house.

I do not believe that she would find the same degree of dissatisfaction with the other house. So did you do that analysis?

Man: Formally we didn't no, to be honest.

((Crosstalk))

Man: Sorry, I'll just comment. I don't have statistics on that certainly. But what I can tell you is that I received adverse feedback on the structure from both houses and positive feedback from both houses, so is not quite as simple as that.

And there is the usual thing that nobody will be surprised about this. Virtually every part of this organization thinks that every other part has too much power.

Tony Holmes: Okay thank you. Marilyn?

| Marilyn Cade: Let me defer my question. I'll take it up. I want to talk about the future and I can take that up separately.

Tony Holmes: Okay thanks. (Rahm)?

(Rahm): Thank you very much. And thanks Richard and you guys. And I was part of that working group and I know the amount of efforts going into it so I really appreciate it.

Clearly we have this difficult situation. It just seems to me that if so many people are saying the structure's broken it's a very difficult one for us to understand why we should be keeping the structure. It just doesn't make sense.

If the majority are saying we should change why wouldn't your reports say you would - maybe you should put together a working group, discussion group work party? We've got all of these beautiful names now where we don't - that are non-PDP names just to dodge that bullet.

Because we know if it goes that way nothing's going to happen. Why wouldn't you recommend that we put together some kind of a working group and think this one through?

Because it just - there - you said there's no alternative solution. No one's come up with an alternative solution because no one has put the time into it because we're busy doing so many other things.

But if a recommendation came back from the body reviewing the GNSO and said you might want to sit down and have a group of people work on this that would then lead to that work.

So I'm just wondering why the recommendation would be to keep it as it is. I know it's broken but it's the only thing you have. That doesn't really work for us. We're trying to grow into a bigger better organization. So I'm just - could you flush it out a little bit for me? Thank you.

Tony Holmes: Well before we go there we will answer that. I'll hand back to the (unintelligible). Steve?

Steve DelBianco: My question was actually on another topic so if you want to go ahead...

Tony Holmes: Okay.

Steve DelBianco: ...and have them answer it.

Tony Holmes: Richard?

Richard Westlake: Yes. Thank you (Rahm). Just to comment on what you said I would reiterate that it is not - the structure is not uniformly hated. There are some positives to it in the opinion of many people whom we spoke to.

And to say that if you do liberalize a constituency process you will wind up with a structure that feels different.

But also they - a factor in our mind was it has cost you a lot of blood sweat and tears to get the structure implemented.

It's only actually been in this situation for a relatively brief period in the life of the GNSO.

We really think that with the liberalization of constituencies we are proposing that you should try to give this a go for a few more years before you throw it out perhaps at the next review if that's still causing such great problems.

Colin Jackson: And if I could add (Rahm) we would absolutely recommend that once our report is finalized if it is accepted that you work through those recommendations first because once you have gone through the substantive issues there then you've actually got a basis on which to determine what structure should be there because remember the form should follow the function, not the other way around.

And again we do caution that structural matters, not just in ICANN but in every organization can be enormous distractions as indeed there were from about 2007 to 2011.

And some people did comment that the focus on structure, trying to get an adequate structure virtually brought to a halt an awful lot of otherwise valuable substantive policy development work which after all is what the GNSO is here for.

Tony Holmes: Steve?

Steve Metalitz: Steve Metalitz. I'm don't - I'm not going to belabor the point. I think you've, you know my - you've heard my view on it and many people around this table think your report is really focused on rearranging the deck chairs on the Titanic. But let me ask about one of those chairs.

You re- in the working group portion, the Recommendation 16 you talk about policy impact assessment be included as a standard part of any policy process.

And it wasn't clear to me whether you thought whether who would do that? Is the something the working group is supposed to do as it develops the policy? Is it something that's done retrospectively?

It just wasn't clear to me and it's obviously an additional step in what is already a very complicated and protracted process.

So I wonder if you could just briefly say what do you mean by a policy impact assessment? Who would do it and where would it come in the process?

Colin Jackson: Colin here. Thank you Steve for the question. And that's a very fair question even if you do regard it as a deck chair.

Now the policy impact assessment there are standards for those things. I mean they are commonly done in say governments when they're proposing policy changes.

Whilst I haven't Googled for one I feel sure that I could pop up a template fairly easily. And perhaps that's something we could consider doing.

It would seem to me that that will be something that a working group could ask staff to do to create an impact assessment.

In other words what will break if we do this? Who will be adversely affected? What are the communications challenges in implementing this?

What are the potential negatives of moving ahead here? What are the potential positives as well, unintended? So it's really a matter of trying to flush out unintended consequences before moving ahead and be for somebody else spots them further down the track and derails the whole process.

Steve Metalitz: And you concluded that the current policy development process doesn't include those aspects? I'm speaking as the co-chair of a working group that's spent 18 months now we've produced our initial report.

We spent a lot of time trying to assess the impact. I mean that's what our job is. So I'm not sure what are you trying to add to this process here that's not already there?

Colin Jackson: I guess it needs to be clear to those who are reading your outputs that that has been done and that needs to be done in some form of structured process so that they must be seen to have been assessed in the same way for all the proposed policy. That is our recommendation.

Tony Holmes: Okay thanks. We have to cut off there. Thank you very much for coming.

I have absolutely no doubt you will be getting some response back from these three constituencies to the report. And this has really helped focus our minds towards that so thank you very much.

Richard Westlake: Thank you chairman, thank you everybody. Thank you for your feedback and we look forward to your comments through the public process.

Man: Thank you.

Tony Holmes: Thank you. Could I asked Chris to come to the front please?

Man: (Unintelligible).

Tony Holmes: Thank you very much. Appreciate you all joining us.

So I'm going to hand over to Chris who's going to bring us up to date with the changes on the digital services front. So Chris thank you.

Chris Gift: This is Chris Gift. Thank you very much for your time. I will be brief.

I did want to specifically update you on a couple of things but the most important was membership management.

Sometime late last fall I was approached by a number of stakeholder groups who'd expressed a problem. They were administratively managing their stakeholder group. You know, membership was increasingly a burden for them, you know, collecting dues and managing events and so on, a dull subject but nonetheless one that is very important.

So over the past few months I've been working with a number of groups gathering requirements and investigating potential solutions. And I just wanted to come back very rapidly to this group to let you know where we stood.

We have found a provider. The provider will offer everyone a Web site plus a membership management application that has a number of functionality that I'll share with you just a moment.

We have secured budgets under my group so we will be able to pay for the service for this year and, you know, in the coming years.

The next step is basically we'd like to run a beta. I know the NCSG is interested in running the beta. I know the IPC we're talking with Greg, the IPC would like to do a beta as well, participate in that.

So if there are any others I think ISPCP this evening I think we're going to have a discussion about participating in a beta.

So if there are any others please let me know. Though if we get more people it'll just be production at that point because everybody will be using it. But nonetheless our hope is to then run, roll it out to everybody in the early fall sometime.

Next slide, just for those who are interested these are the types of things that these services will be able to support.

So if you don't already do these things or they're cumbersome I think this will be able to help you in those areas and hopefully greatly reduce the administrative burden for you and your volunteers.

And I do think one other thing in this area I think it started to as I talk to other people is obviously start and engender other ideas about what else we could offer as a package service to the stakeholder groups and constituencies.

So, you know, could we offer help in writing content or editing content or other areas? So that's I think something we could continue to discuss.

Are there any questions about the membership management or...

Man: (Unintelligible).

Tony Holmes: Did I see somebody want to raise that? One of the things I'll raise. You mentioned on here dues collection and payment processing. That's certainly something I think we've had some discussions about in the past that has caused particular problems.

Have you looked at some of the issues around that because it was always my understanding that's something that ICANN certainly wouldn't want to take on.

Chris Gift: And no we - so let me be clear, we wouldn't be hosting any of this. So the, you know, people were very clear that they didn't want ICANN hosting their membership management or their necessarily on their Web site.

Tony Holmes: Sorry Chris specifically the collection of dues and the payment process.

Woman: And banking, and banking Tony.

Chris Gift: So you can - they provide the payment processing. You would have to have your own banking and work with the payment processing gateway right? But they have the service.

So no, ICANN won't be providing any of the accounting or any of the banking backend. But this service does come with the dues collection software, the ability to manage the dues and integrate it with the payment processing gateway.

Tony Holmes: I see two people with their hands raised. Marc then Marilyn.

Marc Trachtenberg: Yes just for clarity on this I think some of the discussions that at least I've had involved that third-party off the rack system that at least that's something that's being considered for provision.

So it wouldn't be ICANN really hosting or providing any of this but just providing a third-party solution...

Chris Gift: That's correct.

Marc Trachtenberg: ...with, you know, the ability to have that solution customized to the needs of the individual stakeholder group.

Chris Gift: That's correct.

Marc Trachtenberg: So ICANN would merely be paying for it and providing a limited number of, you know, dollars towards customization and so forth.

And, you know, many of these solutions include payment processing through their own service provider. So, you know, you wouldn't have to set up necessarily any complicated banking or, you know, other dues collection mechanisms that don't really already exist.

Tony Holmes: Okay thanks. Marilyn?

Marilyn Cade: Thank you. I'll defer to Jimson as the vice chair of finance and operation on further questions. But my question is more detailed Chris.

And that is if such a service were provided and funding for that as a routine offering were to be provided by ICANN would ICANN also be able to provide training and support to the secretariat, part-time secretariats that also supports the constituency so that they would be able to utilize this?

Chris Gift: Yes. I confirm that this comes with the whole training package. And we'll be training the staff as well as the training will be available to people who self-administer their groups.

Yes. The last very quick topic is I won't - not a lot of detail here but just that we are very much - we are - on the icann.org we're very aware that many of the groups are not present, are not fully present on icann.org.

We're working to correct that. We're redesigning several sections of the Web site so that we can more effectively describe your groups and then push people to those groups, right, push people to your Web sites.

So we're working on this. As soon as we have something that we - we're not going to build that right away. We want to share with you first and get your feedback and see what you think of the concepts.

And then if you guys all appreciate it and think it works then we will go ahead and implement it.

Tony Holmes: (Christian)?

(Christian): Chris I just wanted to say, you know, we've been talking for a couple of years now about how to approach this particular subject.

And we've talked a lot about the ways in which this would not work to try and approach it. And I wanted to commend you in providing a path forward that I think does address our concerns and needs about other (unintelligible) that we had look into.

And thank you. I'm going to be eager to get into the guts of this and see whether this - whether the actual technological decisions that have been made are a good fit for constituencies.

But I think that what we see here addresses the things that we've been talking about as concerns the past couple of years very effectively and I thank you.

Chris Gift: Thank you.

Tony Holmes: Okay. That's good feedback, so thank you. Thank you for joining us Chris. Again there will be some further discussion within house on this I'm sure.

So we need to end our meeting here. We need to move to the room to meet the Board. Can someone remind me where that is?

Anyone know?

Man: (Unintelligible).

Tony Holmes: Okay, thank you. And we need to wrap up here. So thank you for your participation. We've covered a lot of ground. Thanks very much.

END