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BUENOS AIRES – CCWG-Accountability Working Session 2

Wednesday, June 24, 2015 – 15:30 to 18:30

ICANN – Buenos Aires, Argentina

LEON SANCHEZ:

Welcome, everyone, to this CCWG on Enhancing Accountability meeting. This is our Working Session 2 within our Buenos Aires meeting. It is – we're reaching our 100<sup>th</sup> call. I don't know if this is the 100<sup>th</sup> call but we're pretty much very close to reaching our 100<sup>th</sup> call in this group. And so we will be going through the roll call, as usual, with those persons in the Adobe Connect room and, of course, all of those who are here with us in the room.

And I remind you to, for those who are in the Adobe Connect room, I remind you to please mute your speakers and your mics if you're not speaking so we can have a clear conversation. And state your name. Please state your name whenever you are speaking. This is useful not only for the transcript but also for our remote participants.

And we have sent an e-mail suggesting that we would extend this session after 5:00. This is, of course, optional. This is not something that we are suggesting that would be, of course, mandatory for anyone. What we will do is that after 5:00, we will be brainstorming with our friends from XPLANE so we can have graphics built to help people better understand what we're up to in the working group.

So anyone who wants to participate in that brainstorming session is, of course, welcome to join. And those who have previous commitments and that, of course, you don't have time to arrange

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extending the session are, of course, also free to attend any [inaudible] you might have.

So we've, so far, have had many meetings with different ASOs and ACs through the week. I think we have had very fruitful discussions. As you know, those of you who are present here and attended our premeeting on Friday, we had very fruitful and thoughtful discussion about the reference model and we came with a new strategy and a proposal that has been circulated and we've been discussing since Friday.

And what we would like to do is to listen from you at this point about any feedback you might have with regards to this new approach that we're taking. And I would encourage you to please provide us your comments. So I'm now opening the floor for voluntaries from each SO or AC that have already revealed this new model that we're trying to discuss in this meeting and, of course, the next meetings we'll be having.

So it's an open floor. People, please come forward and let us know what you think about this new model. So...

THOMAS RICKERT: Not limited to the model [inaudible].

LEON SANCHEZ: Yes, of course. Feedback is not only limited to the model, as Thomas suggests, is of course wider than that. We would like to get your

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feedback not only on the model but, also, on the comments that we received from the community. We have had lots of comments from the community, and we would like to listen to your assessments on those comments, as well.

So I see Tijani is raising his hand. Tijani, could you please?

TIJANI BEN JEMAA:

Thank you very much, Leon and Thomas. For the enforceability, shall we already have to change the material of the organization to be a membership organization already? So that when we need to go to this stage to get ready, shall we wait till we have the need to do so?

LEON SANCHEZ:

Thank you very much, Tijani. I think this is, I believe, premature to state. Let's remember that we are looking into a model in which we would be able to have a lot of flexibility in how this is formed. And it wouldn't have to come to automatically having enforcement. And I want to be very clear in terms of difference of exercising powers versus enforcing powers.

Because all within the ICANN structure, as it stands today, have different rights that can be exercised. And in this model that we're trying to put up, if it be needed and when time comes that this would be needed, then the door would remain open for the different SOs or ACs to actually enforce the powers. But that will be a next step.

Did you want to add something to that, Thomas?

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THOMAS RICKERT: Yes, maybe just to clarify. We have two points on the agenda. We're now in point number two, debriefing feedback received. We have another agenda item where we discuss the Empowered SO/AC model, whatever that might look like. So we would like to encourage you not to comment on that model, but please do share concerns, suggestions that you have received during the week from your respective communities, not only limited to the model we're using, but with respect to all sorts of aspects of our initial report.

So let's say we've been together with the GAC for longer sessions this morning, and there have been questions on the IRP. So I think it is worthwhile for those that have been in the respective sessions to share with those CCWG, the points that have been made by other communities. That can be support, that can be concerns, that can be suggestions. But let's not chime in with our own comments for that moment. Let's reserve that for agenda item number four.

LEON SANCHEZ: Thank you very much, Thomas. I have a queue forming. I have Kavouss and then I have George Sadowsky. So Kavouss, could you please comment with us your feedback?

KAVOUSS ARASTEH: Good afternoon, everybody. Welcome back to lovely group of CCWG with the very respectful and lovely chairman [inaudible]. Before I start into any of these things, I would like to make, if you allow me one or

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two minutes of introductory statement. We are now, after the first round of public comments, we received many. We also, in fact, you co-chair, listened to the views and concerns expressed by the SOs and ACs in various [inaudible] that we have attended.

We are very thankful to you. Distinguished chair and distinguished colleague, the success or the failure of the process is in our shoulder. It's [inaudible] and next meetings. It depends on the approach we will take. Heavyweight approach, lightweight approach, workable approach, realistic approach, or idealistic approach.

Second, in addition to the public comments, we have received also comments from Secretary Strickling, Fadi Chehadé, and a few other distinguished colleagues. Although they made some reports on the progress but, in fact, there were many feedback on what [inaudible]. In our view, we need to carefully read the Secretary Strickling statements. Perhaps, if not word-by-word, but line-by-line.

He explained what NTIA expects from us and to be mindful to distinguish between the overall accountability, which is more or less in Work Stream 2 and immediate accountability, I would say Work Stream 1. Success of Work Stream 1 would be a letter or the steps for the successful Work Stream 2. If you [inaudible] one, we have little chance in Work Stream 2 to [inaudible].

So we have to look into what we really expect to do. The issue before us is enhanced accountability. It's not comprehensive revision of accountability, it's enhanced accountability. So we have to look at that [inaudible]. All views are most welcome. All of them are valid. No

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one could judge any other person's, whether it's right or wrong. Everybody's right. But you have to see what we can do.

We have heard that there are areas that we need to achieve 000.1% of any probable occurrence. So we have to think to what extent we go to that, and at what expense we do that. Could we accept some [inaudible]? Or we want to have full perfection, which is almost impossible. There's only one perfect entity, and that is God, and nothing else.

So there are always a threshold, so always some area that we need to see to what extent we have to go. So chairman, I request you kindly to take the most immediate, urgent, and important issues as a minimum set of requirements that we have to address as the public comments to provide us opportunity to prepare ourselves for the second set.

So you have to establish a sort of priorities, what priority you take. There are many, many areas. What I mean by this is to the extent possible, shift those areas which could be addressed later to the Work Stream 2 and concentrate, once again, on Work Stream 1. And I thank you very much.

LEON SANCHEZ:

Thank you very much, Kavouss, for your thoughtful comments. Yes, as you mentioned, what kind of approach we're looking for, there definitely needs to be a holistic approach. We need to take into account everything and every feedback that we receive. And we also

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need to, of course, meet the requirements that NTIA has set for this [inaudible] session to happen.

And we will continue, of course, to discuss these very thoughtful contributions that you have just given us, and you continue to give us this very valuable feedback. Next on the queue, I have George Sadowsky, and then I will go to the lady, which [inaudible], okay.

GEORGE SADOWSKY: Thank you very much.

LEON SANCHEZ: I'm sorry? Okay, we'll also add, of course, the people in the Adobe Connect room, I apologize for not looking into it. So George, could you please address?

GEORGE SADOWSKY: Yes. Thanks very much. I'm George Sadowsky. I'm a member of the ICANN Board but I'm speaking for myself, not as a Board member. Because, after all, as individuals, we are part of you. We are stakeholders, also. I've used and deployed networks and been involved in networking since 1986, and I have dealt with infrastructure development, management, training, and so on. My career has been pretty much dedicated for the last 30 years to the availability of the Internet in not only developed countries, but developing countries.

Now the Board hasn't engaged very much in this process. We've sent you a lot of questions and there have been issues with that. So this is

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the beginning, I think, of this engagement. Perhaps we should have engaged positively earlier. We decided, as a result of the history of the process, that we are concerned we would appear to be pushy or obstructionist or dictating. So we have deliberately held off.

And in discussions with two of the three of the co-chairs, we've been encouraged to proceed. So I'd like to make several interventions. I'll only make now, and my colleagues on the Board are prepared, also, to make interventions. And I'm hoping that when we do, these issues demand more comprehensive discussion than we can give in two minutes.

So I hope this [inaudible] generate some dialogue rather than just making statements, and we can get rid of the Twitter-like two-minute disconnected slices of time that sometimes dominate the discussion. We're not here to make statements, we're here to dialogue with you. So I'd like to reflect on the accountability models discussion, and I'm not going to refer to any of the models in this. So it's, essentially, specific model-free.

I had a Facebook conversation with someone on the committee, which grew into something, a rather large debate, which we thought, after meeting and talking about it, would be of interest to the community. So I'm raising – the following thing made me curious. I was at your Friday morning meeting and you graciously gave everybody you had a concept of the way a model should be developed in three to five minutes to outline the model.



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And what impressed me was the diversity of the models that were being presented. And I thought to myself, why are people making these choices? Why do people like one model over another? Clearly, there's some self-interest involved, but that didn't explain it all. And so what I did was try to abstract.

I thought, well, how do groups and societies and organizations resolve disputes? If there is a dispute about whether one group is accountable to another, whether one group delivers what's promised to another. And I conceptualized this as a one-dimensional spectrum. On the one hand, on the one end of the spectrum, I should say, there are contractual arrangements where you have commercial suppliers, consultants, lobbyists, people who are concerned about defining a deliverable will, not necessarily relying on trust and relying upon legal intervention if the trust is not merited, if the delivery isn't made.

And on the other end of the spectrum, you have, let's say, the Quaker meeting where people get together and everybody stands up when they feel like it and they say what they think and there's social cohesion that brings the community together. That Quaker model is close to what I consider the voluntary model that was being discussed.

The history of the Internet is largely dependent upon the adoption, the enthusiastic adoption of that voluntary model. Because from the beginning until about the mid-2000s, there were hundreds, thousands, maybe tens of thousands, maybe more, of volunteers who saw the Internet as a promise for addressing some of the problems that we have in society. And these are people who spread it, who taught

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people how to use it. The culture was one of freedom, freedom of access, and also freedom, generally, without cost, wherever that could be accomplished.

It was an open culture, a sharing culture, a learning culture. And there was a major value added in that culture because the characteristics of the culture allowed it to spread. There were, obviously, clashes with the commercial culture. In 1995, the Internet started to be commercialized. But that voluntary culture and the enthusiastic volunteers who want to spread and use the Internet, it's still pretty strong.

Some of the models which were discussed on Friday and which have been discussed previously, introduced the idea of control, ultimately, in the last analysis, through the judicial process. And that clashes with the culture, I think. It changes the tone and the mood of the discussion. It has a nontrivial effect upon how we discuss things and how we approach issues relating to the Internet. It's already happened just from this discussion, by the way.

And so this contractual and legal orientation, if even if it's at the last step, creates a level of dissonance and distrust that infiltrates a little bit – I mean, maybe not a lot, it depends how far we go – to our thinking and our culture. And so I suggest in a way that some of the resistance to the more formal models, the contractual legal models, are because those models are trying to move counter to the prevailing Internet culture.

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So if that's the case, how do we deal with the concerns regarding accountability? Because nobody is going to argue that accountability is a bad thing. Our current models do have, by the way, judicial review capability. It addresses legal...

MATHIEU WEILL: George, we are in a 90-minute session, working session.

GEORGE SADOWSKY: Yes.

MATHIEU WEILL: You've been speaking for more than five minutes. Can I ask that we stick to the agenda? I mean, with all due respect, we need to work. This is a working session and not an engagement session. So maybe you can share your input, which you obviously have prepared, to the mailing list, and I would really welcome that we can get the feedback from the SO and constituency meetings that we've had all week. Because that's what is going to be valuable for our group. It's group work, community input, and yours is valuable, and I think I'm starting to see a thread here about where you're heading to.

And that's because we still have a number of agenda items after that, that I would really like us to move forward before we leave Buenos Aires. I'm really sorry to be impolite like this.

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GEORGE SADOWSKY: Thank you, Mathieu. I had assumed this was a time to speak, and I was hoping that because the Board hadn't spoken, that this would be of interest. Shall I stop now?

LEON SANCHEZ: We will be addressing this, also, in agenda item number four. And we will be, of course, opening the floor further comments, George. And we thank you for your consideration and your understanding. So as Mathieu said, the intent for this part of the session is to provide the debrief from the different SOs and ACs. So I would urge, of course, those who want to provide us that feedback from the different SOs and ACs to speak up and to try and keep it as short as possible because, as Mathieu highlighted, we have very little time and a lot of things to discuss.

So I will now go to someone in the AC room, and I see Athina Fragkouli is the first one in the AC room. Athina?

ATHINA FRAGKOULI: Thank you very much. Athina Fragkouli, ASO representative. So from the beginning of this process, the ASO representatives have taken a position to be respectful of the needs of other SOs and ACs in the ICANN accountability discussions and their requirements. We have also been spreading the word or been sharing the progress of CCWG work with the RIRs and the numbers community.

However, questions and concerns are strongly expressed by several members of the numbers community on whether the CCWG would be

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able to deliver the proposal and implement it without delaying the overall stewardship transition process.

The progress of the CCWG work affects not only the names community, but also and equally, the numbers community, and the protocols parameters community, and the IANA stewardship transition process. The three stages of the IANA stewardship transition were shared in the opening session by Fadi Chehadé, and we are now deploying where we need to be strongly conscious that the CCWG timeline has to be in sync with the ICG process.

Our work should not be a delaying factor for the IANA stewardship transition. We would like to strongly remind our colleagues in this group that effectiveness is not the only goal in this process. We should come up with a generally agreed proposal in time, the implementation of which must take into account the timelines of the IANA stewardship transition.

We also understand that enforceability of the proposed community powers is desired by many groups in this community. However, in our proposal, there should be a balance of this enforceability with the need of the stability of ICANN as an organization.

Finally, we would like to take a step back and question ourselves whether particular requirements are indeed needed in order to replace the absence, the future absence of the NTIA oversight. Or are we going too far in our efforts to supplement what we have today?  
Thank you.

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LEON SANCHEZ: Thank you very much for that feedback, Athina. It is most useful. Next on the queue, I'm going to go with one person that wasn't on the Adobe Connect room, and that is Cherine. Cherine, could you please share your feedback, if you...

CHERINE CHALABY: I will wait for later on because if you have [inaudible] later on, the Board members can be heard, individuals [inaudible] that's fine.

LEON SANCHEZ: Excellent. Thank you very much. Thank you. Yes, could you please state your name for the transcript?

CHERYL MILLER: Yes, thank you. My name is Cheryl Miller and I am with Verizon. But, again, I'd like to make my comments today on behalf of myself just as an individual in the community, and not my company. I definitely appreciate all the work that has been done. This is certainly a complicated process. Friday was actually the first opportunity that I've had to really dig a little bit deeper into some of the work and start to understand the proposal.

I think that when we're creating a new governance structure, we certainly have some concerns that we need to think of, and we need to be careful. It's generally better if it's been tested before, and so that's certainly a concern. I think, also, Secretary Strickling raised some

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really good points on Sunday about doing homework. And so I thought about that and I took it to heart and looked at some other areas where we might focus on, such as strengthening the IRPs, strengthening the bylaws.

I am worried about timing. I think the comments on timing are important. And so, again, I'm a very new member to this community and so I'm looking at this with very new eyes. I understand some of you have been working on this for many, many years. So please understand that, with respect to my comments.

But possibly, maybe we can look at doing something such as shifting some of the work regarding community empowerment into Work Stream 2 if we feel that, as a community, we're having issues with timing, moving forward. I'm sorry. Not everyone in the room knows me, but I'm very friendly. Please do get to know me, and I look forward to working with everyone in the future. Thanks.

LEON SANCHEZ:

Thank you very much. Next on the queue, I have Robin. I believe Robin Gross. Could you give us your feedback, maybe, on the NCUC side or [inaudible]?

ROBIN GROSS:

Hi. This is Robin Gross. I'm the representative for the Noncommercial Stakeholders Group on this group. So I wanted to raise what one of my concerns, my main concern with this new hybrid model that's being put forward, and it's the...

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MATHIEU WEILL: Robin, can you please provide feedback from the NCUC meeting? This is the debriefing part. Can we please stick to that? Sorry. We're going to have...

ROBIN GROSS: Okay. Do you want to hear what NCSG's concerns were that we discussed in our meeting?

MATHIEU WEILL: Exactly. This is the debriefing part where we collect the input we received during the week so that everybody is up to [inaudible].

ROBIN GROSS: Yes, that's what I'm trying to tell you.

MATHIEU WEILL: Okay. Great. Thank you.

LEON SANCHEZ: Good.

ROBIN GROSS: The concerns that we discussed this week have to do with derivative lawsuits and the powers of derivative lawsuits. And under this membership, hybrid membership model that we're talking about now, as you may know, we're a very contentious, conflictive community



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from time to time, and our concern is that every time a policy gets put in place that a powerful stakeholder doesn't like, there will be derivative lawsuits filed. So that's a concern for us under this model, and we could be tied up in litigation, tying ICANN up, and that is a concern of ours.

So really we're hoping that we could see a little bit more discussion about how we can achieve getting the community and the board on the same page with respect to the budget and a strategic plan. I understand that under this membership, hybrid membership model we're talking about, we will have tighter control and enforceability because we can go to a court and impose those things, the budget and strategic plan. But I wonder if we are using an awfully big hammer to achieve these two things, and if we could just try to find ways to bring the two sides together.

Perhaps the Board doesn't get a budget until it's been approved by the community. That would be a way of sort of gating that without needing to go to court. Perhaps we can have some forms of reconsideration of those issues. I understand we can't go around and around forever and the Board has the final say. However, they would be not very smart if they continue to not accept what the community is trying to say to them with respect to the budget and the strategic plan, and they will be kicked out. So there is some softer enforcement mechanisms, if you will, besides having to go to court on these two issues.

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So, again, I just think we spend a little bit of time exploring what could be achieved under the empowered designator model with respect to the budget and strategic plan and getting folks on the same page on that. Thank you.

LEON SANCHEZ: Thank you very much, Robin, and we will definitely discuss in a deeper way those concerns that you have provided us from the NCSG. And next on the queue, I have Arun Sukumar. Arun?

ARUN SUKUMAR: Thank you, Leon. I'm Arun Sukumar from the National Law University, Delhi. I do not represent an SO and AC but please, I hope I can take a couple of minutes of the working group's time because I like to believe that I'm reflecting some concerns that have been raised by several stakeholders from India who have not had an opportunity to be representing us.

And as I understand it, the models in question, whatever the community decides to choose finally, deal fundamentally with the relationship between the Board and the SOs and the ACs. This is, of course, a critical concern, and the greater the Board's accountability to the constituency, the better.

But I cannot help thinking that we are well and truly in the realm of a Work Stream 2 issue, which leaves a lot of concern of ICANN accountability, and this should pick up on some of the remarks by [inaudible] what the Work Stream 1 concerns here are, I would believe,

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are the first and foremost concerns regarding the IANA transition process. And you now have a fully-fledged proposal from the CWG on names and I'm [inaudible] to see how critical questions like the functional separability of PTI from ICANN and the role of the IANA Functions Review [inaudible] accountability have been addressed either in the discussions on the models or elsewhere.

And I'm quoting from the CWG on names in the second report. Quote, "It is important to note that this proposal is significantly dependent on the results of the CCWG on Enhancing ICANN Accountability." Unquote. If the working group is [inaudible] the models in question can definitely address those Work Stream 1 questions, that's great. I'm yet to see those before the Buenos Aires meeting is over, and I'd appreciate an elaboration or explanation of those concerns. Thanks.

LEON SANCHEZ:

Thank you very much, Arun. Next on the queue is Steve DelBianco. Could you please provide us maybe the views of the BC?

STEVE DELBIANCO:

Leon, I'll give you a quick three points, which I gleaned from meetings with the Commercial Stakeholders Group in the gNSO, and that includes the BC, the Business Constituency, the Intellectual Property Constituency, and the Internet Service Providers Constituency. And members of those individual constituencies can add to this. But here's three high-level points.

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There was a welcome to the simplification that was sought on the Friday meeting. So the idea of simplifying it was appealing to all, although there was a call to preserve the potential for enforceability of the community's voting and rights at some point. And when we discussed the notion of how that would be enforced, there were several attorneys, I might add, who asked – are anxious that we get to the details of who and how that enforcement would happen eventually.

Second major point. There were a lot of suggestions on how to make the improved Independent Review Panel, or IRP, more accessible to groups like the Commercial Stakeholders Group and the constituencies. Because it isn't at all clear how the costs of an IRP would go down as a result of our ability to have ICANN pay the experts. So we're going to need to flesh out the accessibility and likely cost of pursuing an IRP. And not from the community-wide level but, say, from a constituency or stakeholder group level.

And then, finally, we acknowledge the fact that SSAC and RSSAC had [inaudible] to participate in the voting on a variety of issues, but there was an interest to not lose their input, not to lose the input on security, stability, and resiliency when the rest of us are exercising the voting that we would do or exercising our abilities to have an IRP. So there's an idea there to be open to advice to the community group, not just advice that they give to the Board, but be open to advice from SSAC and RSSAC when it comes to items that the community is taking on through these new powers. Thank you.

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LEON SANCHEZ: Thank you very much, Steve. Next on the queue, I have Jordan Carter. Could you please tell us?

JORDAN CARTER: Thanks, Leon. Jordan Carter here, [inaudible], reporting on the discussion at the ccNSO this morning. We had an hour-long session on this in the middle of trying to approve the CWG proposal. The general temperature of the discussion was kind of neutral to warm, and there were some questions. Were there any of the major issues open, how would this actually affect individual ccTLD managers as opposed to broader ICANN matters?

There were some suggestions in terms of the need to update everything that comes out of the CWG with the framework of interpretation language, whether it is in [inaudible] of ccTLDs, which hopefully the Board will be approving on Thursday.

There were some other questions. Is there a veto mechanism available for any impacted group? And the question of standing came up, how an individual ccTLD manager could compel the ICANN Board to follow the processes and bylaws set out if there's a breach, particularly of fundamental bylaws.

The question of GAC advice and its role came up. Larry Strickling's suggestion in respect of setting expectations throughout the ICANN Board operates came up as something worthy of further explanation. The question of the achievability of the implementation of the Work

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Stream 1 proposal came up. And a point was made that when we talk about advisory committees, no one is proposing taking away powers from advisory committees to advise ICANN. So – and then the linkages to the CWG proposal were explained.

So I think that’s the kind of highlights. I could go on longer but those were the key points. There was one other suggestion of the view that in terms of the enforceability question we’re grappling with, one person expressed the view that all that needs to be enforced was the power to remove the ICANN Board, and there was a bit of discussion on the practicalities of the FOI and ccTLD access to that while noting that the proposal does include the prospect of developing a ccTLD-specific schema within the IRP. I’ll leave it at that.

LEON SANCHEZ:

Thank you very much. Mathieu, I’m closing the queue with Alan Greenberg so we can move along with the next point in the agenda. And may I please urge everyone that wants to speak to log in to the Adobe Connect room. It is really hard to keep track of those who want to speak that are not in the Adobe Connect room. And we, of course, are skipping some people that are properly logged.

So next on the queue, I have Avri. Avri Doria, please.

AVRI DORIA:

Thank you. Avri Doria speaking, and just making a quick point with relation to the AOC reviews. Both in individual conversations and in one meeting that was looking at reviews, there’s a certain confusion

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about the relationship between the ongoing nature of the AOC reviews and our incorporation of those reviews into bylaws and how any sort of shift over or relationship between them. My advice has been to continue with AOC reviews as normal until such time as something else has happened, but that whole notion of how the pre-bylaws change and how any shift over might happen is still a mystery that people are asking about.

So I wanted to put that on the table. Thank you.

LEON SANCHEZ: Thank you very much, Avri. Next on the queue I have Mathieu.

MATHIEU WEILL: Thank you, Leon. Mathieu Weill speaking. This is to report on the conversations that we've had during the last couple of days with two advisory committees who are not chartering organizations, but with whom we have engaged, namely the SSAC and RSSAC. Both of these groups expressed a view that they are very much committed to the advisory nature of their role and that they do not expect to participate in a voting mechanism, such as the one that we are describing for the community.

For reasons that are slightly different, the SSAC expresses the importance that they attach to being an experts group providing advice, and as such, are cautious about the unintended consequences of providing the advisors with extra powers in terms of potential candidates for SSAC, for instance. So they know their charter is very

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narrow, the type of questions they can address is quite narrow, and they don't want to create a fuzzy border between their advisory nature and some [inaudible] roles.

And RSSAC has some similarities, although there's also the view within RSSAC that they have a narrow focus, as well, and then not to be confused with the group of root server operators since there are advisors nominated by the Board. And it's also worthy of noting that RSSAC mentioned that it was of interest to them if, in the distant future, if this community of root server operators wanted to organize in another form to interact with ICANN.

Just as an example, if they wanted to form a new supporting organization, for instance, they were interested to know whether the model would be flexible enough to accommodate this change, which is definitely something that we'll need to be working on to provide an answer to such a question for the root servers, but also if there's another supporting organizations coming up in 20 years' time.

I've been using the example of the Internet of Things supporting organizations, for instance. So that's, I think, two very valuable feedbacks we've received from these groups, and we are keeping engaging with them in the next few weeks and months.

LEON SANCHEZ:

Thank you for keeping it short, Mathieu. Next on the queue, I have Alan Greenberg.



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ALAN GREENBERG:

Thank you very much. The ALAC spent a very large amount of time talking about this in the last few days. Although we didn't have the eloquence of some of the things that George was saying in his first intervention, I think if we had and used words like "the culture of the Internet," they would have resonated very well with our people.

There's a very strong feeling that we're looking for something which is just a little bit softer than legal enforceability, which ultimately goes through the courts. There are a lot of issues with membership in the minds of our people. They relate to liability, they relate to a number of things. They may not be – again, we have not many lawyers in our mix, so I'm not sure we have the hard words we could use but, certainly, there is a significant amount of concern.

And lastly, right at the end of our discussion, there was sort of a revelation that came up. And we've always been talking about if we don't have members who have standing to take on the corporation, and it dawned on, certainly dawned on me, and I think a number of our other members that, yes, it is quite conceivable that an ICANN Board does something that we, the community, think is really dumb.

It's not like we could make that decision unanimously. And if we all think it's really dumb, there's a good chance there's at least one director who thinks it's really dumb. And that director has standing to take on the corporation. And we have an actual example in the past where that happened. So we think there's lots of possibilities without taking on strict legal enforceability. Thank you.

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LEON SANCHEZ: Thank you very much, Alan. And last on the queue, I have Pedro from Brazil.

PEDRO IVO FERRAZ DA SILVA: Yes. Thank you, Leon, for allowing me to give that very quick update on what we have discussed in the GAC. Actually, we have held several sessions, and positions in the GAC varied quite a lot. We have also kind of agreed that we need more understanding on the proposed mechanisms. But we have agreed that we defined a set of questions that are now – were posed to the GAC representatives, and we'll have some time in the following weeks to prepare answers to those questions. And then, probably, prepare a final document that will be submitted to this group prior to the meeting in Paris.

So basically, the main question here is whether the GAC wants, or not, to participate in this proposed community-empowered mechanism. And, also [inaudible] considerations regarding the IRP and how public policy considerations will be taken into account into this new framework. Thank you.

LEON SANCHEZ: Thank you very much, Pedro. We thank everyone that has provided debriefing feedback to the session. It is very good to see that we're not ICANN-centered. We also received feedback from outside ICANN in the case of India. So that is something that I want to acknowledge and to recognize because that certainly enriches our discussion and our debate.

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And now I'd like to hand the session to my co-chair, Mathieu, for the next agenda item.

MATHIEU WEILL:

Thank you, Leon. And I know this is going to be a frustrating item for many, because it's a little bit administrative. And what we want to make clear is what are the next steps and how we are proceeding in order to meet the timeline expectation that we've heard rehearsed a number of times, and it's very close to our heart.

So basically, our timeline is we need a second public comment to be issued at the end of July. We have a face-to-face meeting in Paris July 17 and 18. At that meeting, our expectation is that all the items that will fill into this public comment need to be discussed, and 99% of them agreeing within the group about how we're going to public comment. That's basically what would be the project plan.

I have noted that the GAC indicated it would be providing submissions, or at least governments will be providing submissions, probably not GAC positions, in time for the Paris meeting. It's important to stress that it's welcome, number one, but also probably could not be delayed any further than a couple of days before the Paris meeting to be properly addressed in an open-minded way, as was said earlier in the GAC session. So I think that's very important.

We are starting to track the various items of discussions that we have highlighted through the public comment number one, and we'll design a scorecard of items in the public comment structure. We don't

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need to show it because I'm going to be fast, [inaudible], thank you. Where we will highlight what is seems to be mostly supported, still to be considered, where we have divergence. And basically, there are about 30-35 items.

About 1/3 are probably ready to proceed, 1/3 are we need further discussion on this, and a small 1/3 is really strong discussions we need to have, such as the membership or designator, or SO/AC Empowered model. So that's just to give an outline of where we are and how we are planning to move forward.

But one very important aspect is the bylaw drafting approach. That was highlighted in the opening session as well as by Larry Strickling interventions, that the timeline for approval of the bylaws associated with the proposal is very tight. We have, basically, until mid-November. And some of the items in our proposals are getting support from the public comment number one, so they are almost ready. An example of that, and there are some refinements, is the incorporation of the AOC reviews into the bylaws. That's almost ready.

So it's now time for us to discuss how we're going to proceed with drafting these bylaws, what is going to be our role as CCWG, what is going to be the role of ICANN staff and advisors in preparing these bylaws, because it's a text that they usually manage and there are consistency issues, assessments that need to be done about the potential unintended consequences of the introduction of new provisions, and so we need to collaborate.

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And, of course, the Board itself has a specific role to play in terms of bylaw changes, that's what the bylaw says, and so we need to set up this, start this project with the clear roles and responsibilities for everyone in the community.

So what we want to do now is a quick discussion we would like to keep it short so we get time for further discussion on the Empowered SO/AC model about the requirements of the CCWG with regards to how we are going to proceed with the bylaw drafting.

We want the roles and responsibilities to be clear up front so that there's no confusion or battle or conflict in the end about "I was expecting to do this and you did that," and a decision process needs to be clear. So we're not going to draft this decision process here, but we want to hear you, your views about what is absolutely required in terms of interaction from our group with ICANN Legal, with ICANN Board, any other stakeholders you might think of, in this bylaw drafting process, so that after that we could task ICANN Legal to come up with a consolidated proposal to us in terms of how this process is going to take place.

So that's why we want to spend 10-15 minutes listening to your requirements in terms of who's holding the pen, what's our role as CCWG members. Are we just reviewing the proposals? Are we, obviously, validating the requirements? What are the expectations in this group from people who have been involved in drafting these proposals? And some of our initial proposals already had draft, rough

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draft bylaws. So how do we want to interact with ICANN Legal on that, is the key question here for the next, let's say, ten minutes.

And I see a queue forming with Malcolm, who is leading the queue. Malcolm?

MALCOLM HUTTY:

Thank you, Mathieu. I must say I was slightly surprised to hear you say that ICANN Legal would be leading the work of actually drafting the bylaws changes that we are proposing. We did have quite a degree of discussion, shall I say, with ICANN Legal at the beginning of this process, and it resulted in us developing what we believe was a need for us to acquire our own legal counsel independent of ICANN to provide us with advice.

Can I ask you why you are not suggesting that it is our counsel that draft our proposals on our behalf? This is not to say that ICANN Legal would not, of course, be an important participant in the discussion. I would expect all of us to participate in the discussion as to how that happens. But why is our counsel not leading the work of drafting our proposal?

MATHIEU WEILL:

Malcolm, I think the point here, the key word here is leading. Leading means nothing. There's different roles and ICANN Legal is the one organization that has the best knowledge of these bylaws, number one. And so I think they should not lead the process, my personal view, but they should be holding the pen as much as possible. We have legal

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advisors. Our legal advisors have the advantage of being external to the past of the ICANN bylaws, and as such, they can provide us advice about how the draft that will be provided meets our requirements, and whether there are flaws in this draft.

But I think the leadership of this effort, that's what we need to discuss, but to me, the leadership is definitely not the drafting. So I think that's sort of the expectation. So I would encourage everyone to think about what their requirement is in terms of, for instance, having the last word or holding the pen or being reviewed. I would, for instance, offer an idea that every draft is reviewed by independent legal advice. That, to me, is a good, sensible requirement for that process.

Next is Sam. Sam, I'm sure you'll have an opinion on that. Where are you, Sam?

SAM EISNER:

Hi, this is Sam Eisner from ICANN. I'm an ICANN staff member to the CCWG. I also happen to be a member of the ICANN Legal Department. So I'll just lay out, we've been talking internally about how we can make sure that we at ICANN provide the best support to the CCWG in making sure that we reach a timely, as well as a cost-effective conclusion to the CCWG work in time to make sure that we're meeting the other deadlines that are being set out, etc.

And we do have a few characteristics of this process that I think that we would like to put on the table. We think it's essential that the CCWG as well as the independent counsel are part of the effort, that there is a

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role for review and assessment. We do not think that ICANN Legal going off into a corner and writing these and saying, “Okay, here they are, we’re done,” is the effective way to do this.

It’s essential that there be clear guidance about what is supposed to be within those bylaws. It’s also essential that we remember that these are ICANN’s bylaws and we would have questions about tasking out the independent legal counsel to the CCWG with primary responsibility for drafting bylaws for ICANN that may not be drafted in a way that incorporates the rest of the bylaw spirit, and that that could have some impact on how much it costs to have those done.

So we would ask that cost measures are considered as the path to bylaws drafting is done, but we do agree that CCWG as well as the independent legal counsel to the CCWG are both very important components of this process.

MATHIEU WEILL: Thank you, Sam. Kavouss.

KAVOUSS ARASTEH: Thank you, Mathieu. Instead of fighting, who will do the job? Let’s do the job. Doing the job is that we should take advantage of those who have experience. Legal unit or legal department of ICANN has considerable amount of experience. On the other hand, our legal advisors, legal counsel also have considerable amount of experience in this process. So let us take that legal unit of ICANN in collaboration



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with all assistance of the legal advisor or [inaudible]. That's all, chairman.

So let's go to the next item but not discuss an hour here because there are [inaudible] 100 people with 100 different ideas and we don't spend too much time on that. If [inaudible] in collaboration with the other. Thank you.

LEON SANCHEZ: Thanks, Kavouss. Point well taken. Thank you for being concise. And I'll close the queue after Chris, following your suggestion. James.

JAMES GANNON: I fully agree with Sam. These are ICANN's bylaws and we are ICANN's community, and ICANN is an organization here for the community. So I would feel quite strongly that it should be the CCWG holding the pen in conjunction with our independent legal counsel. And, of course, ICANN Legal will be very involved in the process. But I feel quite strongly that we as the community should be leaving the drafting in conjunction with the independent counsel that we've taken on.

MATHIEU WEILL: Thank you. Milton?

MILTON MUELLER: Yes. Milton Mueller, Georgia Tech. I'm agreeing with James. I think this group, cross-community working group, is developing the plan to

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reform ICANN. Therefore, it knows what its intentions are and should be the one responsible for actually drafting the bylaws. However, of course ICANN Legal will need to be in there and pointing out, oh, “You’re contradicting something,” or maybe there’s a disagreement about how to implement California law requirements. So I would certainly welcome and expect ICANN Legal to be closely cooperating with the working group and with their legal counsel.

But I think the pen definitely has to be in the hands of the working group and not the other way around.

MATHIEU WEILL: Thank you. I have Steve next.

STEVE DELBIANCO: Thanks. I know that you teed this up as suggesting that the bylaws drafting would start with some of the items for which there’s broad support. So I’ll take, for example, bringing commitments and reviews from the affirmation of commitments into the bylaws, and I was part of a multiple-member team of this group that drafted that language. And we relied heavily on what is already in the affirmation of commitments, which was obviously of adequate detail for us to conduct multiple reviews.

And we tried to mimic the same level of detail that’s in the existing ICANN bylaws, which a large chunk of which are dedicated to the structural reviews of the different ACs and SOs. You probably are all familiar with that. So it wasn’t – I’m no lawyer and I’ve never written

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any bylaws, but that section of the ICANN bylaws is written in a very plain-language form. And the affirmation of commitments reviews were written in a similar way.

So the draft that we prepared providing that the support was in evidence, as we believe it is, that draft is very close to what the current bylaws are requiring for the level of detail to describe structural reviews. So it's entirely possible with a little more spit and polish from the CCWG that we could send that over the transom and have ICANN Legal come back and say, "Here's the ways in which you might have to tweak it to fit into the structural reviews part of the bylaws."

So by taking a baby step like that with a relatively easy new section, we'd have an opportunity to learn how this interaction with ICANN Legal will go before we get to some of the trickier parts – which as Milton pointed out, there are trickier parts where a change to this word in the bylaw has a ripple effect to other words or other parts of the bylaws. And I understand that's more complex. Don't know what to do with that, but let's please start with something that's relatively easy like a new insert section that's not different from the current set of bylaws. Thank you.

MATHIEU WEILL: Thank you, Steve. Greg.

GREG SHATAN: Thank you. Greg Shatan, IPC, for the record. To some extent, this is a tempest in a teapot, as whoever starts first will get the appropriate

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amount of pushback from the other side. In fact, I would expect it to be more collaborative than anything else but it certainly would be my hope that being equal since I have drafted a lot of legal documentation over the years, I always prefer to have the first draft when I can. Although sometimes when I have a client on a very tight budget, I'll tell the other guy to burn it for a while.

I don't know if that's the reason for this here. We're hardly looking to maximize our outside counsel fees. Either way, appropriate amounts of time and effort should be expended. But I would say that the optics of taking this execution point of our proposal that we, the community, are generating, I think, should be in the hands of our counsel first.

In the end, regardless of the choice made, we'll get to the right place, however.

MATHIEU WEILL: Thank you, Greg. Chris?

[CHRIS]: Thank you. So I'm speaking as a lawyer now. I agree with much of what Greg just said. I have concerns about legal liability. These are ICANN's bylaws. The independent counsel do not act for ICANN. You all were very specific that that shouldn't be the case. So at some point along the way, it's going to have to be signed off by ICANN Legal.

I think Greg is right, it's a storm in a teacup. I don't really think it matters whether you call it leading or not leading. But understand

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that the Board will need to pass resolution on these bylaws and the Board will need to be advised by its lawyers and Sidley & Adler are not liable because they are not acting for us.

So with all due respect, I think we need to be very careful about how we put this together and make sure that we do it in a way that is, as Greg said, collaborative, but also make sure that we are all of us protected when [inaudible] the advice that we receive. Thank you.

MATHIEU WEILL:

Thank you, Chris. I don't think that [inaudible]. Kavouss, is that a second intervention? You are very concise and willing to work through the next one?

KAVOUSS ARASTEH:

Very concise. If there is dedicated people from CCWG, Jordan Carter and Steve DelBianco, [inaudible] want to be, and that will let them [inaudible]. But we don't want to spend the whole time of the CWG drafting that one. We have other important work. They should be there [inaudible]. ICANN Legal Department in consultation with legal advisors plus designated persons or group from the CWG. Thank you. [Inaudible].

MATHIEU WEILL:

Thank you. I have closed the queue after Chris and I know there was a request from Bruce, whose laptop was out. And Alan is in the middle. I would really like that we can move forward. There are different views

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on this, it's obvious, but we need to move forward. So Bruce, if you have a very short point, and it's adding something that hasn't been considered to requirements, please. And Alan, also, after that.

BRUCE TONKIN:

Thank you, Mathieu. Sort of, I guess, reinforce what Kavouss said, I think, and a couple of others did as well. We've got two sets of legal advisors. Let's use them the most efficient way. I think there's a confusion when people are using the term "holding the pen." I think the CCWG should be briefing whichever legal team they choose. And that's the key thing, is who's actually briefing the legal team and giving them the requirements, and I think that should be the CCWG.

I think from a cost perspective, the most efficient thing would be to have the ICANN legal team manage the drafting in response to the briefing from the CCWG. Use your external counsel as a way of validating that and just confirming that the work that ICANN's managing is okay. Because at the end of the day, you're briefing the legal team. So just think about the ICANN lawyers as working for you.

MATHIEU WEILL:

Thanks. Alan, is there something else?

ALAN GREENBERG:

Just one quick sentence. If we really don't trust our external counsel enough to raise a big red flag if they think ICANN Legal is slipping

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something in on us, we're in big trouble. So if we're trusting counsel, let's trust them.

MATHIEU WEILL: Yeah, [inaudible]. I'm seeing your hand, but is that really something totally different that you're bringing to the debate? Because I think we have agreed that there is a diversity of views on this.

UNIDENTIFIED MALE: One sentence. The legal process has to be embedded in a multi-stakeholder discussion so it's not separated from the multi-stakeholder.

MATHIEU WEILL: Okay.

FADI CHEHADÉ: Something that wasn't said [inaudible] two facts from a practical standpoint. We also have bylaw changes from the ICG. It is our responsibility to make sure these have integrity across the board. And secondly, that the bylaws changes will go into your proposal, and after they go into the proposal, the Board does not have a lot of time to do anything other than to review them and approve them.

If we now have the Board changing these after Dublin, the whole transition timeline we shared will slip. So it's important that we all step together from now till Dublin so we make sure by the time that

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language is in, we can't change a comma after it's in without going through a public comment period.

MATHIEU WEILL:

Thank you, Fadi. So we'll take this of co-chairs and come back with a more fleshed-out proposal trying to accommodate the various requirements that were made very clear and not spend too much time on this because we have, indeed, more substantial points to discuss. But I think the debate outlines that we need to make this clear at the outset of this process. Otherwise, we're up for trouble in the end.

And with that, I'll turn over to Thomas.

THOMAS RICKERT:

Thanks very much, Mathieu. And now we're moving to agenda item number four to discuss the Empowered SO/AC model. That's at least the working title that we gave it. And I'd like to ask Becky to come to the table, if she can. Is Becky already in the room? Otherwise, I'm going to volunteer to do that.

The reason being that there's been a lot of talk about this new model, which has been first introduced during our meeting last Friday. And we've met with a lot of communities during the week and we got the impression that everybody created their own subtly different version of what was communicated. In fact, on Friday, we did not embed that into a fully-fledged legal model. We were revisiting requirements established by this group.



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You will remember, we had this table up where we discussed the pros and cons of the models that we knew, we discussed their complexity, the issue of “watch the watchers,” so how is the underlying community to be made accountable to what we’re doing. Messaging, how easy can we communicate that to the outside world. We discussed perceived or actual implementation challenges, unintended consequences.

We discussed the need for diversity participation. CWG expectations need to be met. NTIA requirements need to be met. We mustn’t have a single point of failure. There needs to be some authority for the community to get their will. We dropped the word impossibility in our discussion, as you will remember. We tried not to use that last Friday. And we were considering implementation time as a factor for our considerations.

And I read these for you just to refresh your memory that what we discussed last Friday is not cast in stone. We need to discuss this. We need to evaluate the pros and cons. We need to revisit our requirements as need be, and then have a full legal test. Because we don’t want to destroy more than we do good. Right?

So just for all the others that are sitting in the room and that might have another eureka moment that we resolved everything, that’s not the case. This is just a little further baby step towards consensus. And in order to bring us up on the same page in terms of what we understood we had discussed last Friday, I’d like to show you through a few slides. It we only take five minutes, but I think it’s important for

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us to all be on the same page when we then [inaudible] the queue, and I'm sure that there are many of you eagerly waiting to chime in on how we're going to operationalize, and then we're going to listen to you and take everything with us into our deliberations. Can we see the next slide please, Alice?

Now the idea was to have a simple, fast, low- or no-cost, no-risk path to enhanced accountability. So it must, time is an issue for announcing accountability. We do want to be as less invasive as we can. So we want to build on the existing SO/AC structure that we know and that we trust. I think that's important. We want to retain that trust.

We don't want to change anything in terms of operating principles. Ideally, the SOs and the ACs would continue working as they currently do. We want to respect and address the various community perspectives and the concerns with the other [inaudible] model. You will remember that whether the potentially unincorporated associations acting as alter-egos or as avatars for the SOs and ACs. So that's gone. We wanted to address that.

And we want to have flexibility for the future, and that's one of the points that we heard during the week, that we need to be able to onboard new groups in the future or restructure as need be. Next slide, please.

So we don't want to touch the existing legal nature. For some of the groups, we don't know what the current legal nature is. Some think they are already a legal person, others think they aren't. We don't

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want to decide that. Right? We want to step out of it. We want the ability to exercise community powers. Again, let's not confuse – and that's the point that Leon made earlier – let's not confuse exercising community powers with enforcing community powers. That is a very important distinction to be made. Everybody must be able to exercise the powers.

And the idea for this model was that we leave the current status, the status quo, as it is, but that SOs and ACs could switch on a more formal relationship with ICANN that would give them the authority to acquire legal authority to exercise certain powers and get the community's will or help the community's will to get through.

At the same time, even if not all SOs and ACs choose to formalize their relationship with ICANN, still, all the SOs and ACs should have the same weight. So that's important, that we don't lose anyone on our way to exercising community powers.

And, I think this hasn't been said, but Becky has done some back-and-forth with legal experts. Both the membership model and the designator model could be the basis for such a hybrid model. So this is still quite flexible, right? I guess what Becky tried to convey is that we try to maintain the status quo and that we add something. We don't yet know what that addition might be on top of it to give the community more authority. But this is still quite open.

Next slide. Me too. I didn't know that you joined the table.

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BECKY BURR:

Sorry. First of all, I want to apologize for being late. I have just returned from the ccNSO Council where the Council voted unanimously with the abstention of our ICG member to send the CWG proposal to the ICG. So we're moving forward.

And I just want to make one comment on this last point. Several people have suggested that the language about jeopardizing meeting the CW conditions reflects an assumption about what the requirements and the contingencies for the CWG are with respect to enforceability on the budget authority.

I am going to admit that I am not the world's expert on that and to the extent that there are questions, we obviously have to have those questions. So I just want to put that on the table because I know there are those in the room who have a different view on the conditionality issue.

THOMAS RICKERT:

Thanks, Becky. Can we move to the next slide, please? So what do the SOs and ACs need to do? Nothing at the moment. They can make a choice at a later point to formalize their relationship with ICANN. And I think that we're not going to move through all the details. But I guess it's important to note that status quo is maintained and that we are taking the necessary steps in the bylaws to make the system ready for the situation if and when an SO or AC wants to have a more formal position with ICANN.

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Next slide, please. What does ICANN need to do? ICANN needs to make sure that the authority is granted in the bylaws and that, yeah, I think we should maybe leave it there. I just want to have more time for people to comment. So I guess that the important thing is that ICANN gets ready for phase two, if you wish, of this hybrid model should it ever be invoked. But apart from that, I think we can move to the next slide.

So, again, the hybrid model seems to be working for both the membership situation as well as the designator situation. We might need or we will likely need indemnification for SOs and ACs. On top of that, we still need to work on all the remaining Work Stream 1 and Work Stream 2 tasks, and certainly we need to do stress testing and we need to make an impact assessment on it.

So this was just refresher on the discussion that we had last Friday, and I think what's now important is to get your views on a model to be used. Right? So I would like this group to really focus on the model. Do criticize this model. Let's not go back to other models that we've abandoned, but let's try to further provide for an evolution of this based on the status quo. Because I think that's been a main theme of our discussions, that we want to do as little changes, if at all, at the beginning. So it shall be as lightweight as potentially possible.

So can we open the queue for comments? I think Roelof was the quickest one to hit the trigger, and although we don't have a two-minute clock, can you please make your statement as brief as you can? We would like to get as many voices heard as practically possible.

ROELOF MEIJER:

Thank you, Thomas. I'll try to keep it within two minutes. First of all, I really want to, because I'll be delivering some criticism but, first of all, I think I should compliment Becky for coming up with this plan. I think we were quite at a loss at the beginning of our first working session last Friday, and this is a very good way out.

So don't take what I'm going to say as a criticism to the overall idea. I'm a bit confused, by the way, by you using the word model, because we had powers and mechanisms and I think we are now talking about a mechanism. So maybe we should stick to that term. I've made my points several times now in different arenas, and I'm referring to the remark that Becky has already made. The difference between using this way in a designator mechanism or in a membership mechanism.

And the only difference between the two – apart from the designator mechanism being much easier to implement – but the only difference in practice concerning the powers would be that the [budget] and strategic vetoing powers would not be legally enforceable. And I think if we focused too long on that, we're just focusing on the difference that, in practice, will not exist.

Because I cannot imagine a situation where the whole community, in the end, votes on the decision to veto the budget or the strategic plan, for that matter, and that vote passes with the majority of 70%. It is passed on through the Board, the Board just does nothing with that outcome, and we force the Board through a court case to obey to the

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outcome of the community vote, and then we just live on happily ever afterwards with the same Board?

To me, it sounds like you're having marriage problems. Your spouse is not adhering to the marriage vows. First you get the whole family together, and the whole family practically unanimously tells your spouse to behave, doesn't help. You take your spouse to court, the court tells him or her to behave, and you don't get a divorce? I cannot think of such a situation.

So I think we're making this more complex. It can even be simpler than we have it now. The only power that we need to be legally enforceable is the power to remove the Board, and we will never use it, I'm sure of it.

THOMAS RICKERT:

Thank you, Roelof. Before I move to the next speaker, let me just quote publicly a remark that my dear co-chair, Mathieu, just made: whether there's a need to enforce divorce in courts. Next in line is Kavouss, please.

KAVOUSS ARASTEH:

Thank you, Thomas. I think you take it granted that we already agreed earlier in [inaudible] the empowerment of communities require. You have not discussed that. It was in the first draft but now, after comments, the result was that in all those things earlier that you mentioned, the community needs to be empowered. That's a direct

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impact on the model. And all of a sudden, we've taken the approach of the CWG hybrid. Hybrid of what?

First, you have the two models clearly mentioned, and the earlier in which we required that the [inaudible] empowered. Then after that, we have to see whether we could have a hybrid. So you came, all of a sudden, with hybrid, but you have to see what a hybrid is. Hybrid of what? First, you have to [inaudible] the area in which the community needs to be empowered. There was doubt [inaudible] earlier that it would be difficult if you want to empower the community. Thank you.

THOMAS RICKERT:

Thanks, Kavouss, and just a small remark. The community will have the power to exercise – will have the opportunity to exercise the powers that we define. So we're not going to let go of the powers that are define, and I think that's what Roelof meant. He is talking about the authoritative or the enforceable part of that.

Let's move to Alan now.

ALAN GREENBERG:

Thank you very much. We keep on saying that the only difference between designators and membership is that we don't have the powers to veto a strategic plan in the budget. The concept of vetoing a strategic plan which is going to be with us for five years is not a particularly urgent matter.



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The budget, I worry if the community can veto it. However, those are not the only rights of members. Members have statutory rights. One of the statutory rights of members is to, by majority vote, if there's only one that's them agreeing with themselves to dissolve the corporation.

The concept of one AC or SO being able to unilaterally dissolve the corporation, assuming I'm reading the California law statutes properly, is just shocking. The steward of the IANA function goes poof. I think we have to consider some of those issues. Thank you.

THOMAS RICKERT:

Thanks, Alan. Next is Malcolm.

MALCOLM HUTTY:

Thank you, Chair. Firstly, I would be amazed if Alan is reading the California statute properly and that a single member can dissolve the corporation on their own. That said, however, I had a specific question about how this model applies, as in what the consequences are.

We have been looking at this, and very closely, in terms of the effect of these models on the community powers that we've created in WP1. But that is not the whole of it, and to that extent, Alan raises a very important point. There is also the question generally of enforcing the bylaws. In WP2, we have created some very important accountability mechanisms – in particular, substantial reform of the IRP.

That substantial reform of the IRP must be effective, and for those of us that believe that legal enforceability is absolutely a core

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requirement of any satisfactory accountability, that means that the availability of the IRP must be something that we can have legal certainty in.

So my question is this: with regards to each of these models, do they provide a legal remedy for material breach of the bylaws generally? And specifically, with reference to the IRP, supposing that ICANN failed to implement the IRP – for example, by failing to appoint any IRP panelists – under each of these models, would there be a remedy?

THOMAS RICKERT: Thanks, Malcolm. Sebastien.

SEBASTIEN BACHOLLET: Thank you. I would like you to come back to what Alan Greenberg said earlier. I think there are already possibility with the current organization with just changing and just it's not small work, but changing the bylaws that we can act. I really feel, like Alan, that 50 Board members will not act wrongly altogether at the same time, and that if it's happened, that means that this organization didn't choose the right people to be on the Board. They have chose the same type of people all around and it may be that we need to fix first.

Then I do appreciate the [inaudible] with the proposal written by Becky, and then thank you very much to have done that. But I think that we can go even further without any need of a membership or designator model at all, even if it's at the end of the day. And once

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again, I don't like the expression of it's less of less [inaudible], of course, hopefully, but nuclear option.

We don't need any nuclear in this world. Please, try to keep ICANN in a peace world. Thank you.

THOMAS RICKERT: Thank you, Sebastien. Next is Milton.

MILTON MUELLER: Milton Mueller, Georgia Tech University. First of all, I would like to endorse the concerns expressed by Malcolm Hutty. I think he was very articulate about the importance of getting a better definition of the safeguards. Whatever membership model we have to adopt has to guarantee that these kinds of IRP processes are effective.

Second, I want to talk about something no one else seems to have mentioned, which is how granular the units of membership are. Are they only at the SO level, AC level, or within the SOs, could they, particularly in a gNSO, could they be at the level of the stakeholder group, which would give a lot better representation to some of the minority interests? But that could have problems, as well. So I'd like to see that discussed by the members of the panel.

And finally, I just don't understand the point of what you call the springing membership concept in the slide. Why don't we just decide whether they're members or not, and if they decide they're not members, they're never members, and if they decide they are, they

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are. What does is this business about them bouncing back and forth from one status to the other? I don't get that. Maybe I don't understand what's being proposed. It's possible. But I don't understand why we wouldn't want to know who the members are at all times.

THOMAS RICKERT:

Thanks, Milton. Before we move to the next speaker, maybe answers to, attempts to answer your questions. Our group has, so far, only allocated votes to the SOs and ACs. So according to our current thinking, it would be two votes, five votes for the gNSO, let's say, and not membership or whatever other granularity you might have for the individual stakeholder groups, or even at the constituency level.

So the proposal at the moment has the votes accumulated in the SOs and ACs. With respect to the hybrid nature of the model, that is to respect those in our group as well as in the wider community that do not wish change to be made, that do want the model to be trust-based. And we tried to honor that wish or that request by leaving the situation as it is, so we would be acting merely on a trust-based model until such point in time when the relationship between the Board and the community, which hopefully will never happen, turns sour. And then the groups could switch on and change their mode.

But ideally, that would never happen. But that was the idea behind the two to reconcile the different approaches between full enforceability at the one end of the spectrum and no enforceability, merely trust-based, on the other end of the spectrum. But since this is, I guess, a

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very, maybe the most central point, we had hoped to get input on other aspects of the various options of the table. But we seem to be revolving around the question of enforceability and going to court, pretty much. I think Becky has another idea to offer in response to that.

BECKY BURR:

Well, I just wanted to do a couple of clarification points and respond to Milton's question, I think. Just on the point of bouncing back and forth, I don't think that the proposal contemplates bouncing back and forth and, yeah, if somebody really thought that was important, we could certainly consider it, but to me, it seems confusing.

The other point was clearly respecting the wishes of those groups that want to continue to rely on the voluntary and cooperative approach. Also, providing enough time for the groups to talk about it and understand it and decide what they want to do without creating roadblocks in the way to go forward. So part of this is a timing issue. If we had all the time in the world, we could probably argue this to the ground. But recognizing that we all want to get this right, and get it right in a timeframe that works and supports the transition, this does offer the sort of additional time.

I've said this before, and I just want to reiterate. We have heard loud and clear the concerns about litigation and taking ICANN to court, and derivative suits and having ICANN tied up in court and all of that. We've heard that really clearly. I don't think anybody thinks that would be a good idea to create a model that has ICANN constantly in

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court. We have had long conversations and we have legal confirmation that with an extremely high degree of confidence, we can, if the community chooses, have disputes resolved through the IRP without resorting, except in the most extreme corner cases, to courts for substantive review.

That, I think, is a fact now. I'm not a California law expert, and I'm not going to tell you there is never any possibility that can happen. But general, we have a high degree of confidence that for in a general and normal case, if the community decides that it would prefer to rely on the independent review arbitration mechanism, that is a workable approach.

THOMAS RICKERT:

Thanks, Becky. And I'm conscious of time. I will have to close the queue after Jonathan. And because we had said we would work with XPLANE, and since we hear a lot of expressions of anxieties for the various models in the extreme, we would very like to operationalize a little bit and help understand all the options on the table better.

Let's move to Jordan Carter now.

UNIDENTIFIED MALE:

Oh yeah [inaudible] Tijani's hand. Tijani's hand was up.

UNIDENTIFIED MALE:

I think Tijani was in front of me.

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THOMAS RICKERT: Okay. So your hand was lowered, obviously, Tijani. It's your turn.

TIJANI BEN JEMAA: Thank you very much, [inaudible]. First of all, I'd like to thank Becky and all the people who participated [inaudible] this hybrid model. Please don't [inaudible] to the model of [inaudible] people who [inaudible]. Second, I'd like to say that I agree mostly with what [inaudible] said. Third, this model [inaudible] a solution for [inaudible] problem, and I want to remind you that if there is some problem in the [inaudible] problem [inaudible] the Board and the community, we don't need any tools.

But if there is a problem [inaudible] between the Board and the community, we have to [inaudible] and since we [inaudible] said what ICANN has to do, they have to prepare the [inaudible] to make the SOs and ACs able to become members. That means that we will go to the membership model.

And then we come back to the first case, the case that we discussed on Friday, and the case that [inaudible] the problems that we [inaudible] and that we [inaudible] we said that that we don't want [inaudible]. So the conclusion of all this is that this is a good model if there is no problem. If there is no problem, we would not [inaudible]. We need something for problems. So what problems [inaudible] the model of the [inaudible] and I don't think we [inaudible]. Thank you.

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THOMAS RICKERT: Thank you, Tijani. Now it's Jordan's turn.

JORDAN CARTER: Thanks. I just wanted to make kind of three reflections, I guess. The first one is that it felt like we made some progress on Friday, and the progress I've got out of it in a tangible form is five or six slides. So really hope that no one is going back into their bunker or trying to make decisions about whether they support this model yet or not, because we do not have enough information.

We need at least a table that compares this new model, whatever we end up calling it, with the two we were exploring before that we need to develop. We need to more clearly specify how it works and what the underpinnings of it are. Certainly, I would just urge everyone to not jump to conclusions.

The third point is that as we keep [inaudible] on these hard issues, I think we keep understating or underestimating the successes that we've had in building this model, and the associated parts of it. Wide community consensus around the powers that are being discussed, the fact that everyone, I think, accepts that Board members and the Board collectively have got a legal obligation to follow those powers as they're exercised, whether or not there is a membership model or not.

The fact that there is an obligation on us to support the work of the CWG and to meet their requirements, it would be hilarious and disastrous all at once if our work fell over and the CWG transition



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proposal fell over as a result. So we need to keep their requirements firmly in mind in a real way.

And just that we've got a lot of work to do in a short space of time in taking those consensus elements and building on them the kind of frame that delivers them, and it's not easy. So you know, I certainly don't feel like I've got enough information to be able to make a call about whether this is the right way to go or not. If any of you have that certainty, I envy you for it.

THOMAS RICKERT:

Thanks, Jordan. Fiona.

FIONA ASONGA:

Thank you very much. I just want to mention that I think it's important for us to be realistic on how, on the practical level of empowerment that the community can have or the SOs can have. Bearing in mind that there've been models of trust in other parts of the community, for example, that have worked very well. Within the numbers space, there is a mechanism that works at the global level right from the grassroots up, a bottom-up process, and all these powers we are talking about are covered in all those processes.

Maybe we need to be looking at what works right, what has worked right in those parts of the community. That can be adapted to cover the rest of the ICANN community. And that means that we need to be able to allow for a trust-based environment. We have achieved a lot over the years because there's been a certain level of trust to the

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Board, to the staff, and within the community that has gotten us to where we are.

We need to hold onto that as we move forward. We need to also begin to consider whether we really have to have a numerical best manner of exercising those powers. They have to be five votes, five whatever. We decide 70%. Can we work on trust, on consensus building? Because that will help us to build on what we already have in place and move forward.

I know that there may be challenges for some of the constituencies, like the gNSO that has a lot of other parts in it, but I'm sure if we give it a bit more thought, we can find a solution that works, even, within the gNSO, but doesn't distract the structure of ICANN so much. And the reason I say that is because for the numbers community, any instability or risks that are going to [inaudible] ICANN will directly affect the numbers community, and that is something that the community will not take kindly being that the community makes a lot of effort to get a lot of its processes and empowerment of its part of the community out of the ICANN meetings and the ICANN space. Thank you.

THOMAS RICKERT:

Thanks, Fiona. Julia.

JULIA WOLMAN:

Thank you very much. After having discussed these issues in the GAC, and especially with regard to the role of governments in this new

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mechanism and new model, I'm trying to have two questions I would like to bring forward, and clarifying questions. Because maybe this is clear to some, but at least to us it might not be very clear.

So the first one is if the Empowered SO and the AC model would require a form of legal personhood in order for the members of the GAC to, it could be the GAC, to exercise its powers. And a related one, this could, some are members and some are not, if this could create an imbalance of powers, maybe. And the second question is about this springing model proposed, and if some members or ACs and SOs would decide not to be a member from the start, and then decide at a later stage to join, who would decide in the end if they could join or not? Thank you very much.

THOMAS RICKERT:

Thanks, Julia. Kavouss?

KAVOUSS ARASTEH:

Yes. This is the second time I raised the question. We need to look into the empowering the community associated with enforcement. If we take that [inaudible] are not convinced that for the budget and for the starting plan, we need enforcement. There is a difference between the [inaudible] to the traditional or fundamental, which is more or less [inaudible] constitution, convention, charter, whatever, and the statute plan of five years.

We see, still, no point to have that enforceability with respect to the budget nor with the [inaudible] plan. So we have to come back to this

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point to see whether we need that one. If we take these two, the situation will be much more simpler and clearer. Thank you.

THOMAS RICKERT: Thanks, Kavouss. Chris.

[CHRIS]: I'll use [inaudible] if you want. That'd be good. Okay. Let me start by saying that, as a Director of the Board, I want to assure everyone around here and the entire community that I look forward to the community being empowered appropriately within the multi-stakeholder model, and that I firmly believe in strengthening the bottom-up process.

In that spirit, I believe that we are all aligned in enhancing accountability without destabilizing the security and stability of ICANN or introducing opportunities for capture. Now, within that context and in my personal capacity as a member of this community, I would like to bring to the attention of the CWG a concern about an unintended consequence of weakening ICANN governance irrespective of whether you use a designator model or the membership model. Let me explain.

The CCWG has asserted that the empowered community will have control over the Board in the following areas: strategic plan, operating plan, budget, and bylaws changes, fundamental or not. As a consequence, there will be no decision that the Board can make in those fiduciary core responsibilities that cannot be rejected or stopped by this new community-empowered mechanism.

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The CCWG proposal indicates that the Board would always have the ability to exercise its own judgment after the community empowerment mechanism makes its decision. But the proposal also states that if the community empowerment mechanism does not like what the Board has done, it can remove the Board individually or collectively.

Hence, the new community empowerment mechanism, in fact, has the ultimate power to control the activities of ICANN. While as a community member, I believe in the bottom-up model, I support the principles behind this objective, but I also believe that it's vitally important that the newly-transferred powers are paired with the transfer of corresponding accountability.

Your proposal, in effect, creates two bodies: one that is empowered and a separate one that is accountable. This, in my view, breaches a fundamental principle of governance, weakens the overall structure of ICANN, and is not sustainable. Please ensure that this unintended consequence must be avoided within your proposal.

As I said before, do not take my ideas as a criticism, but as an input and an objective [inaudible]. Thank you.

CHERINE CHALABY:

Thank you very much. I think this is a very valid point. It's been voiced by many, several, at least, commenters in the public comment. And it's been captured in one of the outstanding items that we have to address, which we call SO/AC accountability, and which we sometimes

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label under the slogan of “Who watches the watchers?” And that’s taken into account for our group. It’s certainly something we need to reinforce in the model, I think, is the point you’re making.

THOMAS RICKERT: Thanks. Next is Samantha.

SAM EISNER: This is Sam Eisner from ICANN. I have a couple of questions about the proposal, and I agree with Jordan that I understand this is not fully fleshed out yet. We do need the comparative materials that Jordan was referencing. And I look forward to receiving those. I do have a couple of questions, though.

First, on the springing, is there any requirement of something that must happen before a member can spring? I’ve heard suggestion that it would only be at a time when the Board has done something that springing would happen, but I don’t see any sort of conditionality stated within the slide. So I don’t know if it’s at any time or just at a certain time after something happened.

In terms of the IRP as a requirement, I heard Becky state that that might be something that’s possible. If we were to go to there and we had a membership model, would we have an effective way to keep members separately out of court on their own individual issues that they may wish to bring against the organizations based on their statutory rights?

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We've heard discussions in here about legal advice that's been received on the model. I was wondering when we would have an opportunity to see that through the group. I also noted that the document starts off with a statement that this is a low- to no-risk model for us to be considering, and I was hoping to understand what was considered in making that assessment, and could we see that risk assessment?

And I just wanted to make sure that if we, from my understanding, if we were still to go to membership model of this, even if we had no members from the start and it was on the voluntary springing basis, just to be clear, we would have to modify the bylaws to allow for membership and to create ICANN as a membership organization from the beginning. So that would be work that would have to happen, so there would be some complexity. I'm not saying that that's a gating issue or reason not to do it, but just to make clear that that would be a necessary thing to do from the beginning.

THOMAS RICKERT:

Thanks, Sam. Becky, I think you wanted to respond to that.

BECKY BURR:

Just a couple of quick responses, Sam. The advice on the ability to go to send people to just independent or dispute resolution rather than court has already been circulated a couple of weeks ago in the form of slides from me. I'll recirculate them to you.

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Our understanding is no matter what we do, we're going to need to make some bylaw changes, but that does not involve any need to reincorporate ICANN. It might possibly be an articles change, too, but there's no reincorporation requirement.

THOMAS RICKERT:

Before I go to the next speaker, I'd like to encourage all of you to consider not only asking questions or criticizing what you think is not a way forward, but we heard Cherine saying who holds the community accountable, that this is an unusual concept the way it's being set up. Sam asked questions about the low-risk and asked for a risk assessment.

If you think that this is not the way to go, and we thought that a hybrid-type model would get some traction in the group, please do make concrete suggestions as to what needs to be done. So if you think there is a risk with membership, let us know what the alternative is. Right?

We heard criticism, but if we want a model, we can't tell NTIA what the community doesn't like. We have to come up with something that the community wants. So we need to refine our requirements. We need to have something implementable. We need to have something that we can explain, and something that we, hopefully, all agree on.

And let's not forget this is a give-and-take. We're going to be equally unhappy at the end of the day. That doesn't mean that we have to go for a bad solution, right? But we need to see compromise at both ends



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of the spectrum. And what we heard during the last hour was to a great extent a repetition of arguments that we had heard before.

So please do come up with concrete suggestions how we can move forward. The next in line is Malcolm, please.

MALCOLM HUTTY:

Thank you, Chair. Earlier, I took the microphone to ask a specific question. Which of these models, if any, seek to provide a remedy, a legal remedy, for breaches of the bylaws, other than the new community powers created by WP1? You passed over that and, while you gave directed yourself to give answers and invited Becky and others to give answers to other questions that were raised, I didn't hear a reply to that question. It was not meant as rhetorical. I would like to know whether the empowered SO model as [inaudible] open by membership or, for that matter, as designator. I believe the answer no.

Would the empowered SO model underpinned by membership seek to provide a legal remedy for other breaches of bylaws? Such as, for example, for the ICANN failing to implement the IRP provided [inaudible] bylaws. If you can't answer that, if you don't have an answer, then please say so, and we'll look at it later.

THOMAS RICKERT:

Well, I mentioned earlier that we will need legal advice on the proposal anyway. So we will have to work on that. I'm not sure whether we have an answer on the spot. I would suggest that we

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collect further input from the group first, but Malcolm, I had already taken note of your question last time when you spoke.

The next in line is Matthew Shears, please.

MATTHEW SHEARS:

Thank you, Chair. Matthew Shears with CDT. We're here and we spent a considerable amount of time and effort in this process because ICANN's accountability is lacking. We are here because we need to enhance that accountability for the future. And we've generally agreed, through the various public consultations in the work of the group, that the community needs to powers and it also needs to be empowered to do so.

The value of Becky's model is that it has appropriately combined elements of the various models we've discussed to date. It brings us an approach that encourages the community to continue to work together, as we do, with the understanding that if the collaborative approach is exhausted, the community has an additional power to exercise.

We should be looking at this model and the other models that we've discussed so far to see which one allows us to exercise those powers. I agree very much with Jordan. Let's go through the process of understanding how we get those powers exercised and which model we've discussed to date gives us the ability to do so in the most appropriate and effective manner. Thank you.

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THOMAS RICKERT: Thanks, Matthew. Siva?

SIVASUBRAMANIAN MUTHUSAMY: Sivasubramanian Muthusamy from India, from Internet Society India Chennai. ICANN doesn't operate from the California legal environment. This is an environment that makes the directors and the executive already excessively cautious of what they say or do. The proposals to introduce legally enforceable community powers would make the situation far more complicated, even more complicated.

Another thing is that these proposals to introduce enhanced community powers, especially legally enforceable powers, presupposes that the community is balanced within. At the moment, it is not. So we have to proceed on this with caution. So far, I see that the proposals for accountability enhancement talks about processes, counter processes, procedures, counter procedures, powers, counter powers. You're taking ICANN closer to being the UN Central Assembly. Please be cautious. Thank you.

THOMAS RICKERT: Thank you very much. Next is Jonathan.

JONATHAN ZUCK: Yes. And I guess it's tough being so far down in the queue because a lot of get said. I guess I just want to reiterate that I think that it's a red herring to talk about trust in the context of accountability. I don't think they're the same thing or even related concepts.

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I think trust is extremely important. I think trust is a very valuable commodity inside of ICANN, and it's a lot of how it runs. But if we are, in fact, talking about accountability, the only real accountability is the ability to hold to account. And so that's why, and we've used different words for it. People have said enforceability. I think we've been trying to say authority instead.

Because, in theory, we're not trying to get to enforcement. As Roelof said, that would be a very bad thing if we ever got to that point, if we ever got to court. And as the lawyers and the [inaudible] quick to point out, it would be a mess to even figure out how to go to court. But I think the bottom line is that what we all believe to be true is true, that trust will prevail and that everyone will do what we expect them to do, especially with these new mechanisms in place, there won't be a trigger that would get the required consensus from the community, which historically has been a very difficult thing to do inside ICANN. That's another thing I think everybody continually forgets, is how hard it is to get consensus. And so what would need to be required for the community to have consensus would be very rare.

And so I think ICANN, for the most part, would continue as it does now but with additional accountability mechanisms in place, and only disruptions to normal course of business when something was serious enough to bring about community consensus.

And, as I say, that would be a very rare thing, and something worth listening to, if it happened. Also, I guess, in my last four seconds, want to reiterate that we do have a lot to do to improve the accountability

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of the community itself. I'm not sure that that that's something we're going to get done in Work Stream 1, but it is something that is worked on quite a bit inside the ICANN process now, whether it's through the use of metrics, as I've brought up a couple of times, whether it has to do with periodic participation to allow broader participation in the community. There's a lot of things that are in process to improve the accountability of the community. It's not as though these things are mutually exclusive.

But we do need to get Work Stream 1 done in order to have a transfer, and then we can keep working Work Stream 2. Thanks.

THOMAS RICKERT: Thanks, Jonathan. Kavouss.

KAVOUSS ARASTEH: Thank you, Thomas. I think we have to look, first of all, I suggest perhaps you look into the transcription and then try to find out comments and have some [inaudible] on that. [Inaudible] earlier that you asked for concrete proposal. Concrete proposal is that budget and operational and strategic plan does not require empowerment and so on. Because there are not at the same weight as the bylaws. So you could treat them differently. This is a concrete proposal.

Second one, you ask that we put clear [inaudible] for the Director of the Board. You elect them at the time of election, ask them, please give [inaudible] that you are in [inaudible] as soon as I want, sit down. This is not [inaudible]. Increase the requirement, increase the criteria,

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increase the qualification but not ask them to give a [inaudible] this is that I am at your disposal at any time that you want, I sit down.

This may not be constitutional. Thank you.

THOMAS RICKERT: Thank you, Kavouss. Chris.

[CHRIS]: This time, it is actually me. Thank you. I put my hand up again because of what you said about concrete proposals and so on. So I wanted to say a few things. To a certain extent, we're talking around ourselves here. I was interested in what Jonathan just said. There are two sides to the same coin. It'll never happen so it's okay to have the power. It'll never happen so we don't need the power.

The difference is that it will never happen so we don't need the power just means we can stay the same. It'll never happen so we can have the power means that we have to change. So the way that I look at it is, what changes am I prepared to make that I would consider to be acceptable?

As I've said in e-mail to Becky, I think that this proposal is very interesting and obviously there's a huge amount of work to be done that needs to be dealt with. But at the moment, I am leaning towards being persuaded by those who are talking about the budget and strat plan not being the same weight.

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And because I am leaning towards that, I am leaning towards looking at this from a designator point of view. The main concern I have in respect to the membership point of view is – well, there are a number, but one is the necessity to reincorporate ICANN as a membership organization, or at least make substantial changes to make it so. I thought that was a necessity. Maybe it's changed. And the second one is the statutory rights that once a member is sprung, that that member has.

And I think those statutory rights need to be examined in some detail. I think Alan is correct that, in fact, it is possible for a member or members to wind up to dissolve the organization under Californian law, and it is also, of course, possible to bring an action that Robin referred to. And once you're sprung, you're sprung. You're a member. There's no going back. Thanks very much.

THOMAS RICKERT: Thanks, Chris, Cherine was after Chris, and then we have Alan.

CHERINE CHALABY: Thank you. You asked for concrete examples. On Monday, the [inaudible] I talked about my concern regarding the budget proposal. And one of the unintended consequences could be budget paralysis, whereby members of the community can vote against each other [inaudible] so I'm going to give you the concern, and also, a real concrete proposal on how to resolve this concern.

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One of the concerns that there is a budget proposal that this will jeopardize the organization's ability to deliver on key commitments, such as contractual compliance enforcement, including issues related to enhanced consumer protection and enhanced IP and rights protection on other initiatives. The budget paralysis was also [inaudible] continued funding of the IANA function.

My proposal is that the commitment to fund the IANA function should be separated from the budgetary proposal that you're saying, and should be enshrined in the bylaws so that we have absolute guarantees of the continuing funding of the IANA function. Thank you.

THOMAS RICKERT:

Sorry. Thanks, Cherine. Everybody should hear that. I'm thinking [inaudible] with a muted microphone. Next is Alan. I think Jonathan, that was an old hand, so you might wish to lower it.

ALAN GREENBERG:

Thank you very much. If you want concrete proposals, mine is empowered designator. We talk... Sorry, I've lost my train of thought now. We really have, if we're going to have any belief in this organization, we don't have a lot of control over who the NomCom selects. So NomCom selectees are untrustworthy by definition, even though the people on the NomCom are our own people.

However, we select seven directors. We select them directly. If we do not trust one of them, in answer to Malcolm's question, to take action against the Board if the Board is violating the organization's bylaws,



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we are in real trouble. But if you don't trust them, then before you appoint someone, [inaudible] remember, the empowered AC/SO is now a legal entity. It can have a contract. Have a contract with your director requiring them to take action if the Board is violating its own bylaws. There's plenty of mechanism to do it. Thank you.

THOMAS RICKERT: Thanks, Alan. Theresa.

FADI CHEHADÉ: Sorry, I didn't have an Acrobat.

THOMAS RICKERT: That's Theresa with a lower voice now. Right?

THERESA SWINEHEART: This is Theresa.

FADI CHEHADÉ: This is Fadi. Thank you very much for laying out this model. I would like to bring a dimension that, unfortunately, ended up being very close to what I have to do at the end. At the end of this, Strickling and I will have to be in front of Congress. So please let us not forget that everything we're doing here will have to pass through a political context.

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And let me ask a very simple question. A lady from the GAC asked, would governments or the GAC have the ability to become a member? The answer to that, based on what we see so far, is yes. And now the senator is asking me in Congress. “Mr. Chehadé, would governments having a membership position at ICANN give them more power than they have today at ICANN as an advisory body?”

And my only answer will have to be, unless I wish to lie in front of Congress, which I won’t do, because there are also Congressional staffers in the room right now listening to me, the answer is, “Yes, Mr. Senator. They will have more power.” And he will ask me then, “Now will they have more power relative to others having more power today?” And the answer is still yes.

And he will say, “Isn’t one of the key conditions Mr. Strickling said, who’s sitting next to you here in Congress, that governments will not replace us or increase their role here?” And I will say, “Yes, I know the condition, sir.”

So hopefully, the staffers in the back will not hear this. And hopefully the Senate will not pay attention to this, but the reality, folks, is that they will, and they are, and we need to be very careful. We should not make change for change’s sake. Now, we have Work Stream 2. If we want to discuss things calmly, as Jordan was asking, as well, there are many questions, there are many things we still need to think through. What is necessary to transition ICANN from where it is to a state where it is independent of one government’s contracts?

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That's our goal. We all share it. Let us not upset a consensus balance we've had for years. And it distinguished us. It made us who we are, that we actually reach decisions by consensus through the good advice of our advisory committees, including the GAC. If that balance changes with this model, our political process just became nearly impossible.

THOMAS RICKERT:

Thanks, Fadi. Mathieu would like to respond to that, but I'm conscious of time. We will now definitely close the queue after Jordan. You will have noted that we're past the hour, past the top of the hour, so we already dropped the XPLANE part of our session, but I'd like to save us some time for concluding remarks.

So after Jordan, the queue is closed, and Kavouss, even though you attempted, I'm afraid I have to be strict on that.

MATHIEU WEILL:

Thank you, Fadi, for your thoughtful comment. I think, I know our charter. I know now the criteria that were laid out by the NTIA. And they're very clear. The organization must not be under the control of one or a group of governments. That does not mean that the place of government, if there's a community consensus, could not be shifted or changed.

So our goal – and I know it would be difficult, maybe difficult to address in Congress – but our goal here is not to prevent questions in Congress. Our goal here, and that's going to be difficult, look at the

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discussion we've had. I've always said I have three goals, and this group has three goals. Come up with a proposal, find consensus, make it simple to explain to Congress, and then we'll hand over to the ICANN Board, to the US Congress, for everyone to take their responsibilities.

But we should not impose ourselves any extra criteria than the ones that were laid out when we started. And I think this is extremely important. We need to find consensus in this group. We need to find consensus in the ICANN community. We need to get support outside of the ICANN community all around. And that starts with what Thomas was saying, and that a number of contributors actually started doing here, is adding ideas that we can take onboard to build this consensus, to say, "I was of the opinion of, but because I understand the other's perspective, I'm willing to shift. I'm willing to lower my expectation on this so that we get closer."

That's really what we're here to do, and I think it's extremely important that we stick to our requirements and try and fit something that we all can agree on. And I know there are many expectations outside of this. We will not be able to meet everything. And governments have difficult decisions to make, which part of them are theirs to make and part of them we will have to review.

But I think it's important that we focus on bridging the gaps between our views right now, and then we'll see where the consensus has led us. Thank you.

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THOMAS RICKERT: Thanks, Mathieu. Next is Ed Morris.

ED MORRIS: Thanks, Thomas. I'd like to indicate my complete wholehearted support for the Empowered SO/AC model. No reservations whatsoever. Let me tell you what's great about it that I haven't heard anyone discuss today. It's truly bottom-up. You guys aren't telling me and the NCSG, "You must become a UA, you must have a legal personality." That's our choice. That's bottom-up. That's what we're supposed to be about.

It is bottom-up with hard enforceability. So Fadi, when you go to Congress, if we take the "let's all be friends" model, some of us are going to be there saying, "There's no enforceability, it's just a bunch of garbage by this thing you don't understand called ICANN." It has hard enforceability. It's bottom-up. I won't call it Becky's model because I know she doesn't like that, but it's a thing of brilliance. And for those who devised it, thank you very much.

THOMAS RICKERT: Edward, I wasn't even prepared to switch my microphone on after such a short intervention from you. Next is Greg, please.

GREG SHATAN: Thanks. Greg Shatan. I also am generally in favor of the Empowered SO/AC model. I think it still requires further study and development. There are things, I think, we do need to clarify before I can give quite

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the same gusto and brio that Edward just did, but I am generally in favor.

I just wanted to respond very briefly to what Cherine said about the budget. I believe that our power that we proposed is the power to veto the budget, which requires a supermajority vote. So I think that the only way budget paralysis would occur is if the vast majority of the community rejected the budget. This is not the right, and I believe the budget actually goes into place unless it's rejected. We can look at those details. That's a soluble problem in either case, but I don't believe we have a positive power of approval and we can hold up the budget. It needs to be voted on and rejected. Thank you.

THOMAS RICKERT: Thank you. Next is Jordan, please.

JORDAN CARTER: Thanks. I just want to make three points that kind of riff off what Fadi's points were, that the first one is that the reason that we have to make changes is because the NTIA is ending its contract with ICANN. The contract with ICANN is a legally-enforceable framework for ICANN accountability. So if anyone is going to go to Congress and say, "Hey guys, you know how there's been at least a legal accountability framework here? We're going to replace it with a voluntary one." I don't envy you selling that.

The second point I'd like to make is that when you do get asked by a senator, "Is this model giving anyone more power?" Probably,

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because you're much more accomplished speaker than I am, you'll say it a bit differently to this. But the message you'll give to Congress is twofold. First of all, today, the SOs and ACs in ICANN have different kinds of powers.

GNSO, ccNSO, they make policy that the Board sort of stamps at the end. The GAC gives advice on public policy issues. Tomorrow, if this model comes in, they'll have all of those same powers. And the other powers that they'll have will be the same, as well, the accountability powers that we've talked about.

So does this give a government more power? It gives the governments more power. It gives the community, in every respect, more power, and that is the heart of the multi-stakeholder model that I am here to uphold. So please, can I urge you personally, and all of the senior staff, and all of the Board members of ICANN, people like Chris Disspain on staff. When you are having conversations with politicians and government officials, don't close the door to this model. Don't leap to conclusions for something that we started to talk about on Friday. Give us the space to turn it into a full proposal.

THOMAS RICKERT: Fadi wants to respond.

FADI CHEHADE: First of all, I was not giving you an answer. I was giving you a risk that you should consider. That's it. So don't accuse me of giving you an answer to a model. Secondly, you made a false statement at the

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beginning. The accountability that is in the contract with the government today has nothing to do with that. It's all about IANA. This is way beyond what's in the contract with the US government today.

Let's be clear on that. This is beyond that. And the political risks we're facing are real. You cannot ignore them, Mathieu, and you know that because you work for a government. So let's be very clear. There are political risks here, and if we simply say, "Oh, this is a perfect model," but do not take the political risks with that, then we risk the transition and we take that responsibility with it.

THOMAS RICKERT:

Thanks, Fadi. I saw a few of you raising their hands, but you will remember that I had closed the queue after Jordan, and I think we need to end the discussion here. We will have another session tomorrow where we will continue the conversation. But I would like to take the remaining minutes – hopefully I'm not going to take all of them – to take stock of what we've discussed and suggest a way forward.

I think that there is a risk being seen both in the... Let me discuss this without mentioning any models. But there is a fear that we might have unintended consequences stemming from derivative lawsuits and statutory rights, which might empower individual groups beyond what we have defined as a conclusive list of community powers.

So I think that's something that we need to take a look at in order to ensure that an empowered community cannot bypass the processes



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that we have defined, i.e., that none of the groups can short-circuit and move directly to enforcement mode, if you wish, without having proper consultation and consent in the community.

Also, what we've heard is that we need to reinforce our commitment to discuss "watch the watchers," the accountability of those that exercise community powers. I think that proved to be essential for getting compromise or consensus in this group. Also, I think that the two camps, if you wish, those that want enforceable powers and those that want to base a model on trust, are almost irreconcilable.

I heard little willingness to compromise on these two ends of the spectrum. There was some movement, and still I'm not sure whether if we took what we had, if we would not even get rough consensus with one of the models. But it is our aim not to lose anyone behind, but to get consensus that everybody can live with, even though not everybody might be fully satisfied with what we're suggesting.

Which leads me to an observation that a hybrid model might still be the way to go. So I think that this idea of using a hybrid model that we discussed last Friday got traction because we would not switch to authority immediately, but we would retain the current structure or maintain the current structure, and start with a trust-based model.

The question is, then, where do we move from the trust-based status quo and where do we move from this trust-based status quo? So the authorities [inaudible] or the authority mode needs to be further defined, and I heard some movement, for example, from Kavouss, from Roelof, and from I think it was Chris, who said that we can maybe

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sacrifice some of the authority for some of the powers if we just ensure that the ultimate powers in order to make an impact or call the Board to reason are kept. Right?

So let's discuss that more. Where would we go in case we switch to a more formal mode? And that is not necessarily membership. That is maybe a variation thereof. Give that some thought in preparation for tomorrow's meeting.

The other thing is, how do we connect these two worlds? There was the question of would it be sufficient for one group to switch on and then there's no point of return? So we might consider having some threshold, some arrangements whatsoever whereby we would need a certain consensus or threshold inside the community to switch from one level to the next. Because I think we haven't thought about moving from one stage to the other enough. And maybe by finding good solutions for these two areas, we can – again, and this is something that I said last Friday – take the best out of all worlds to move forward.

My final observation is that we need to think more about where the power rests and who should have what powers, and that is the point that Milton made. We haven't discussed enough the granularity of votes at the moment. We put votes into the SOs and ACs. I'm not precluding that we need to make a change there, but at least we need to give it some thought and come up with a rationale why we put the votes where they currently are in our draft proposal.

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And lastly, who should have what powers? Meaning, how do we deal with the statutory powers? And while we need to interact with legal counsel to see whether such statutory rights can be waived or whether they can be suspended or whether there are other forms to ensure that there's no excessive use of powers beyond what we intend to equip the community with. I think we need to go back to our e-mail. We did get an inventory of statutory rights that we could take a look at, and maybe the members of the group and the participants and the observers could actually take a look at the list and say where their anxiety comes from.

I think the anxieties don't necessarily rest with a certain terminology, but there are real-life scenarios behind it. And Cherine, I very much applaud you for coming up with a suggestion of putting the budget question for IANA functions into the bylaws, put it there, make it fundamental, right? So that we have this weakness of the designator model or one of the weaknesses of the designator model on the table, and that maybe allows us for revisiting the requirements and compromising with the set of requirements, the revisited set of requirements, and after we've done a full analysis of the legal implications, come up with an implementable solution.

I think I should pause here. I would like to thank you very much for a very informative discussion. I think it was important for everybody to make their point, and we might not have too much tangible results, but I think we're now best placed to have a constructive discussion tomorrow and make good progress tomorrow. Thank you, everybody.

[END OF TRANSCRIPTION]