SINGAPORE - CCWG-Accountability Engagement Session
Wednesday, February 11, 2015 – 09:45 to 11:15
ICANN – Singapore, Singapore

LEON SANCHEZ: Good morning, everyone. Welcome. Welcome to this engagement session, enhancing ICANN accountability.

We will be going through different points on accountability. I'd like to welcome, of course, everyone present here in the room, but also our remote hubs. I -- they have told me that we have remote hubs following us from Ukraine and Canada, so you're very welcome, remote hubs, to participate in this session as well.

May I remind all present to state your names when speaking because we have a transcript and we also have interpreters, and this makes it easier for everybody to follow, track, on what everybody is saying.

So there will be a session, of course, of questions and answers with regards to all the topics that we will be discussing, and we would like to also ask you to keep it short and focused on the substance if you have any questions.

So with no further delay, I'd like to turn to my co-chair, Thomas Rickert. Thomas?

THOMAS RICKERT: Yeah. Thank you very much, Leon. My name is Thomas Rickert, and I am the co-chair from one of the chartering organizations, the GNSO.

My colleague, Leon Sanchez, is the ALAC co-chair. And in a minute, Mathieu Weill from the ccNSO will come and join us.

As Mathieu -- as Leon said, we're going to have a Q&A session, but before we go into the Q&A, we're going to give you an overview of what we did so far, so that everybody can understand the status quo of what we're doing, and we've prepared a slide deck to do that, but for those who haven't followed this discussion from the very beginning, I would like to reassure everybody of what we've done as precautions, basically, to make sure that we really take a holistic view at things.

At the outset, we have split our working group into four subgroups, the first of which has created an inventory of existing ICANN accountability mechanisms.

So basically, we looked at what is already there. And the purpose of that was to ensure that we have a full understanding of ICANN accountability to date and that we can build on that existing repertoire of accountability tools.

The second subgroup has dealt with community comments that have been received during public comment periods that ICANN has received after the U.S. Government has made its announcement last March.

There have been public comment periods where members of the community have voiced concerns and made suggestions as to what needs to be done in order to improve ICANN accountability, and it was the group's view that we should have a full insight into what the community wishes were, because as this is a community-driven,

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bottom-up, multistakeholder approach, we are well advised to build on what the community has already come up with.

There's a third subsection that has worked with the interface to the CWG, to the naming community, in order to ensure that the accountability-related topics that they are discussing are known by our group but also to extract those areas which have an impact on our work.

As you well know, the work of the CWG and the CCWG are interdependent and interlinked, and we've heard a couple of comments earlier this week that there's a desire for those -- for the two groups' work results to be more intertwined, even, but we have charters that we're working on and these charters are very clearly demarcated in terms of our mission.

So we're both doing our work, so the naming community deals with technical matters but also with accountability relating specifically to these functions, while our group is chartered with looking at ICANN accountability from a broader perspective.

But nonetheless, we're having co-chair coordination calls on a weekly basis so -- and there is a correspondence, written correspondence, between both groups. So rest assured that we take all the necessary precautions in order to ensure that we're fully updated on each other's progress and that we're making maximum use of potential for collaboration.

And the fourth area, fourth subgroup that we have set out -- set up at the beginning dealt with contingencies. So we felt that it was important to ensure that we create an inventory of contingencies that we need to

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safeguard against. So that was what we did before, so what we have so far is actually the inventory of existing accountability mechanisms, we have an inventory of public comments received, we have a list of actions of interaction with the CWG, and a list of contingencies.

So we amalgamated that into a document which is available on the working group's wiki, and the wiki is linked to on the last slide, so I recommend you take a look at that. And in that document, we also make a problem -- we explain the problem statement, what are we actually talking about, we are scoping the issue, and we are making reference to the two work streams that you would surely have heard about, the first of which being Work Stream 1. I.e., that work stream deals with accountability mechanisms that need to be implemented or committed to within the time frame of the IANA stewardship transition. While Work Stream Number 2 addresses accountability topics for which a time line for developing mechanisms may extend beyond the IANA stewardship transition.

Our group is consisting of more than 160 people. So we have 25 members, as we call them, and 136 participants. And what's important to understand is that there are chartering organizations for this cross-community working group and each of these chartering organizations sends five members, so this is why -- you know, since we have five chartering organizations, we have 25 members, and there are 136 participants who are not directly linked or have the liaison function with their respective chartering organizations, and we have almost 40 observers.

We can say that the turnout on our weekly telephone conferences is very positive, so there's huge interest in what we're doing.

We have quite good regional representation, although we would very much like to see more participation, particularly from Africa and Latin America.

In the document that I've referred to a little bit earlier, we are coming up with definitions for the accountability topic, so we are talk- -- speaking to the purpose of accountability, which is to ensure that there's due process, that there's compliance with applicable legislation, that we meet to certain performance levels and security, and that we ensure decisions are for the benefit of the public and not particularly for a set of stakeholders.

We can't go through everything that we've done in terms of defining the issue, to be clear about what we're doing, but the main topics that we are dealing with are transparency, consultation, checks and balances, review, redress, and independence.

Also, there are huge questions, and we've heard that in earlier discussions that interested parties have asked us, to whom we would be accountable, and that's actually something that we've also spent quite some time on getting our heads around, and we have defined the stakeholders that would be important and relevant to accountability work.

So we have affected parties, and amongst those we have those who are directly affected and we have those who are indirectly affected, and if

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you go through the -- through the list, you will potentially find your own group that you're representing or find your role as an individual.

On this slide, you know, we see the parties that affect ICANN, and -- on the last slide we've seen the parties affected by ICANN and here we see the parties that affect ICANN, and again, we have a split between those that are affecting ICANN directly and those that are indirectly affecting ICANN.

With respect to contingencies, i.e., what the situations are for which we need to be equipped, we have come up with a set of five main topics. We should say that there are more contingencies that we -- that we found, that we identified, more specific contingencies, but during a face-to-face meeting, a two-day face-to-face meeting that we held in Frankfurt in January, we thought it would be a good idea for everybody to easier understand what the issues are that we have to deal with to come up with main topics.

So these main topics are: Financial crisis or insolvency, it's failure to meet operational obligations, it's legal and legislative action, failure of accountability, and failure of accountability to external stakeholders.

So basically, these are the topics of the worst things that can happen.

So let's say the domain industry is doing very badly. There's almost no registrations taking place. That would result in ICANN's income to decrease, and that might lead to a situation where ICANN has a hard time keeping up their operations, unless necessary precautions are taken to sustain the operations, and so you have the financial crisis as a contingency topic, and we can use exactly those contingencies to apply

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stress tests, i.e., to see if there's something bad happens, have we found the right mechanisms and would these mechanisms that we've identified and developed be robust enough to safeguard against a risk turning into a true crisis for the organization.

But we will get to all these points a little bit later on when we -- when we open it up for discussion.

Now our group is split into two subgroups that are dealing with what we call Work Stream 1. And Work Stream 2, I'm going to speak to in a moment. But the idea is that we would actually -- Work Party 1 and Work Party 2. I'm sorry. Now I'm starting to confuse myself. And rest assured that for our meeting for tomorrow, we've come up with a new idea to name this so that we don't confuse ourselves.

[Laughter]

THOMAS RICKERT: But this just happens in a world of endless acronyms, doesn't it.

So we have two topics, one of which is community empowerment. You know, we try to keep it as simple as can be for everybody to understand what we're doing and to be able to follow our work. So I tend to say beauty is not if there's nothing you can add to it, but beauty is if there's nothing you can remove.

So basically the main topics are that we discussed what requirements there are for the community. You know, with this effort, particularly for Work Stream 1, i.e., the accountability mechanisms that need to be in

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place prior to the transition, we thought that, okay, how can we replace the end of the historical relationship with the U.S. Government, which has been perceived as a stick the U.S. Government can use to beat ICANN in case ICANN chooses not to behave, and what can replace these -- this stick.

So we've asked about the requirements that we -- that need -- that the community has to replace this historical relationship, and we thought that one of the -- one of the main themes for that would be to empower the community to take certain steps, and that would be the approval of the strategic plan.

So in other words, in case ICANN chooses not to work on a strategic plan or on an inappropriate strategic plan, the community would refuse to consent to it, right?

And that's quite a powerful -- a powerful tool that the community would have.

Same would be for the business and operating plan as well as for the budget. To ensure that there is solidity and viability in ICANN's finances.

Approval of proposed changes to the bylaws.

There is a lot of fear that once the U.S. Government has disappeared, ICANN might wish to mission-creep into other areas where it's not -- where it shouldn't work, and that would need to go into bylaws, and therefore if we ask for bylaw changes to -- to be made only with the approval of the whole community, we can safeguard ICANN's board to adopt bylaw changes that are not in the interest of the -- of the community.

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Then we need to do something if there is action that is contrary to the bylaws.

So we need to be able to refer certain actions back to the board and ask them to reconsider, if the community feels that what ICANN does is contrary to the bylaws. I.e., that's a compliance issue.

Then we need to have a mechanism to establish and reach consensus on community opposition to board or staff decision, and referring it to the ICANN board for reconsideration.

We need to have a tool to, one way or the other, invalidate decisions that have been made by the board. So if they do something immensely stupid, according to the community, then the community needs to have a tool to give the board the chance to rectify or redo a decision so that it is in compliance with the community's wishes.

And then there needs to be the possibility to remove one or more members of the ICANN board, a recall mechanism, for the purpose of ensuring that if review/redress don't work -- i.e., if the board proves to be immune against community wishes, if it is not willing to reconsider and then redo decisions, or if the community feels the board has been captured by a certain interest group -- there must be the possibility not only for the organizations delegating individual board members, but also for the community, to be empowered to dismiss board members.

And with this and with -- and if you add various review and redress mechanisms to it that I'm going to speak to in a moment, the community has the tools at its fingertips to shape the organization in a way that is consistent with the community's wishes. I.e., with that, we

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can safeguard that the community or that ICANN doesn't get out of control and that there is no disconnect between what the board -- i.e., the ICANN as a corporation -- is doing versus what the community is doing.

Speaking about review and redress mechanisms, there needs to be review and redress. Now, this is a term often used, so we've spent some time working on definitions of what exactly we mean by review and redress, and we need to further flesh out where review and redress takes place.

To give you an example, if there is a decision by the ICANN board that the ICANN meeting should be located in Singapore and not in Dublin, there are those who would like to see this meeting taking place in Dublin rather than in Singapore, I think that should not be a reason to dismiss the board, right?

So we need -- depending on the subject matter concerned –

UNKNOWN SPEAKER: (Off microphone.)

THOMAS RICKERT: That's the only reason most of us --

[Laughter]

THOMAS RICKERT: Depending on the subject matter concerned, you need different review and redress mechanisms with different escalation paths.

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We just bring up something.

So we need to talk about standing for review and redress mechanisms. We need to work on -- we will work on standards for review.

You know, there must be a process which is transparent that must be accessible. It must be affordable in terms of costs. We need to talk about the composition of the -- of those that -- those committees that take decisions for review and redress. And we need to think a little bit about how to implement various review and redress mechanisms.

But there -- but there -- the group is in agreement, or at least there was no disagreement, that there's no one-size-fits-all accountability mechanism in terms of review and redress. We're cognizant of the fact that different types of areas need different types of expertise, so it would be a stupid thing to ask community representatives to discuss certain operational issues or certain intellectual property-related issues or other matters concerned, so we need -- we just need to make sure that we have a mechanism that enables ICANN to find the right people with the right -- with the right mechanisms to take the proper decisions, if and when this is needed.

We can skip the time line because that's something that we're going to do at the end of the session.

This is an important link for everyone to take a look at because that's -- that's the wiki.

You'll find there are correspondence in there. You'll find the papers that we produced in draft form. So the work -- the interim work results that we've produced. And we will keep updating these.

So if -- for example, if you look at the document that we've discussed a little bit earlier spelling out the definitions of accountability, to whom we're accountable and so on and so forth, this document is currently with the independent advisors and one of those is actually in the room, Jan Aart Scholte, who is -- welcome to the session.

So the independent experts that have been found by the public experts group, they are currently looking at this document. Some have. And they're providing feedback. And once this feedback has been received and looked at by the whole group, we might likely update the document that we've prepared and publish an updated version.

So this is just a pitch for everybody to take a look at the wiki every now and then to see what progress we have made.

And I think with these introductory remarks, we can open it up for the Q&A session. And Leon wants to add something. Please do.

LEON SANCHEZ: Yes. Thank you, Thomas. This is Leon Sanchez.

Just to add that as Thomas said, this link is very important for everyone that wants to follow the work we're doing, but also for those people who would like to actively be involved and participate in the group.

So the -- there is information if you want to join the work of this working group. You can send an email to the address that's stated in the wiki page and you can have yourself added to the group as a participant.

So I'll turn now to Mathieu.

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MATHIEU WEILL: Thank you very much. My name is Mathieu Weill. I'm the CEO of AfNIC, the manager of .FR, and the ccNSO appointed co-chair of this cross-community working group.

We're here to listen and answer if there are questions, but mostly listen, so we'll come to the substantial part of this engagement session where you have the floor.

I'd like to set the scene a little bit for that.

We have two standing mics. I will see this one as for questions, this one as for follow-up remarks, so please queue first on the one which is on your right.

And we will try to divide the question-and-answer sessions into topic sub-sessions, so we will start with a short time on the definition and scope questions, which I will have the pleasure to chair, and we have on the panel all the relevant expertise to provide answers, if need be, but also we will be taking notes of your inputs.

So the definitions will be the first one.

Then we'll go into the two working parties -- community empowerment first, review and redress second -- and then we'll go into the contingencies and stress tests which are absolutely essential to our work.

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And in the end, we will go back to the time line and the next steps for everyone to have a clear view on that.

So I'd like to invite now for questions and remarks regarding the scope of the group, definitions we've introduced, the purpose of accountability, to whom ICANN should be accountable to, who are the stakeholders, and I am welcoming questions.

Maybe we can go back to slide 2.

Any questions? These are perfectly clear.

And I should know that -- did we mention we had the clock on? Two minutes. That's a clock we will be using both questions and answers, just for the record.

So I see a queue forming.

UNKNOWN SPEAKER: We're done.

MATHIEU WEILL: That was the most efficient question-and-answer session ever. I know we can count on Sebastien.

There is no follow up until we have a question.

SEBASTIEN BACHOLLET: Hello, everybody. I did not want to be the first one here because I don't think it's for the working group to intervene here because the aim of this session is the input of all the participants. I just wanted to say even

though I'm the only one who disagrees with what has been proposed, I don't think we are there. What Thomas read were just work streams. It is not that we decided this is what's going to be implemented. The list that were given to us, that if we want to do something more complicated, that's going to become very difficult. In this organization, there is a point where we are going to have to ask ourselves the question.

The efficiency can also be taken into account, and maybe you can reduce the complexity of the system instead of increasing it. Sometimes we should just trust people.

I'm very surprised. All the members of the board, all of them, are elected from one way or another by the community and then we want the community to have a power over the community -- over the board. What -- I have a serious problem. I cannot understand what do we want to get? Do we want something complicated, impossible to implement? Or do we want to find a solution that is simple that can allow everybody to find themselves in a clear way? Thank you very much.

MATHIEU WEILL: A quick reply, Thomas?

THOMAS RICKERT: Yes. Thank you very much, Sebastien, for a very good question. For those that haven't followed our internal discussion, there has been debate with Sebastien earlier, and I guess there is the fear that we might come up with a construction that is very complex and that would

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be -- that would not only impose implementation issues but that would potentially slow down the organization's efficiency to a halt.

Just to be clear, I mentioned during my initial remarks that we have discussed requirements for empowerment. We have not talked about how to implement those. And the list of contingencies, the list of community empowerment requirements are topics we took from the community. So this is nothing that the working group or even the working group co-chairs have developed in isolation. This is a direct and immediate response to what the community wished us to do.

I thought we tried to go about with this as you would do in software development. You would establish the current status quo. Then you would establish the requirements. And then you would move to the implementation phase. And once you have a full understanding of the status quo and the requirements, then it's relatively easy to come up with an implementation model together with experts, in this case legal experts.

So our plan is to come up with the most simple model for implementation. But having said that, we don't yet have an implementation model. So I think it's too soon to criticize our approach for complexity given the fact that we don't yet know the level of complexity.

We know some of the parts of the puzzle, but there will be few. There don't necessarily need to be a lot of parts to the puzzle.

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MATHIEU WEILL: Thank you, Thomas. I think you skipped the clock. You are a very lucky man.

[Laughter]

And we'll make sure we get concise answers as well as questions.

Quick follow-up, Sebastien, in French, I guess.

SEBASTIEN BACHOLLET: ---

MATHIEU WEILL: I think the point is well-taken. Is it a followup, Keith? Please.

KEITH DRAZEK: Hello, everybody. Keith Drazek with VeriSign, Registry Stakeholder Group Chair, and a participant in the group as well as a member of the ICG and ICG liaison to the accountability CCWG.

You know, I think Sebastien actually raises a good point, and it may be premature to, you know, determine that we've reached any recommendation because we have not.

But I think his point about the board being, you know, sort of put in place by the community is accurate. I mean, the board members, whether it's through the Nominating Committee which is a community process or, you know, through the various stakeholder groups and SOs and ACs having their -- not representatives but the board members that come from those communities, that's all very true.

But currently there is no ability to challenge a board decision, that it has any meaningful hooks, if you will.

And I don't think we can simply wait for an election cycle to go through the process in a number of years to ensure that the community has the ability to challenge a board decision. And I think that's what we are trying to do. I don't think in any of this process we are trying to replace the board with a completely new board. I don't think we're -- and, again, I may be getting ahead of myself because we haven't come up with these recommendations. We're still working through that process.

But I think it is just really important to note that it is simply a matter of making sure the community has the ability to challenge a board decision and to have confidence that the board is truly accountable to us on a day-to-day and a week-to-week and a month-to-month basis.

And, again, I think the idea is to not replace the board in any way but simply to give us a mechanism or mechanisms to ensure they remain accountable. Thank you.

MATHIEU WEILL: Do you really want to try a short answer, Cheryl?

CHERYL LANGDON-ORR: It is Cheryl Langdon-Orr for the transcript record.

Keith, you have raised some important points. But I think we have to -- while we are thinking about remembering, yes, the Nominating Committee does put members on the ICANN board. It has no right for recall.

MATHIEU WEILL: Thank you, Cheryl.

So we'll go to a question from the Canadian hub. Yes. Hello? Welcome.

REMOTE INTERVENTION: Hello.   My name is Murray McKercher (phonetic) from the Canadian hub.   Not a comment and a question, but I know Leon is there and Cheryl is also at the table. And I had the pleasure of being involved with the At-Large Summit in London and we created a number of recommendations for the board and the process that we went through to call the massive information that we wanted to present to the board was a useful exercise.   I just wondered whether that process, and maybe Leon and/or maybe Cheryl could comment, is one that could be used in the accountability process. Thank you.

>>MATHIEU WEILL: Thank you very much. Just a quick answer to the remark is yes, that's been part of the analysis and inputs we've taken into account both in existing mechanisms as well as existing input from the community. There's more than 70 different mechanisms and comments that were analyzed, and that was one of the work areas that Steve DelBianco on my right has been leading.

I think we will have this last question on the floor for definitions, and then we'll move to the next item. Please?

UNKNOWN SPEAKER: I'm just a newcomer. And it's the first time of my fellowship. And I got the idea of the accountability from your presentation. And from my perspective, I'm thinking: How can you improve the accountability process or procedures as simple and easy as possible for the users because normally when I got some questions, how can I get the simple procedure -- precise procedures to ask the accountability of ICANN. So that's my question and also my comments. Thank you.

MATHIEU WEILL: Yes. I think this is a requirement that we have, that it has to be simple, affordable, and accessible to end users as well as industry players. So that's well-covered in our initial expectations. And, yes, it's too early to be able to demonstrate whether we are fitting this, but it's part of the requirements. Thank you very much for this input.

With this, I will suggest we move to the next question-and-answer session. And I will turn to Leon for the community empowerment items.

LEON SANCHEZ: Thank you very much, Mathieu. This is Leon Sanchez. Well, as Thomas explained -- If we could go to slide 10, please -- one of the work divisions we're implementing at the moment in the working group is working party 1 which has been led by Rapporteur Jordan Carter. The objective for working party 1 is to find ways or examples in which that we can empower the community to, in turn, trigger this accountability mechanism as needed.

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Like, I know Thomas has already gone through this, but one example would be maybe the budget and the budget approval or maybe invalidating a decision from the ICANN board. That doesn't fit the needs of the community. And I would like to now turn to Jordan to get an update on the work they've been doing and more detailed view into what's going on at this stage.

So, Jordan, could you please give us an update.

JORDAN CARTER: Yep. Thank you. Good morning, everyone. My name is Jordan Carter from Internet NZ. Sitting here with my hat on as the rapporteur for working party 1, empowerment. I will try to keep this very brief.

What the working party has done, and so far having been formed about two weeks ago, is to look through the inventory -- as Thomas I think has already explained, looked through the inventory of suggestions around accountability that are about community empowerment. You can see on the slide a kind of summary of what those are. And what we've basically done is taken all of the suggestions, ones that might need to be done in terms of work stream 1 before the IANA stewardship transition is finalized and work stream 2. And we are considering them all together because we need to make sure that we don't forget to do something we would need to do before the transition to allow possible changes to happen after the transition.

And what we've done is we've pulled these all into a document that sets out what these community powers might be, the things the community should be able to do. Now, I'm pretty sure -- and staff could maybe

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nod, that that document is available off our Wiki space. It's on the Wiki? The working document?

And the second part of that document, after dealing with the powers, looks at the mechanisms or tools you might use to implement those powers. And that's all we've done so far. We've had a quick and formal meeting here to develop it.

And I think in my perspective as rapporteur, the feedback that would be useful to get is whether you think there are particularly good or bad points about the ones on the slide or in the document and if you think there are any gaps.

Because while there has been a lot of community input already into making specific suggestions, I think we remain open for more suggestions as we work through this document.

Our job as working party 1 is by the end of March, by the time of the face-to-face meeting of this working group, to have a clear idea of a consolidated set of proposals to discuss at the working group level, at the CCWG level, that will deliver an improvement to community power in the ICANN community. So I don't think I need to say anything more than that at this point.

LEON SANCHEZ: Thank you very much for that, Jordan.

I'd like to open the floor for questions and comments regarding working party 1, empowerment. And the question I would like to pose to all of you is whether you see this list complete? Or have we missed some

important points or powers that we should be looking at that are not already into this list?

So we have Alan Greenberg on the queue.

ALAN GREENBERG: On? Is it on? Yeah, now it is. Okay. Thank you very much. Alan Greenberg. I am also a member of the CCWG.

Two clarifications. Number one, when Thomas was talking, I think it was Thomas, he said that these various empowerments could address actions of the board or in some cases inactions of the board. And those bullets don't reflect that. I presume that's just an omission in the bullets, not in the plan, number one.

Number two, several of those talk about reconsideration. I note with pleasure it's a lowercase r because the formal current reconsideration plan which only looks at whether policy was followed has been severely criticized. I assume you are talking about some future reconsideration. Thank you.

LEON SANCHEZ: Thank you very much, Alan.

Do you want to add anything to that, Thomas? Or do we have any other questions or comments? Yeah.

THOMAS RICKERT: I can briefly respond, but I insist the clock being turned on for me now.

[Laughter]

I've tried to encapsulate that in an easy formula when I presented this in other fora. It is basically we need to make sure that we can call the board to action in case of activity -- inactivity. We need to be able to influence the board in case they've taken the wrong decisions. And we need to have an opportunity to dismiss or recall board members if need be. So these are the main, main high-level topics that we're dealing with.

ALAN GREENBERG: For clarity, you said the right words. Some people will only look at these slides, and I'm suggesting you may want some minor tweaks to them.

LEON SANCHEZ: Please, Steve.

STEVE DELBIANCO: Thank you. Steve DelBianco with the Commercial Stakeholders Group. Alan, I wanted to respond with respect to this motivating action where there is board inaction. A number of us -- and I realize there is no consensus as yet. But a number of us were nervous about empowering a community group of members or a permanent cross-community working group with the ability to create a prescription for board action and thereby skipping or bypassing the bottom-up, consensus-driven policy development process.

However, there is a way to preserve the community's will and still prod into action a board that is not moving.

So the document that Jordan referenced earlier has within it a power of the community with a supermajority of its representatives to force the board to implement a previously approved, bottom-up consensus-driven policy development process such as the ATRT, the Accountability and Transparency Review Team recommendations, or for that matter, recommendations that arose through any of the review teams. If they've been approved and they've been sitting idle for three years, the community ought to be able to force the board into action to implement that item. So I hope that will help for some of it, but I do want to avoid having us create our own policy from the top down.

LEON SANCHEZ: Thank you very much for that, Steve.

Now I would like to go ahead with the next agenda item which is review and redress. And I would like to turn this to Thomas.

THOMAS RICKERT: Yes, and for that group we have a rapporteur, which is Becky Burr. And I would like to give Becky the opportunity to speak to this for two minutes.

BECKY BURR: Okay.

[Laughter]

All righty. Am I going to have another two minutes to talk about the mission core values?

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Before we get to work party 2, I just want to bring everybody's attention to a document that's also on the Wiki, which is just a strawman of an attempt to articulate ICANN's mission in a way that can -- its behavior can be measured against.

We talk a lot about, as both work party 1 and work party 2, important issues of keeping ICANN -- limiting ICANN's work to its stated mission. So one of the first steps is to make sure that we have community agreement on the stated mission and, indeed, to have agreement on a limited set of important principles about the way in which ICANN carries out its mission such as preserving stability, security, interoperability and openness, treating people -- implementing policies in a consistent, fair, and neutral manner and the like.

The document that is up there is just a discussion piece. This is really, I think, a fundamental aspect of our work that if we get it right will be extremely helpful for the various mechanisms that we're talking about. So I'd like to encourage everybody to take a look at it and make suggestions, disagree with it, whatever.

With respect to working party 2, we are looking at current review and redress mechanisms including the existence of an ombudsman, the reconsideration process. I don't know if that's with a little r or a big R, independent review and looking at enhancements, improvements, changes to those things --

[Timer sounds.]

And we'll be working very closely because some of these things appear on both of our lists.

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We are also looking at new accountability tools. There's been a suggestion about the kind of -- the ability of the ICANN -- of the community to convene certain processes, standing in the various processes that exist or new processes.

So all of those are being considered. I very much consider the list a work in progress. It reflects the inventory that was put together but is by no means final and written in stone.

And we'll also be looking at, again, coordinating with work party 1 the review processes that exist, the periodic reviews, creating a standing ATRT team, institutionalizing the Affirmation of Commitments principles into the bylaws and other kinds of periodic reviews including reviews related to transparency and openness of ICANN's operations.

It sounds like a long list. It is sort of a long list. Again, the goal is to keep it very simple, to make the tools for review and redress accessible appropriately and easily and affordably to the community, as well as individuals and entities affected -- directly affected by either ICANN's actions or inactions.

THOMAS RICKERT: Thank you very much, Becky.

And with that, we'd like to open it up for questions or comments. Looking at staff, do we have any questions from the remote hubs?

We have a question from the table.

Steve, please.

EN

STEVE DELBIANCO: Steve DelBianco.

In improving the review and redress mechanisms, there's the question of who is challenging the board and then who gets to decide, and what we have striven to do is to say that the community ought to have standing to initiate one of these processes and the community ought to be able to have access to the resources to pay for the arbitrator in the case of an independent review, but how do we differentiate between improving these processes for a supermajority of the community versus making it too easy for a single aggrieved individual to use these new and improved and more accessible challenge mechanisms to bring the organization to a halt and to stop the implementation of what would otherwise be consensus supported items?

That's one of the things I've been thinking about over the last couple of days.

THOMAS RICKERT: Becky, would you like to take a crack at it, or shall I?

BECKY BURR: Well, I think that the key is -- there are two keys.

The first is the standard, which is why I strongly encourage people to look at that document. If we correctly set ICANN's mission focus on the -- that the main point of accountability and review is to ensure that ICANN stays within its mission and that it carries out its mission in accordance with a standard of behavior that is spelled out and clear to everyone, that -- that is one hope for it.

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The other is I think that some of the problems we have had with the independent review process, for example, is that it doesn't ensure that all affected parties participate, and this was something that ICANN staff pointed out to me. So somebody may have been affected by an ICANN decision or inaction, but when you go to consider that, other -- the community may have been affected in a different way.

And so not all of the parties to that -- to the dispute or discussion are around the table at some point. So that's one important thing.

And second, critical to this is to identify practical means to ensure that really frivolous cases don't occupy the time of the panel.

And so that is work to be done. It's critical to the success of this. You know, if I could say that -- one of the things that I have criticized ICANN most aggressively for is the change in the bylaws regarding a standard for the independent review. I think that that -- those changes, if -- in some measure were designed to cut down --

[Timer sounds]

-- on frivolous cases. I think we have to find better ways of doing it, but that is a critical piece of our work.

THOMAS RICKERT: Thank you very much, Becky. Any further interventions?

I don't see any here. Looking at staff, there don't seem to be any at the remote hubs.

And with that, we can move to the next topic. I.e., the contingencies.

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Mathieu, please.

MATHIEU WEILL: Thank you very much, Thomas.

Contingencies is the part where it gets funny because it's basically anything that can turn wrong.

So this is really the underlying reason why we are working on this.

So to introduce this a little bit further, I will turn to Cheryl for -- to explain exactly how we're proceeding, and then we'll have -- we'll get you through an example.

And what I'm asking you to think about is what exactly is your worst nightmare with ICANN, in terms of accountability, so that we can check whether we have all these contingencies already in place in our work or not.

So Cheryl.

CHERYL LANGDON-ORR: Thank you, Monsieur. And Cheryl Langdon-Orr for the transcript record.

And the work team -- sorry, the work party that we're engaged with is called STWP, so it's called stress test work party.

I've noticed chatter in the Adobe Connect room about how unlikely and extreme some of these stress tests are. Well, that's fine. It is, as Mathieu just said, your worst nightmare scenarios. But they don't have to be just your worst nightmare scenarios, however. They can be some

realistic ones as well. And what I want to take you through briefly -- and unfortunately, I'm not seeing it reflected on the Adobe Connect room, so my apologies to those of you who are remote, but we're looking at the wiki page for accountability, if you're in the remote participation in the hubs.

And of course while I have that front of mind, our wiki page is a place where any of you -- and we encourage any of you to engage with us. So the comments section is at the bottom of the page. Please, look at these stress tests as we're going through them and working through them and contribute as and if you will.

I'll also suggest that as we've heard about the five primary categories of the contingencies -- and if we could just scroll a little bit more now, it was mentioned earlier on that -- the financial process of -- or insolvency, the failure of meet operational obligations, legal and legislative action, failure of accountability, and failure of accountability to external stakeholders.

These grab-bag categories were developed in our Frankfurt meeting based on the then 25 stress tests that had been contributed.

The list for those stress tests is not closed. If you have another stress test, give us a 28th, a 29th, a 304th. We will, we assume, probably be able to put them into these major categories and we will go through the exercise of running them for you.

So please be very clear. This is not a point where you cannot contribute. We desire your contributions and the wiki is the place to do that.

Scrolling a little bit more now, because we -- we want to see where the rubber hits the road here, very briefly this is -- this is sort of a tracking document to show you all where each of the contingent -- each of the stress tests that we are getting access to are plugged into this model, and any new ones you come up will be. And if we can just go to the top of Page 3 -- we just need to scroll up a tiny bit. Thank you. Hold it. That's -- no. Down. More. Keep going. There we go. Thank you.

I just wanted to draw attention to Number 18, because it's something we've -- we believe is worthy. We are not going through these tests today, I'll hasten to add, but it is an example of a somewhat more realistic one.

And just -- just briefly to read 18, this is a stress test that is as follows: Governments in ICANN's Governmental Advisory Committee, the GAC, amend their operational procedures to change from consensus decisions to majority voting. And there are consequences that go on.

So this is the type of stress test we will be running through.

At this point, I want to continue to scroll down now and I'm going to ask Steve if he can go through -- there we go -- one example, which is Number 14. Over to you, Steve.

STEVE DELBIANCO: Thank you, Cheryl. Steve DelBianco in the CSG. So if you scroll up to Number 14 -- Thomas, I think you're controlling it. Done. Scroll up to -- to the sample for Number 14.

Sorry. You -- scroll down the page further into the document, please. Keep going, please, to the next page. And you can stop right there. That's perfect.

The chairs have asked us to run through one stress test, and this is where you apply a stress test to the package of accountability mechanisms that we have thus far. And the true utility of a stress test isn't really understood until you run the stress test against the mechanism, the prototype that you've built.

I'm a software developer and we would run stress tests or user case scenarios against code that we'd written. To do that, the code has to be at least in runnable form, and as all speakers before have noted, we are still assembling the package of community empowerment and review and redress. So it's somewhat premature to run the stress tests against a package that isn't yet finalized. However, by doing one sample, I think it will really help everyone understand what this is all about.

So to run a stress test -- for example, Number 14 -- we assess it against the existing accountability mechanisms in place today and the proposed mechanisms.

The one we thought up for you here, Number 14, is to suggest that ICANN or NTIA, for that matter, chose to terminate the Affirmation of Commitments. As all of you know, the affirmation can be terminated by either party -- by either the U.S. Government or ICANN -- in just 120 days' notice.

If it were to terminate it, the consequence would be that the commitments in the affirmation would no longer be binding upon

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ICANN. And more importantly, the commitments to conduct the reviews that are embedded in the Affirmation of Commitments. The accountability and transparency review, the WHOIS review, the review of the new gTLD program and the review of security, stability and resiliency. And those reviews are one of the few ways that the community holds the board and management accountable for past activity to come up with recommendations for how to improve things in the future.

So how do the existing accountability remedies answer to that stress test?

As we've indicated here, the existing remedies are just plain inadequate, because the AoC can be terminated by either party, and by giving up the leverage of the NTIA contract with IANA, I don't know what would hold IANA -- ICANN to stay in the Affirmation of Commitments if it didn't suit the purposes of the board or management.

That is why we turn into the proposed accountability mechanisms. This is the third column. And one of our proposed mechanisms thus far is having the community standing in the ability to challenge a board decision and to refer it to an independent review panel or to challenge it with a supermajority and reverse the decision.

So for instance, if ICANN were to cancel the Affirmation of Commitments, that decision could provoke the community the opportunity to have an independent review of that against a standard that Becky indicated or it might well be that the community would simply veto the decision to step out of it.

Now, another proposed mechanism we have is to import the most important parts of the affirmation into the ICANN bylaws and simply dispense with this bilateral agreement called the affirmation between ICANN and one government. Since that is obviously something that other governments get nervous about, well, let's take the best of the AoC and bake it into the bylaws.

Now, what if ICANN's board then tried to undo the baking of it into the bylaws?

The third paragraph here in that third column suggests that if the board took the measure to change the bylaws, remove the Affirmation of Commitments obligations, the community would, once again, be able to block a bylaws change like that.

And so bottom-line conclusion? This threat is directly related to giving up the IANA stewardship. Existing remedies are inadequate. And in this case, the proposed remedies seem quite inadequate -- quite adequate to address the stress test. Leading us to the conclusion that this is a stress test that we'll be able to show to those who are watching this transition carefully and be able to show that we've got measures that solve for this stress test. Thank you.

MATHIEU WEILL: Thank you very much, Steve. We have a remote question, Alice?

REMOTE INTERVENTION: This is ICANN staff reading a question from Eric Brunner-Williams. It's a question for Steve DelBianco.

Do you have reason to believe that the ICANN board has considered unilateral exercise of the 120-day notice period for the AoC?

End of question.

STEVE DelBIANCO: Eric, it was discussed early, after the affirmation was signed by a few members of the board but that's sort of irrelevant. The idea of a stress test is plausible, relevant scenarios that will test the mechanisms we're here to design, and it really doesn't matter to look backwards in time and try to ascertain whether it has happened, and you -- that entirely misses the point. And as a software developer yourself, you know that you create use case scenarios and use them in stress tests on programs that we develop, and we do so without having to look back in time and predict whether it's happened before.

So I don't think it's relevant as to whether the board has considered walking away from the affirmation. The point is that they can. Thank you.

MATHIEU WEILL: An extra response by Thomas?

THOMAS RICKERT: Yes. Just to add and maybe illustrate, as much as there's no reason to believe that the board wishes to terminate the AoC, there is no reason to believe that there is a community wish to spill board members, and this is also one topic that's been brought up over and over again,

whether our works on mechanisms to dismiss the board are evidence of distrust in the current board and that's obviously not the case.

The U.S. Government has made it clear that stress tests would be a requirement for the transition. As much as they've said that we need to talk about or speak to contingencies.

So we are thinking of worst case scenarios and appropriate remedies in theory, and there is no reason to believe that any of those have -- are founded in evidence on the table to have distrust.

MATHIEU WEILL: Good point, Thomas.

                        Alan has a follow-up.

ALAN GREENBERG: Alan Greenberg. Okay. I've got to say my name slowly.

                        Okay. Just wanted to point out that with relation to the last question, the reverse is very relevant. If you chose to ignore a stress test about something that did happen three years ago, we would be really negligent, but we can't afford to ignore things just because they haven't happened or we think they're improbable if the consequences of them happening would be really severe and bad.

MATHIEU WEILL: I'm tempted to ask whether you have a specific example in mind, but obviously...

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[Laughter]

STEVE DelBIANCO: Yeah, form a queue.

[Laughter]

MATHIEU WEILL: Are there any questions on stress tests? Sebastien?

Just -- I'd like to stress how much this is really at the core of what we're doing because -- and that's an echo of Sebastien's question earlier that yes, we might add some new things within the system, but that's because we wanted to be resilient to very low-occurrence probability events that may occur in the next 10 to 15 or 20 years because we're setting ICANN for the future.

So Sebastien has a follow-up.

SEBASTIEN BACHOLLET: Thank you. I want to -- I'm going to speak in French. Some people put their headset. I'm waiting. Even if they are ready. And there are people that are organized, who are organized, but not everyone is, because as soon as I get to the mic, it's a test.

What is proposed to us is a possible solution. One possible solution. In the other meeting the other day, I offered another. I hope it will be reflected in the working group document.

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I re -- I'm telling you that everything should be integrated in the Affirmation of Commitments in the unilateral or multilateral contract with organizations such as the registry or the registrars or the regional group of ccTLD or the at-large structures because each region has a contract with ICANN.

Therefore, there could be another solution that would simplify things a lot, but there could be two parties that would be concerned in the case that things would get done or not done.

MATHIEU WEILL: Since everybody has their headset, I'm going to keep in French, speaking in French.

I think this is an element that will be an item that will be in the discussions of the working group, and it illustrates very well the added value of these exercises that allow you to discuss the risks, the solutions, and that will create the substance for our propositions internally.

Becky, did you want to say something?

BECKY BURR: This is an idea that we will be contemplating and considering. I just want to make one point that it -- that we can't rely entirely on contracts. There is -- the CCs, in particular, some of them have no ability to enter into contracts with ICANN or are precluded from doing that.

So we have to have other mechanisms to address those issues.

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MATHIEU WEILL: Thank you, Becky. Last question from Jonathan, and then we'll go into the time line and next steps items.

                        Jonathan?

JONATHAN ZUCK: Yes. Jonathan Zuck from ACT, and I guess I just have a comment more than a question and I -- I think there's a persistent tendency to view this exercise as a remedial or disciplinary act on ICANN, and it's not. It's simply a part of the evolutionary growth of the organization.

                        There was a series of agreements between the United States government and ICANN, and each one of them had a set of new things that ICANN needed to do, like form a board, form review processes, et cetera, and it's all been part of the evolution of ICANN.

                        And this last transition of the IANA function to ICANN is simply another milestone that requires another level of evolution in the organization. So this is a pro-ICANN effort, not an anti-ICANN effort. I think if you look at it that way, everything that's being done looks different than if you look at it as some kind of disciplinary action.

MATHIEU WEILL: Yeah, Steve.

STEVE DelBIANCO: Jonathan, thank you.   That's an excellent observation.   And we witnessed this firsthand over the last 12 months where I live in

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Washington, D.C. I testified in a congressional hearing that occurred shortly after the announcement of the transition. And I can assure you that members of at least the U.S. government and critics in the media look not into the past of ICANN but looked into the future and let their fears run away with all the possible things that could happen. There were headlines like, "U.S. to turn over Internet to the United Nations." I mean, there was a lot of concerns and fears.

And what we discovered is that we could channel those fears as opposed to people saying, I want to stop everything until a perfect solution emerges. We allow the solution to develop, to evolve, while assuring everyone who has concerns that we will run stress tests and scenarios against the solution.

So it became a compromise that allowed us to proceed full steam ahead on the development of the transition while knowing that we would have guardrails to keep us from, well, literally running off the road.

Thank you for that, Jonathan.

MATHIEU WEILL: Thank you. So this is now the time to get into the next steps and the timeline. And I will turn to Leon for this specific part.

LEON SANCHEZ: Thank you very much, Mathieu. Could we please have the timeline on the screen.

It is in the slide deck we had earlier. Slide Number 12 on the slide deck.

So we have a click problem. Okay. There we go. So our timeline -- our working group began working. We had a charter development from middle October. We began working in December. We have held so far 11 working calls as well as two face-to-face meetings. This all accounts for more than 50 working hours from our more than 160 participants in the group.

And as you may have noticed or may not, we are very intimate connected -- very intimate connected to the CWG timeline as well, as some of their work depends on what we will deliver. And so in these regards, we are expecting to have a draft proposal by the end of March. This would be our first deliver of a document. And it would be then posted for public comment, and we would also turn this proposal for proper advice so we can assess the feasibility of the proposal we're posing.

And we will then, of course, incorporate all public comments into the draft proposal. And, hopefully, we'll be able to turn this draft proposal for the chartering organizations to approve by the end of May. And we will be able to send this for board consideration at our Buenos Aires meeting in June.

So next steps for us, we're going to have -- we're going to have another session tomorrow, which will begin at 7:00. So anyone needing some emotion at this ICANN meeting is welcome to come at 7:00 with us.

So one thing I would like to stress is that this is a best-case scenario, of course. This is -- we're working as fast as we can to deliver our work as stated in this timeline.

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But, of course, there might be some bumps ahead that might keep us from sticking to this timeline. But we're doing all efforts to deliver our work as expected and be able to deliver also the outputs that the CWG needs so the board can take proper action at our Buenos Aires meeting.

And with that, I would like to go back to Thomas for -- I'm sorry?

THOMAS RICKERT: Maybe there are questions on the timeline or the next steps?

MATHIEU WEILL: We have five minutes to get questions on that if needed. Otherwise, we can provide you with the valuable gift of five minutes in this terrible week.

No? No question remotely on the timeline and next steps.

So what I'll do is I will wrap up now this session. And I just want to stress a few points, take-away messages, you can call them like this.

This is work in progress. We are being very careful to approach this topic in a very rational manner step by step without rushing to solutions and in the spirit, as was rightly said by Jonathan, our process that will help ICANN grow. ICANN is about to turn 18 very soon, and this is what it's about. It's about creating the capacity within the organization to be fully autonomous, and that's need for greater maturity in certain aspects including risk management, including accountability mechanisms. That's really what we're trying to do.

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So it is good if you can take away the fact that we have two areas of work so far: The empowerment of community over certain board decisions, the review and redress, the appeals mechanisms which are the second big part. And we take on board what we've heard in this session regarding the necessity to be as simple as possible when we come up with solutions.

The complexity of ICANN is something that is actually creating accountability issues, let's put it like this. And so this is an image I have been using already this week. We're looking for the minimum valuable product that ensures resilient accountable ICANN. And that's the spirit in which we are trying to work.

And, finally, I will really, really encourage everyone to come to the meeting that we have tomorrow, 7:00 a.m. I know, that's a safe speech.

But ICANN is committed to provide breakfast.

THOMAS RICKERT: And we have a surprise.

MATHIEU WEILL: And we will have a surprise there.

THOMAS RICKERT: Really.

MATHIEU WEILL: Yes, we will have a surprise there. And the group is not even aware of this. This is breaking news.

Two of the items, to give you an idea, that we'll be assessing -- discussing tomorrow, we're going to discuss around the five draft stress tests and how -- whether there is agreement in the group that we have correctly assessed, whether it is covered, not covered, and so on. And we will be going into much more details about how we proceed forward to fill in the different accountability mechanisms and the ones we want to amend, the ones we want to maybe add, if need be. And so there's going to be a lot of substance on the agenda.

THOMAS RICKERT: And fun.

MATHIEU WEILL: And there might even be fun. Yes. I don't want to overpromise here.

[Laughter]

And maybe fun for me may not be fun for you. But at least really encourage everyone to -- everyone to comment. It is open for everyone to look at. Obviously members and participants get a little bonus in terms of participation, but everyone can come and see how we are working and we hope to be able very soon to provide even further details on what we come up with.

I'd like to send this session by thanks to the translation and the scribes and the support staff.

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[Applause]

And, I mean, the group is available for the rest of the week for further engagement. Feel free to ask questions even in the hallways and please keep in touch with our work. Thank you very much, everyone.

CHERYL LANGDON-ORR: Thank you.

[Applause]

[END OF TRANSCRIPTION]