

**Transcription ICANN Dublin  
Tuesday 20 October 2015  
Commercial Stakeholder Group CSG**

Greg Shatan: Good morning, everybody. And welcome to the open meeting of the Commercial Stakeholders Group, October 20, 2015 here in sunny - partly sunny Dublin, Ireland.

I'm Greg Shatan, President of the Intellectual Property Constituency. And as is the CSG tradition the IPC is in charge of planning and carrying out the CSG activities at this meeting. And then we get to rest for two more meetings. So thank you for letting us have the opportunity to run things this time around.

We'll get right into the agenda. As you can see we'll be talking about any final preparation for the board roundtable that immediately follows this meeting in the auditorium right behind us - to the left of us. And then after that we'll have a discussion of the - I'll give a brief update along with Wolf-Ulrich if he's here, on the IANA stewardship transition, which is in good shape. And we'll be talking about the possible intercessional and then several items on accountability finally all other business.

So but the first item in here is introduction of any new officers, councilors and secretariat. But I'd rather - I'll make that part of just an introduction around the table and behind us as well. So if you are an incoming or present officer of one of the three constituencies, you know, please identify yourself as such or if you're outgoing you can identify yourself as such and I'll thank you for your service.

So since I've already said who I am, Greg Shatan, Intellectual Property Constituency. And I'll hand it off to my left.

Phil Corwin: Good morning all. Philip Corwin. I'm currently interim chairman of the Business Constituency until we hold elections next month. I've been filling in since mid-year. I'm also one of the two GNSO councilors for the BC and was just reelected to the full two-year term so I'm both an incoming and new councilor.

Tony.

Tony Harris: Good morning, my name is Tony Harris. I'm with the ISPCP Constituency. I've just been elected as a member of the GNSO Council.

Tony Holmes: Good morning, everybody. Tony Holmes and I'm Chair of the ISP Constituency.

Petter Rindforth: Good morning, Petter Rindforth, member IPC representing Fenix Legal.

Anne Aikman-Scalese: Anne Aikman-Scalese, IPC member.

Heather Forrest: Heather Forrest, GNSO councilor for the IPC.

Christian Dawson: Christian Dawson representing the i2Coalition with ISPCP.

Jay Sadowsky: Jay Sadowsky, the BC.

Alain Bidron: Alain Bidron, ISPCP.

Paul Mitchell: And Paul Mitchell, BC.

Barbara Wanner: Barbara Wanner, BC.

Todd Williams: Todd Williams, IPC.

Charné Le Roux: Charné Le Roux, IPC.

Paul McGrady: Paul McGrady, newly elected GNSO councilor for the IPC.

Chris Wilson: Chris Wilson with the BC.

Jen Taylor-Hodges: Jen Taylor-Hodges, ISPCP.

Claudia Selli: Claudia Selli, AT&T, BC.

Colin O'Brien: Colin O'Brien, IPC.

Jay Chapman: Jay Chapman, BC.

John Berard: John Berard with the BC.

Jimson Olufuye: Jimson Olufuye, BC, Vice Chair of Finance and Operations.

Oswaldo Novoa: Oswaldo Novoa, ISPCP, outgoing councilor.

Wolf-Ulrich Knoben: Wolf-Ulrich Knoben from the ISPCP and incoming councilor.

Olivier Muron: Olivier Muron from the ISPCP.

Jim Baskin: Jim Baskin, ISPCP.

Angie Graves: Angie Graves, BC.

Mahmoud Latouf: Mahmoud Latouf, BC.

Esteban Lescano: Esteban Lescano, ISPCP.

David Fares: David Fares, BC.

Lori Schulman: Lori Schulman, incoming Treasurer, IPC.

Steve Metalitz: Steve Metalitz, Vice President IPC.

Marc Trachtenberg: Marc Trachtenberg, IPC.

Jonathan Cohen: Jonathan Cohen, IPC.

Kevin Audritt: Kevin Audritt, BC.

Aparna Sridhar: Aparna Sridhar, BC.

Andy Abrams: Andy Abrams, BC.

((Crosstalk))

Geoff Noakes: Geoff Noakes, Symantec visitor.

Chris Chaplow: Chris Chaplow, BC.

Alexandria Charnofska: Alexandria Charnofska, Academia.

Steve Coates: Steve Coates, Twitter, BC.

Laura Covington: Laura Covington, Yahoo, BC.

Scott Hayden: Scott Hayden, Amazon, BC. Andrew Harris lost his voice, Amazon, BC.

Izumi Okutani: Izumi Okutani, JPNIC, ISPCP.

Steve Mace: Steve Mace, NCTA observer.

Olivier Zumi: Olivier Zumi, ISPCP.

Matt Serlin: Matt Serlin, Mark Monitor, BC.

Judy Song-Marshall: Judy Song-Marshall, Neustar.

Dan O'Neill: Dan O'Neill, WBC Global, observer.

Vicky Scheckler: Vicky Scheckler, IPC.

Crescent Ezekwu: Crescent Ezekwu, Valideus, IPC.

Richard Pringle: Richard Pringle, IPC.

Karen Bernstein: Karen Bernstein, IPC.

Griffin Barnett: Griffin Barnett, Mayer Brown, IPC.

Iva Zane: I'm a visitor.

Malcolm Hutty: Excuse me, Malcolm Hutty, LINX, the London Internet Exchange, and ISPCP.

Akinori Maemura: Akinori Maemura, JPNIC and ISPCP.

Susan Kawaguchi: Sorry, Susan Kawaguchi, BC, GNSO councilor.

Greg Shatan: Thank you all. My alternative was to have Jonathan Zuck say all of your names but thankfully the microphone came around in time. Last but not least I'd like to introduce our new Secretariat, Chantelle Doerksen, why don't you - oh we left you without a microphone.

Chantelle Doerksen: Hi, everyone. My name is Chantelle Doerksen, I'm your new Secretariat support. My background is in international relations and community relations so I look forward to working with you all.

Greg Shatan: Thank you. And I'll say that Chantelle Doerksen has already been incredibly invaluable at this meeting in assisting and supporting us and looking forward to a long and fruitful relationship for all three constituencies with Chantelle. So moving on to our first substantive point, final preparations for the board roundtable.

First, I'd like to just mention the process that we'll be using. As we did in Buenos Aires, it'll be a roundtable with about half a dozen board members or so and half a dozen members of each constituency separately, each constituency will have half an hour with the board on the topics of their choice that have previously been chosen.

And as the host constituency for this event IPC will be in charge of overall timing. We've learned that if there's nobody watching overall timing the third constituency is left with very little time. And to incentivize the IPC to do a good job of holding the first two to time IPC will have that last slot. And I have installed a new meeting timer app on my phone, which I will be using. Each of the three slots will be chaired by a representative of the constituency - their chair or president if they choose, so they should be primarily running the 30 minutes that they have. And then I'll just keep an eye on the overall clock and then run our 30 minutes.

In Buenos Aires it was actually a little shocking to find that one of us was expected to chair, but I guess that's part of the bottom multi-stakeholder process that neither board nor staff was chairing the roundtable between us and the board, and that's probably a good thing.

So I'm not sure if we need to have any discussion on topics but I think it would help to at least mention again the topics that we have chosen to go - to

talk about with the board. And I'll start with the ISPs because they have the first slot.

Tony Holmes: Okay, I'll pick up on that, Greg. Thanks. But before I do, a question to you that I think you were going to clarify was whether during these interactions with the board, they were looking for any feedback from our constituencies with regards to IANA and where we currently are as constituencies in that instance. Do you have any...

Greg Shatan: I have not heard back yet.

Tony Holmes: Okay because that has the potential to impact on our strict 30 minute slot so not sure how we handle that. But the two topics for the ISPs, the first one we're going to talk about, and it's the biggest one for us is the universal acceptance issue. Christian is going to leave that topic for us and Tony and others who will be there. So that will be for the bulk of our 30 minutes, probably for 20 minutes or so.

The final issue we're going to pick up on is some concerns we have over the current structure, our disappointment with the failure of the recent GNSO review to address structural issues and in particular some ways that impacts our thinking going forward as ISPs. We still very much support that we need a structural revision. But we also want to start working in a different way and we need to make the board aware of what we plan to do. We're planning to try and have a focus on the technical day to take that forward.

But we want to get in on the boards horizon that were looking for changes. And how that relates to the new meeting structure is something else that hasn't been developed. But it seems pertinent to us to flag that to the board now that we are still looking at structural reform, we're looking towards that occurring in some way or the other. And some of those elements will be broader than just a GNSO Reform as well. So that's what we're covering. Thanks, Greg.

Greg Shatan: Thank you. Next I'll turn to the BC.

Phil Corwin: Yeah, we're going to be raising issues related to the next round of new TLDs and review and planning process going into that. I'm hoping - we're with Tony where we have some issues with the GNSO review report. Susan Kawaguchi and myself, BC councilors more familiar with the details than I am and if we do wind up looking like we're overlapping with that ISPs aren't board review -- GNSO review we may also bring up alternatively just concerns about all the major PDPs on the horizon and kind of general lack of bandwidth and stakeholder burnout when so many major complicated issues are arising at the same time, particularly when accountability is not finished.

Greg Shatan: Thanks, Phil. And I think - a previous meeting we had of the CSG we - Susan - we didn't get from Susan more detail on the GNSO review. And I'm wondering if it's possible to get a thumbnail sketch from Susan on that.

Susan Kawaguchi: Sorry. I didn't communicate this to the rest of the - this meeting. So Tony - this is Susan Kawaguchi for the record. Tony was concerned that if brought GNSO review to the board after they had that would be duplicative so we've removed that from our - and I didn't tell you.

Phil Corwin: Okay.

Susan Kawaguchi: That was the Monday meeting. So sorry about that. I'm done.

Phil Corwin: I stand corrected.

Greg Shatan: Thank you, Susan, for clarifying that. Always good - that's why we have this final preparation slot here to deal with things. The only constant is change.

Tony Holmes: Sorry, just to interject. Now being aware of that where I will also look to do is to try and make the points for all of our CSG constituencies that we are



somewhat disappointed with the outcome of that review and try and cover it off that way. So thanks.

Greg Shatan: Thanks. And I think I would point, I'm sure you would, the very idea that you're running a technical day when the BC and the IPC would have no business trying to do such a thing, kind of points out the fact that we're, you know, just, you know, an ill-suited, you know, we're Siamese triplets that have been sewn together.

Tony Holmes: A bad marriage.

Greg Shatan: Yes. Oh I don't know, it's not that bad. We enjoy each other's company but, you know, we don't share a lot of the same interests but the house is still in good shape. In any case I'll now turn to Steve Metalitz to go over the IPC's topic.

Steve Metalitz: Fortunately I'm not planning to do any marriage counseling amongst our constituencies. Our main topic will be contract compliance, not surprisingly. And obviously this is a bit of a moving target with Fadi's remarks at the plenary yesterday regarding what ICANN will and won't do to deal with the problem of widespread infringement and other illegal abusive behaviors and fact that there's now a contract provision addressing this and what they intend to do about it.

So that's kind of - that's going to be the focus of our presentation. Our second topic has kind of been overtaken by events that was on the Whois review so we'll just focus on the other one.

Greg Shatan: Thank you Steve. I think that takes care of the final preparation for the board roundtable. And we're actually five minutes ahead of schedule which is great. So next I have IANA stewardship update. I put my name in there because I am the representative of the Commercial Stakeholder Group to the CWG on IANA Stewardship. But as you all know some weeks ago or so months ago

by now, the CWG essentially finished its proposal and handed it up to the ICG. And Wolf-Ulrich Knoben is our representative to the - on the ICG so I'd like to actually turn it over to Wolf-Ulrich to talk about where things stand with the ICG.

Wolf-Ulrich Knoben: Thanks, Greg. Wolf-Ulrich speaking. So I think maybe some of you attended yesterday, the so-called ICG engagement session. I couldn't make so short as it used to be yesterday surprisingly. It was a nice meeting, you know, just a presentation given. No questions. It seemed to - it could seem that the work is done because there were no questions.

But the ICG is aware that there is still work to be done. And I wouldn't go just through the presentation which was done. The status is the ICG is in charge of to deliver combined proposal of all three operational communities from the numbering, from the protocols, and from the naming side. And deliver that via the board, the ICANN board, to the NTIA.

So why I am saying via the board that is the - a legal aspect which the NTIA is relying on. We have got very early the statement from the board that they would just take the proposal and put it forward as it is maybe with a comment accompanying that proposal.

So where are we? All three proposals have been delivered. We have had during the summer time an extended public comment period. We have had questions forward and backwards with regard to the CWG proposal. And the major issues from our perspective have been solved. Up to that point (unintelligible) comes to the question of the dependency of the whole proposal from the input from the CCWG. You know, that there is a dependency that the CWG proposal is relying on the input from the accountability part.

And if there is a goal given from the CWG that the accountability part fits to their expectation then the proposal is ready to be sent to the NTIA from our

perspective. So from an ICG point of view, there is a rather - not consensus thing, full consensus, but there is a rough consensus, well, tell that what is at the table at the time being with regards to the CWG proposal and for the other proposal, as well, to be delivered. So we are waiting for that goal from the CWG with regards to the accountability issues.

So we will have coming from the outcome from that ICANN meeting from the different aspects we will have another meeting on Thursday and maybe on Friday, well, to refine the combined proposal. And then there is a plan to put it to the public, through our Website, as a status update for the existing combined proposal, not as the final proposal, that we cannot do until the goal is given by the CWG but as a kind of update of the current proposal. And then, well, wait and see. That's from the ICG's point of view, the case.

So there is another issue then which is started to be discussed within the ICG is the question what is to be done afterwards, what does it mean. So the issue is implementation the question. Is there any role or is there any task, well, to be given to the ICG with regards to a question kind of oversight of the implementation or whatever so this is contentiously discussed.

And it is the opinion then the overall opinion is that this is up to the operational communities to decide upon whether there should be a role of the ICG. It's not covered yet in our charter of the ICG, there is nothing said about any implementation issues. But this would be up to the operational community as well to discuss that point how the implementation is going to be organized. And then if from that perspective there is some request towards the ICG so we would stand by and think about, you know, what could be done in this area.

I saw implementation is already on the agenda as I think Fadi was saying yesterday and that Akram is from ICANN side in charge of the implementation issues. The question is then how is that really to be evolved, developed, organized and in a way that the community is engaged in that and

can be - and can be - can see that the outcome shall be (unintelligible) what has been expected.

So that's in total from the ICG point of view. I don't know if there's only details of the separate single proposals but that is what the status is. Thanks.

Greg Shatan: Thank you, Wolf-Ulrich. That's very helpful. And I will mention that the CWG is already involved in implementation planning. We have an implementation chart that we've been preparing to plot out the various different streams of work for implementation for the IANA transition in terms of the names work.

We also have our outside counsel from Sidley Austin working on a first draft of the bylaws changes and additions that will be specifically required by the IANA transition. And I expect that the CWG will be seeing first drafts of those in approximately two to three weeks. For some reason our lawyers seem to be otherwise occupied this week here in Dublin, not working on the bylaws for the CWG.

Next, Anne?

Anne Aikman-Scalese: Just a quick question for Wolf-Ulrich which is on the ICG work when accountability - after accountability delivers its work, he mentioned status report before that work is final. But once that work is final does all the ICG work get published for comment or no more public comment because it's all been through public comment prior to coming to the ICG?

Greg Shatan: I guess, Wolf-Ulrich the question was...

((Crosstalk))

Greg Shatan: ...whether there would be any further public comment periods on anything that the ICG is doing. ICG did run a public comment period.

((Crosstalk))

Anne Aikman-Scalese: When it's all final.

Wolf-Ulrich Knoben: The ICG is not yet planning any further public comment. I don't know whether it's needed, you know, from the - depending for the accountability part that they have - we would have another one, another round, if well - that depends, you know, the process (unintelligible). If that is the case and it comes back to the CWG if they have to amend their proposal and what's going to happen then then there may be ne necessary but at the time being we don't see that.

Anne Aikman-Scalese: Yeah, I was just wondering if it might solve a problem for accountability because they'd like to not have to have additional public comment right now in order to stay on timeline. And I was wondering whether if they sent it to ICG and ICG did - or would that make any difference. But apparently not because you're not planning a public comment period.

Greg Shatan: Right, and also, remember, the accountability group's work does not go through the ICG; it goes to the board and the board has - is obligated by a resolution passed by the board to pass it on directly to the NTIA. So the ICG, you know, does not get into the accountability business per se for better or for worse.

Just a few brief remarks on the non-contracted party's house intercessional. There's not much of an update. Oh, Jimson.

Jimson Olufuye: Yes, thank you. I just wanted to underscore something based on Wolf's presentation. And that is that as ICG coordinating - the work of coordination is not complete until what you are coordinating is accomplished. So that has to do with the (unintelligible) implementation cycle. This is my personal opinion. So that means the ICG needs to know that - how to really fully coordinate the full implementation of the proposal they are submitting in terms of

(unintelligible), what the numbers and the community and the naming community have committed to do. So that's my thought line based on this presentation. Thank you.

Greg Shatan: Wolf-Ulrich, would you like to respond to that?

Wolf-Ulrich Knoben: Yes. Jimson, thank you. Just for clarification, that is exactly the contentious point. It was in the ICG. So to what extent the ICG should exist, well, in order to be ready to do something with regards to implementation or whatever. The discussion ranges from there is not any point related to implementation which is on the list - on the task list of the ICG because it's not in the charter at the time being so we were talking about amending the charter. But so okay that was one point.

The other thing is what does it mean until it is fully coordinated. This is two week. And so we decided at the time being to let the ICG exist until September 2016 at the NTIA contract is living at the time being. And stand by. And in between if there is - and the trigger must come from the operational communities, not from the ICG because the (unintelligible) communities are the ones who have the real interest in that it get - be implemented from their perspective in the right way. So if there is coming something back from their side, so we will be ready to step in. Thanks.

Greg Shatan: Thank you, Wolf-Ulrich. Anything further on this point? Anne, is that a new hand? Thank you. Well we're all looking forward to the next steps in the transition process and we'll be getting to the topic of accountability shortly. We will have one of the co-chairs, Leon, will be joining us.

And of course we have our stalwart CSG representative and member of the CCWG, Steve DelBianco, who will be prepared to make a few remarks and sitting next to him is Jonathan Zuck who's also been very, very active in the CCWG as have I and Anne Aikman-Scalese as well from the IPC. And, you

know, others around in this room have been active as well. So it doesn't just have to be - it'll be a robust discussion, hopefully.

But before that just a few remarks on the non-contracted party's house intercessional. And it's sort of a short update because like so many other things that have been swamped by accountability, volunteer burnout, multiple open comment periods of great substance, noncommercial party's house planning - non - the intercessional planning has really not gotten off the ground. But I think that's something that we need as a stakeholder group. And with the NCSG to get off the ground really right after Dublin.

So I think that my suggestion or our suggestion would be that each of the three constituencies puts forth one or two leads. And I think that's been done to some extent already. But, you know, right after this meeting put forth one or two leads and then those leads can form a planning group amongst themselves.

We have an internal planning group already within our group but, you know, clearly there needs to be coordination and coordination across. Then this probably would occur somewhere in the late January, early February timeframe so as not to be too close to Marrakesh and not to get caught up in the kind of holiday season in December.

Of course I've heard a few people use the word, "intercessional" in another context, which is the possibility of an ICANN intercessional, if that's needed to close the accountability work and get the chartering organizations to support that. So who knows if that will have any effect on our intercessional planning or if such a relatively unprecedented ICANN intercessional would actually even take place. But as I said before, the only constant is change.

Given that we're actually running about 15 minutes ahead of schedule, the - and Leon is not yet with us - wanted to turn to a topic - and I don't, unfortunately, have this able to be put up on the screen, but we have been

discussing amongst the three constituencies a short statement to be issued with regard to the accountability work. And over the course of the last 24 hours the IPC has indicated, you know, by individuals on our list and in our meetings, support for the following statement, which I believe is consistent with what the other two constituencies may be looking at.

I'll read it out, apologies that I didn't warn Chantelle that I'd be doing this and she's not here at the moment. So but it's only one sentence so that shouldn't be too tough. And here it is. "Consistent with the joint statement issued by the GNSO at ICANN 50 in London, the CSG supports the development of an independent accountability mechanism via the process currently being followed by the CCWG Accountability." That's it.

Basically just supporting the work and supporting letting the CCWG Accountability do its work implicitly without undue interference. But that is the statement. And I'll take a queue see if there's any comments on this statement or to see whether the other two constituencies have in fact, you know, finished considering this or are ready to do so.

So I see first Anne and then Paul.

Anne Aikman-Scalese: Well I just had had confirmation both from the ISP and the BC that they supported and agreed to that statement if asked by the board. But, I mean, I'll let them speak for themselves but they did confirm it.

Greg Shatan: Anne was part of the small team that was coordinating this so I appreciate that. Paul.

Paul McGrady: Paul McGrady. Is there a record? No. So I don't have to say my name? Terrific. Can you put it on the board, can you...

Greg Shatan: I'll take care of it.



Paul McGrady: Yeah, I'd like - if we could visualize it would be helpful.

Greg Shatan: Steve DelBianco has presenter's rights, or do you not? Oh okay very good. Yeah. Oh here's Chantelle, okay. We need to put this up on the screen. I think Steve is actually in the process of doing it so. Yeah, okay. We have a next question, I don't see any hands up in the chat room. Do we have any live hands back here? No hands.

Paul McGrady: I'd like to see it before to know whether or not I have to ask a question.

Greg Shatan: Sure. Sure, we're getting it up there in just a sec. Yeah, I should have it. Okay. Okay. It's now in the chat so hopefully you're in Adobe Connect. And I'll read it out again.

"Consistent with the joint statement issued by the GNSO at ICANN 50 in London, the CSG supports the development of an independent accountability mechanism via the process currently being followed by the CCWG Accountability."

Should be up on the screen. Yes, Paul.

Paul McGrady: Why is this singular? We're just looking for one independent accountability mechanism.

Greg Shatan: The overall mechanism - and maybe those who are working on the topic can explain why that particular phrase was chosen?

Olivier Muron: Because it's part of the London statement, yeah.

Anne Aikman-Scalese: Yes, exactly.

Olivier Muron: It's a quote from the London...

Anne Aikman-Scalese: Olivier mentioned let's just go back to the London statement from the GNSO and let's use the language that used by the GNSO in the London statement. And so specifically the three words, "independent accountability mechanism" were taken from that.

Greg Shatan: Just to clarify the GNSO put out a unanimous statement at the time of London and used this phrase. So the idea here is to essentially reiterate from that earlier consensus statement of the GNSO.

Paul McGrady: Yeah, I understand. And I was there. But it doesn't - I guess that doesn't undo the fact that what's been worked up since then is not a singular mechanism. To me this could easily be read as we'll be happy with one thing instead of all the stuff that's been asked for.

Greg Shatan: I think that certainly wasn't the intention. I don't read it that way. You know, and working on the CCWG, you know, I think that the entire proposal could be characterized as a mechanism. But I'll take a queue on this. Jonathan.

Jonathan Zuck: I guess it might - the definition of consistent might be the operating word here. If we're just trying to be consistent with it does that need to be word for word or could we just substitute "framework" for "mechanism" because I think that would address Paul's concern and it would be more accurate and still be at least in layman's terms, consistent with the GNSO statement.

Greg Shatan: Thanks, Jonathan. Paul, what do you think of that?

Paul McGrady: Framework works. Thank you.

Greg Shatan: I would also prefer framework and I think that's a good suggestion from our bearded duo.

Olivier Muron: Yeah, I think its better - it's better because now we are using mechanism for some particular event. So it's better to use another one.

Greg Shatan: Yes, and since the only constant is change using things that haven't changed sometimes has the effect of not communicating what they used to communicate. Anybody who's listened to the argument about what private sector means will know that using a term that once meant something clearly only can result in confusion when try to apply it in the present day. So I know that we don't have Leon here yet but I think we've - the next thing on our schedule is - oh, Anne, please go ahead.

Anne Aikman-Scalese: I didn't know whether you wanted to raise the topic of Avri's motion and discuss or not. Oh you've got it, oh sorry.

Greg Shatan: I think that is the next topic, which is up on the screen also regarding accountability, is a motion which has been crafted overnight or during yesterday by Avri Doria. And I don't know how many of you can read it on the screen. I will read it out loud for those who are not in Adobe. And I'll try to read it neither too quickly nor too slowly.

And I seem to have lost...

Steve DelBianco: Greg, honestly, the only thing you have to focus on is the resolve clause.

Greg Shatan: Yeah.

Steve DelBianco: So scroll up to the resolve clause...

Greg Shatan: Yeah.

Steve DelBianco: ...and pay particular attention to the letters in bold. And I can speak to what Avri's got in mind.

Greg Shatan: Thanks. And we've had some discussion, at least amongst - in the IPC about some possible thoughts on that. So everyone can read the first part for themselves.

The last part it says, "Resolved, the GNSO reiterates its support for the process that is ongoing in CCWG Accountability, its commitment to participating in continuing discussions with the goal of finding solution," - that actually should be solutions - "with broad agreement for ICANN accountability in preparations for IANA," and that probably should be preparation - "for IANA transition and to working through the process as agreed upon in the charter before making any resolutions declaring support or opposition to possible outcomes."

Steve DelBianco: Thanks. Steve DelBianco. And in the BC and in the CCWG it's widely acknowledged that Avri, in this case, drafted that last key paragraph, because otherwise other than that last resolve clause it's really very similar to the language that Anne circulated for a joint statement and that's fantastic.

But this is a little bit different because it tries to express Avri's discomfort, and discomfort of many of us on the CCWG, with the notion that yesterday the ALAC decided to gather and take a particular element of the current debate in CCWG, that is the enforcement model. And took a resolution yesterday to say that they withdrew their support for a key element of enforcement to membership aspect without actually saying what it is they would prefer instead. I think that was implied.

And because of that move it definitely steered the debate. It moved the needle and it tilted the field a bit yesterday. And there were other events would happen when the board came out and said that it too would embrace the designator model. And I'll cover that in detail when you get to the full CCWG.

But for now we have to understand in Council whether the three CSG constituencies think this motion is a good idea. Everything expressed is fine, it's just got a tiny bit of well a tiny bit of a shot at the ALAC in the last paragraph. I fully support the sentiment that we should not try to take resolutions from GNSO as a chartering organization until we see the full package.

And to that extent, and Steve's nodding, right, so to that extent let's see the whole package before we pick and choose a piece of it to take an issue with. And if in fact you have an issue with a particular part like 29 and 30, right, core values, the best way to work it is through all of us here at the table in the process because we can get it changed in the next draft.

This particular motion as long as you don't feel as if it's too direct a disagreement with the ALAC and to the extent we are concerned with keeping that relationship constructive I think it's worthy of our support.

Greg Shatan: Thanks, Steve. In the IPC we floated around with general support, as many as we got given the timing, the idea of ending the statement with the word "charter" so that it would - the last clause would read only, "to working through the process as agreed upon in the charter." Period.

My rough analogy is that this may still be a thumb in the eye to ALAC but at least we're not twisting our thumb in the eye by going through the rest of the sentence so that would be my view is that that would be a little more subtle and diplomatic. But I'll take views from others. Olivier.

Olivier Muron: Yes, I think I agree with you. I think we should just throw out the last words. But we call to the participant to respect the charter, that's enough. Because as we said, the first point we want to - the first message is to support the process. And support the process against outside intervention. Outside intervention you know what it is, I mean, (unintelligible) and the board and the

(unintelligible) because it say that ALAC is outside intervention. So, I mean, the problem between NCUC and ALAC is another one.

I think to have a strong statement, a strong motion, we should just - I support what Greg said, just throw out the last few words, it doesn't change much. It's just - it does not target ALAC as much as ALAC is not one of the problem of intervention we have now in the process. Thank you.

Greg Shatan: Steve DelBianco.

Steve DelBianco: Thanks, Greg. Olivier, thank you for that. And it's good to know that the IPC - the two of you feel it's appropriate to stop after "charter" I'm sure the BC would still support that as well. But the timing on this, because it's a late motion, means that we - I know Council is not until tomorrow, but this may have to be resolved on the list today. So I would ask, has Avri been offered your amendment - a friendly amendment to stop it after the word "charter"?

((Crosstalk))

Greg Shatan: ...been offered the amendment over a beer at the gala last night which may not qualify as a formal offer. But generally Avri was receptive. I will note that it was relatively well into the gala so - but generally, you know, I think her - she's open and receptive to friendly amendments on this. And is also looking for a second. And it would actually be a very nice message if IPC or, you know, the stakeholder groups, you know, in this group found a way to be that second if we, you know, so moved.

Steve DelBianco: I should clarify that the BC met yesterday, considered the original motion and the entire BC room was willing to second it. Phil and Susan, did we second this yet on list?

Phil Corwin: I don't believe we formally have but I also ran into Avri during the gala last night, earlier into it so she - the credibility of the statements exchanged may

be higher. But I had indicated that the BC was looking toward it and she asked me if I'd be willing to second. And I indicated I didn't see any reason why not. So if it's appropriate to do that online I can take care of that, Steve.

Steve DelBianco: To the extent possible let's try to have an organized CSG coordination.

Phil Corwin: Yeah.

Steve DelBianco: But I leave it to the Council.

((Crosstalk))

Phil Corwin: ...that we wanted to see where the rest of the CSG was this morning.

Steve DelBianco: Right. I know Matthew is in line too but I was putting a question to our councilors of the three respective constituencies that if in fact Avri didn't accept, right, the amendment, I would still hope that the three constituencies would support the motion as it was originally done since it certainly is a helpful motion. Our feeling that it might be a thumb in the eye that's being twisted, notwithstanding, we should do our best to soften it if you think that's appropriate. But I don't think we should oppose it if she doesn't accept. Thank you.

Greg Shatan: Malcolm.

Malcolm Huty: Thank you. I didn't speak to Avri about this directly so I'm just giving a reaction of what it looks like from reading it in the abstract. And in the abstract I don't read this as being directed to the ALAC resolution. I read this as being directed to the GNSO resolution saying that we - our support for, yes, I know, the GNSO resolution saying that the GNSO support for transition is conditional upon successful completion of the CCWG work. And asserting the GNSO's right to pass a resolution saying that it is satisfied that the CCWG has completed it successfully.

So I read this as saying that as reaffirming that position as saying that we continue to believe that will not be supporting further action until the CCWG has completed its charter.

Now if that's the meaning, I would think that that's a good thing. I would like to continue to support our collective position on that. Now if there's an ambiguity about that that it makes it look - I don't want to put a thumb in the eye to ALAC.

But if it looks a bit like that then maybe the change is not to drop off the last thing but maybe instead to - of talking about no resolutions to clarify the kind of resolution that we're referring to by saying, for example, no resolutions regarding transition or regarding the completion of the CCWG work rather than resolutions about what the preferences were which is what ALAC was speaking about.

So...

Steve DelBianco: I can assure you, ALAC perceives that the thumb has been in the eye.

Malcolm Huty: I can appreciate that given your explanation. But - and I think that is something that it would be useful to clarify so as to remove that because I wouldn't want to do that. But to refine this in a way that rather than dropping that removes that - it being directed at ALAC and instead directed it at our continuing affirmation that the CCWG work must complete successfully with consensus to our satisfaction before we move forward. That is that I think this resolution ought to be made to say. Thank you.

Greg Shatan: Thanks. I'll take Anne.

Anne Aikman-Scalese: I guess I think there's a nice creative solution related to using the word "resolutions" because I think that does imply GNSO Council. And I'm



not sure that we could actually muzzle SOs and ACs anyway. So why not just say Council resolutions and so we're affirming the principles related to CCWG accountability. It's a bit of reference to hey, guys, let's not treat this in a premature fashion but you're identifying that you're talking about Council resolutions because isn't that what the GNSO - I mean, in terms of the jurisdiction.

We're not trying to preempt statements by - by use of this motion we're not trying to totally preempt statements by an SO that feels that it needs - or a constituency that feels that it needs to speak out, right? Is this framed in terms of GNSO resolutions?

Greg Shatan: My understanding is that it was drafted in reaction to the ALAC statement. And the idea was to suggest that to come out with statements either in support of or in opposition to particular elements of the proposal should be - should not happen I don't think from this point on.

Anne Aikman-Scalese: I think that's definitely true but we all want to avoid, you know, trashing ALAC. And then we all want to reserve the right to make our own statements. So but yet it's a stronger statement about what is and is not premature if we leave the last portion on. And I think Malcolm's suggestion to frame it in terms of a Council resolution I think that's what he said, I'm not sure, would be useful in that regard. The GNSO can still, you know, wants to weigh in after the final report if it wants to make a statement.

Greg Shatan: Thanks. Phil.

Phil Corwin: Yeah consistent with the goal of both not directing it directly at ALAC to continue the eye-thumbing and also to be more precise perhaps we could simply, in this last phrase before the word "charter" introduce CCWG so it's clear we're talking about the CCWG charter.

And before “resolution” I agree, put in the word “Council” so it’s then we’re not talking about any particular group, we are just saying we support the process, we are committed to participating and we're going to wait until the process is over and complete it in a way that's consistent with them CCWG’s charter before the Council makes a final decision on the output.

Greg Shatan: Yeah, I guess, you know, we shouldn't spend too much time on this because it's not clear at this point where there that contracted parties would support this, and also the more we -- really need to get together with the moving parties to see what actually flies in terms of a change.

So it is clarified that we are referring to GNSO resolutions, but then again I don't think that - the GNSO probably would not deal with this by resolution anyway so that's kind of an oddball reference too because it has nothing to do with the way that the GNSO Council expresses itself. So there's really no such thing as a GNSO resolution so...

Anne Aikman-Scalse: Oh one about GNSO statement? Statement was what was issued in London.

Greg Shatan: Well, that's very rare and that was actually done not by the Council but by the chairs of the organizations so that was done at the chair and president level rather than the Council table level so that's still not a Council -- ultimately this has to be approved by the chartering organization so what will ultimately happen will be that through the Council, as was done with the CWG report, it will be brought up and the approval of the Council will take place. So this is trying to recast this as if it was about the GNSO I think is actually kind of getting off track.

I like the sentiment but I think that's getting off track of what was originally planned and as such would be unlikely to be accepted as a friendly amendment. But I think will take this also general discussion and perhaps, you know, task our councilors, and anybody on the small team to perhaps,

you know, approach Avri to see where the thinking on this might be and try to be supportive.

I think the general sentiment is to not go too heavy on ALAC but not - if we try to change the essential reason that paragraph was drafted that's not going to be really a friendly amendment at least.

Anne Aikman-Scalese: I think ALAC would tell you that they are going according to the process and it's just part of their participation in the process. I think that's exactly that they would tell you especially because their statement recites the fact that hey guys, we can't get this through unless we have board approval and we'll never get board approval of sole member and therefore we're making this statement.

Greg Shatan: I think...

Anne Aikman-Scalese: That's really what the statement says.

Greg Shatan: Right.

Anne Aikman-Scalese: So they would they're participating in the process.

Greg Shatan: They're allowed their opinion. Heather.

Anne Aikman-Scalese: That's why I think that's a bit weak if we cut off after the word "charter" but, you know, I mean, we can also beat a dead horse as well so at any rate I think it's very important that we support Avri's motion.

Heather Forrest: Thank you, Greg. Heather Forrest. Two comments. One picking up on where the wind is blowing. We have an informal opportunity tonight to see where the windsock is on this and we can report back. At the moment, let's say, because of Constituency Day we're not going to find out anything between now and then. So this evening we can do that.

My question - and I don't mean to reopen this, I ask it at a late stage in this discussion - is it strikes me from Steve DeBianco's comments, from Anne's comments, from other comments that have been made, the question in my mind is but for the actions of the ALAC would we be making this statement? Would this be on our agenda today? So I think that's something we all need to acknowledge. We've been dancing around this issue of, you know, how do we interact with - are we poking the ALAC and this sort of thing. The reality seems to me that but for the actions of the ALAC we wouldn't be having this discussion. So that factors into our wording. Thank you.

Greg Shatan: Thanks, Heather. And I think that's a good last word on that topic. So I think the next topic on our agenda is accountability.

Anne Aikman-Scalese: Greg, I'm sorry but I don't understand what we've all decided about this.

Greg Shatan: We decided to let the Council members discuss what the - with the NCSG who's put this up, what they'd be willing to accept as a friendly amendment. I don't think at this table that we've come up with a decision as to...

Anne Aikman-Scalese: And the intention is to second the motion with a friendly amendment, that's where we are.

Greg Shatan: Well I think we haven't decided what friendly amendment there would be. I think that there's one friendly amendment, which was generally - had some support was to end with the word "charter."

Anne Aikman-Scalese: Right. And everyone said they'd take that rather than nothing.

Greg Shatan: And the question is, I guess if we can get a sense of the room, as between leaving it as it stands, ending it with the word "charter" or perhaps making it appear as if it was a reference to a GNSO statement that would be helpful.

Anne Aikman-Scalese: Well I think if we could develop a consensus around one thing it would be best and that somebody should offer it and second and if it has to fall back to just a period after charter I'll fall back to that. I don't know about others but it needs to be seconded.

Greg Shatan: Tony.

Tony Holmes: I think it's important that we make that call now. And you're right, Greg, there's three options on the table. The last one that was tabled was Malcolm's. I didn't hear anyone suggesting that that wasn't acceptable. But we need to be quite clear when we leave here where we stand because those of us in Council are going to have to tackle this on the hoof. We need to know where we stand as a stakeholder group so can we settle that one issue now?

Greg Shatan: Fair enough. Malcolm.

Malcolm Hutty: Okay here's what I'd like to propose. Phil made a specific proposal for implementation of my suggestion that we add two words, that we add "CCWG" before charter; and that we add "Council" before resolution. You said you didn't think that Avri would accept that. My proposal is this, we ask Avri if she is willing to accept that that is what we do as a friendly amendment with her support and that we support that resolution amended like that. That if she's unwilling to accept that then we go with dropping this paragraph - the final paragraph and we support the remainder. Ending with charter.

Greg Shatan: Malcolm, how do you deal with the fact that the GNSO Council does not make resolutions and would not approach this as a resolution?

Malcolm Hutty: The - what is the status of this statement that regarding transition that we made saying that - regarding the transition proposal that the conditions are support for the transition proposal on the successful completion of the

CCWG. Is that called a resolution? Is that called a statement? What is it called?

Greg Shatan: But remember the document you're referring to.

Malcolm Hutty: Well whatever it is that's the one that...

Tony Holmes: It was a statement.

Malcolm Hutty: Right, okay. So in that case Council statement.

Jonathan Zuck: Can we agree with that conceptually? And then, again, put it in the hands of the councilors to wordsmith it to match whatever the actual actions of GNSO would be? Let's see what - awfully big group to be trying to find...

Greg Shatan: Yes, I know unfortunately.

((Crosstalk))

Greg Shatan: Maybe - I think a show of hands may be the best we can do in this - so the first proposal as Malcolm put in the table would be to changing it to "Working through the process as agreed upon in the CCWG charter before making any GNSO statements declaring support or opposition to possible outcomes."

Olivier Muron: I think it's completely off the target.

Greg Shatan: Heather.

Heather Forrest: Sorry, Greg. Why - I realize I'm making a friendly amendment to a friendly amendment. Why not just say before declaring support? Why are we talking about resolutions and statements and this sort of thing?

Greg Shatan: Because we started with resolutions and then made a small change...

((Crosstalk))

Heather Forrest: Yeah, but if we say “To working through the process as agreed upon in the charter before declaring support because there are set ways onto the GNSO...”

Greg Shatan: Yes.

Heather Forrest: “...operating procedures in which the Council has to work.”

Greg Shatan: Yes.

Heather Forrest: So if we simply leave it understood that Council will continue to operate in the way that Council is required to operate...

Greg Shatan: Yes, I think that’s...

((Crosstalk))

Greg Shatan: Yes, that gets us out of the process rabbit hole that we were actually all following each other down. So that would be, “To working through the process as agreed upon in the CCWG charter before declaring support or opposition to possible outcomes.” How does that sound?

Malcolm Huty: Yeah.

Greg Shatan: We get a general show of support for that or not? Let’s see any opposition to that. We see general support and passive support. Or I say no objection, as they say in the GAC. No objection and support.

Anne Aikman-Scalese: Just a quick comment that I think that the importance of this is really mostly to encourage accountability in its work. Our chairs are doing

fantastic job, it's such an endurance race and I think that seconding it is the right thing to do for the CCWG accountability itself.

Greg Shatan: Yes. Agreed. Tony.

Tony Holmes: Just to pick up on the point we discussed just now about whether it's a statement or a resolution. I think it would be helpful to let Avri know - or make it quite clear to her how we do view this when you exchange our views with that. Thanks.

Greg Shatan: Thank you, Tony. So moving on to the next item in our agenda, not far off of this item, appears that Leon is delayed in joining us but we have our personal A-team at the front of the table, Steve DelBianco, and Jonathan as well. But, Steve, I'll give the floor over to you to discuss where the accountability group is and perhaps what feedback or discussion might be helpful in the CSG.

Steve DelBianco: Thank you, Greg. I'll try to focus it very carefully. We have only 30 minutes and I wanted most of this section to be me hearing from you. Rest assured then that as you meet as constituencies today I will try to circle back with the officers of each of the constituencies to learn what feedback is coming back on the CCWG proposal and the current state of play.

So I've separated this into three brief sections. One is to make sure that you understand how hard I'm working on the CSG comments as they work their way through the third draft. A couple of things that happened after the second draft that IPC and ISPs need to comment on. And then finally some late breaking developments on the decision making model and the enforcement model. And I'll be able to cover that in about 15 minutes and take a lot of questions.

So the first is that there were extensive comments from the ISPs and the IPC and the BC, and I thank you for paying such close attention to it. I do my best to keep everyone informed. But when the comments came back from the



three of you it's really where I figure out what CSG member constituencies really care about.

So I highlighted here just four comments that in particular I'm having to pull the oar to get through in the revisions to the next draft, and that's where help from participants like Anne and Phil and Greg and Jonathan and those who are actively engaged in the CCWG are essential.

The first the ISPs in a relatively brief comment said they didn't believe the GAC should have any voting in the vote mechanism. And that wasn't true of the other two constituencies. It leaves me in a hell of a place to figure out what to do about that. And if you were worried about putting a thumb in the eye of the ALAC, well then we could spend the rest of today thinking about the thumb in the eye of the GAC.

And this isn't the only one, whether they vote on exercising a community power but my own thumb, through Stress Test 18 has exerted a lot of groans of agony from the GAC. In the end it may not matter too much because the GAC has a difficult time coming to a consensus and coming to a position under their current decision making rules.

However, we want to do everything we can to try to accommodate the reality that the governments are a stakeholder and if we're going to have a community decision making mechanism and we count ACs and SOs, do we count some ACs and not other ACs? The GAC gives advice to the board but when we come up with a community mechanism that's going to decide whether to block a bylaw or block a budget, it's not advice to the board.

The community comes together and has to say, well, community, do we want to block a bylaw? Do we want to block a budget? So just consider the reality. We go around the room and ask all six of the ACs and SOs and we don't ask the GAC. To me, not a good move.

And I'm just responding to the ISPs and I don't have a lot of - I don't have a lot of other support to shut the GAC off from being a community member. And I'm happy to talk further with the ISPs about that. But that's where that is likely to end up in the third draft that the GAC would have one equal vote like AC and SO when it comes to advice.

The second element was 29 and 30, Stress Test 29 and 30 came out of the blue at the end of the first comment round and it came from New America Foundation and they wanted to try to stimulate a discussion as to whether the revised bylaws and mission and core values could be used as a way of stopping ICANN from enforcing voluntary contracts like PIC Specs or could it be used to block enforcement of consensus policies if they were somehow outside of a narrowly defined mission statement or if GAC advice developed into top down requirements could they kill those because they didn't do the bottom up process?

Well I ran the stress test on it and the answer was maybe. I can't predict what an IRP panel would say. But, you know, maybe. And that certainly has set off a storm. Many in the IPC said, Steve, delete Stress Test 29 and 30. I wish it were that easy. I couldn't delete them but I'm absolutely grateful for Steve and Greg giving me some ideas on how to rephrase the analysis of the stress tests.

And Steve, and I circulated to you and Greg over the weekend my recommendation for that. And I do hope that you'll - Greg is giving me a markup. We should continue to talk that through. We don't have the time here to go through the details. But we're going to work that as hard as we can. Greg has his finger on the button so I think I need to stop, is that right?

Greg Shatan: I just wanted to say in response to that I'm working up another redraft in response to some other comments on the list, hopefully try to approach that in a way that will kind of take care of the issue. Because the way that 29 and 30 framed it was basically that if ICANN enforced its contract such that

registrations were canceled or noncompliant registrars were held to be in breach of their contract and potentially terminated, that that would make ICANN a regulator of content according to - that's what the outcome originally was stated and that's, you know, clearly assumes a particular theory of - rather than an actual, you know, potential outcome.

Steve DelBianco: Let me suggest in the IPC you have much to discuss on this today. Please, I would ask you, and Jonathan will be there, Paul, Greg, Steve, please dedicate some of your agenda if you can to working out the right solution to that. Because here's where we're headed right now. We're going to ask the lawyers in CCWG to recognize what we've been asking for all along which is that let's clarify that any mission statement or bottom up requirement cannot be used to stop the enforcement of voluntary contracts or consensus policies.

And if we got that back, Greg, that's mostly what I want to understand does that solve it. Because Stress Test 29 and 30, you know, thank God they were there because they have helped us to identify this potential risk. Now all we have to worry about is how to solve the risk. And you don't solve the risk by changing the word of 29 and 30, they're just stress tests.

To solve this risk we need to make sure the lawyers give us the right language for the mission statement and core values the has a carve out for bottom up consensus policies and a carve out for the enforcement of terms of a contract regardless of whether they're in the mission. So I would just encourage you to do that. I know, Paul, your hand's up on this one. Please discuss it in the IPC. We don't have the time to go into this detail in the CSG.

Greg Shatan: We'll work that forward.

Paul McGrady: Could I real quickly, I'm sorry, actually my question was about the one before. It's a much more pedestrian question. If the GAC gets a vote do they have a timeframe within which to vote because they move incredibly slow.

Greg Shatan: That's a great point. In the decision making method we base the timing on urgency. Because each AC and SO takes their own time to make decisions. But if the urgency of a budget - let's suppose somebody wanted to move a community power to block a budget and the budget kicks in in 90 days, well sometimes the timeframe will be dictated by circumstances.

If the board has a bylaws change that we're trying to block the board is ready to consider it in 60 days. So a lot of those timings will be dictated from the outside. But we cannot require the GAC to act quickly. Most we can do is to say there's a deadline here and invite them to respond. That's all we can do, Paul.

Paul McGrady: So what happens if they don't, is that a de facto...

((Crosstalk))

Steve DelBianco: Okay hang on, hang on, I'll get to that later because a decision making rule...

((Crosstalk))

Steve DelBianco: ...is support in the absence of objections. So if the GAC is unable to indicate support and unable to give an objection it doesn't matter. Okay so I have two more - think about what we have here, it's 10:23, we quit at 10:45. My goal is to show you we are working hard to implement the CSG priorities through the process.

But I understand the specificity we need because I've circulated to each of the leaders of the constituencies the yellow highlighted notes of how we're proposing to change the third draft to accommodate CSG concerns. And that's what I need you to focus on. We can't do that in this meeting. You need to do it in your respective constituency sessions or after this meeting and get back to me before we produce the third draft which is certainly not going to be, Greg, for three weeks or so, agreed? Three weeks. Good.

All right so the third area is the IPC was very astute, and nobody else picked this up but you were right, Affirmation of Commitment Number 7, this is not part of the reviews but Commitment Number 7 was supposed to go into the core values and when Becky Burr wrote that section of our second draft, all she did was show deltas from the first draft. So a lot of stuff that's still in the current table didn't make its way to the report. So thank you for pointing that out. No problem, we're going to make sure it shows in the next one.

And then finally the IPC said, what happened to the balancing test? Same problem. Becky didn't - Becky framed it as a delta instead of a new one so those are both covered.

All right I wanted to quickly move to three things I'd like the constituencies to consider because they came up after the publication. The first is the - if you recall we were bringing from the Affirmation of Commitments all four of the reviews into the bylaws and we brought in the parameters of those reviews pretty much verbatim.

Well one of the reviews, the Whois review, suddenly stirred up the board. And Steve Crocker gets on the phone on a CCWG call and said if you bring the Whois review into the bylaws it's going to be dangerous and destructive to the organization. Greg, you were on that call. It was amazing.

And so we sat back a little bit and said, well what do you want it to say? And four weeks later the board came back with something that very closely matches to what was in the Affirmation of Commitments. And it even had the blessing of NTIA.

So the BC commented that we found it to be acceptable, the board's slight tweak to the Whois language. If you don't recall I can send the leaders of each constituency another copy of that for you to consider. But I do hope that

you'll join the BC in supporting that new Whois language. I think it's still just as strong as we needed it to be.

Another is the review team composition. The IPC was the strongest at saying when we do these reviews, you know, how is it - how many seats get allocated to the GNSO? And initially the second draft had basically three. Seven ACs and SOs and each would get three members, it could have as many participants as you want.

But in truth we haven't had a review team that had any more than about a dozen members that did any work. And I have suggested that why would you tell the GNSO you can't have five or six people that want to do the work. So I have proposed a change to the third draft that would say that there be 21 members of a review team and that would be three for each AC and SO but if an AC didn't give you three names, let's say the RSAC or the SSAC didn't come up with three names on a Whois review, because they don't care, maybe not care, then those extra slots could be filled by volunteers from an organization like the GNSO who had a lot of people that were interested.

And that's as far as I've gotten it so far. I'm hitting resistance from ALAC who says we ought to cut it off at 14. I don't know where that came from. But I could use some help working that angle through as well.

The third element that you should consider is that in the affirmation of review - the Affirmation of Commitments review on the new gTLD program I took the advice of the CSG in the first round of public comments and suggested that we add a line in there in the bylaws that said that the next round of expansion couldn't begin until the implementation of the recommended improvements indicated by the consumer trust, consumer choice and competition review team.

This is the CCT review team that Jonathan Zuck had worked on from the Zuck resolution days. And it's being teed up to start in the next couple of

months. The only guy to have a resolution named after him. So he's got a lot to live up to. And I hope you're going to be on that review team. But here's what's happened to that, initially only the board of directors objected to that saying that they wanted complete discretion.

And then the contract parties realized they probably hadn't paid enough attention to that little one line we had in there and they're objecting to it. So here's what currently we're recommending. We're recommending that the review team, on consumer choice, consumer trust and competition, would indicate in its recommendations which must be implemented before the next round and which could be done concurrent or after. And that way it becomes part of the public comment period and public record.

And if the board decides not to accept any of the review team's recommendation then we have the power to pursue an independent review, to challenge that, to work it on public comments to that extent. So it's sort of a compromise solution besides a hard and fast requirement that everything be implemented and giving the board complete discretion. And it puts it in the hands of the review team. Which makes it all the more important that we have a lot of representation from CSG on the review team for the next round.

Those are the three items I wanted you to consider. And then I'll quickly jump to three items that - latest developments that have come up in the past four days. This is this notion of a community decision making model. Paul, you asked a few moments ago like what happens if the GAC doesn't indicate a decision. Well that decision, Paul, is the community decision, it's in the fourth step of this ladder.

This notion of an escalating path came out of the CCWG meeting in Los Angeles where we endeavored to say that enforcement, going to court or whatever it is, is an ultimate last resort. It's on the top right hand step. And there are many, many places to get off of this escalator or this Stairmaster, to

get off of it long before then. So constructive engagement, not only with the community but having the board in the room.

So this is a series of steps including conference calls hosted on Adobe, face to face meetings at the tail end or opening of a meeting, and the idea is to see whether there's - to completely test whether there's support in the community from the ACs and SOs to keep going. Relatively low level of support, by the way, and it only takes two to get the precall. In most cases two, in some cases three of the ACs and SOs to say, yeah, let's call a community forum for a day. And ICANN would provide travel support and staff support for a day meeting.

And then it steps up one more level that you might need four AC and SOs to support blocking a bylaw, spilling a board, removing an individual board member. There are seven community powers, four of them require four ACs and SOs to support; three of them require three. That's the current proposal.

But in all cases it would take two ACs and SOs objecting in order to kill it. In other words, we're trying to come up with a decision making rule where no one party could kill a community power that was heavily supported. And part of this was to get rid of this notion of weighted voting with percentages and come up with something that smells more like the consensus model that we use in ICANN.

So would be interested to see what feedback we get from members of the community on that. Greg, I'm doing a time check, its 10:31. I only had two other things I was going to discuss, which was the enforcement model, community versus designator, and that's a rabbit hole that could consume the rest of the day for not much good. And I could take general questions at the end of that. So if it's okay with you I'll quickly cover - what would you prefer?

Greg Shatan: Please go forward, this is basically the last item on the agenda.



Steve DelBianco: Thank you. So we also had this notion of an enforcement model. And the top right step, and I guess Greg is managing the zoom here, but, Greg, slide it to the left so people can see the word "enforcement" at the top right. Whoever is controlling it. So enforcement would mean that, gosh, we went all the way through to try to block a bylaws change, we had four ACs and SOs in support and maybe the SSAC said no, but, you know, the community power has been exercised. We turn it over to the board and they proceed anyway and pass the bylaw. What would we do next?

We do an - we can do an independent review panel that would evaluate whether ICANN has followed the bylaws because once we've changed the bylaws the bylaws give the community the authority to block a bylaws change. So if the board's not following what the bylaws say we can challenge that with an IRP. It might take several months.

And if it's community IRP the key is who pays for it. If it's a community-based IRP supported by only three ACs and SOs ICANN pays the legal fees of the IRP. It's one of the real neat community powers that we've come up with.

But an IRP, as I said before, could take a few months. What happens if the end of the IRP the panel comes back and says, you know, we think the board was okay to deny that. Or the panel comes back and says, support the community and the board ignores it. Either way you go to the next step which is enforcement.

So we got all wrapped around the axel in the CCWG about when, if ever, would you ever need to go to court to enforce a decision on ICANN. And I'm no lawyer but I feel like I've studied four years of law school in the past year here. But the membership model was very strong on enforcement. It gives statutory rights to the members of a nonprofit California corporation.

And if you recall if each of the ACs and SOs were a member that created some troublesome comments in the first round so we said that the community

mechanism as a whole is the sole member, that's why we call it the sole member.

So the member would have the ability to directly enforce the ability to block a bylaws change. The board, as you probably know, decided to draw a line in the sand and said they would not accept a membership model. We heard lots of different rationales for why. They started by saying that the member has the statutory power in California to dissolve the corporation. And they're afraid that the member might do that or the member can propose bylaws changes and they're afraid that we might do that.

We came back with an answer that we could constrain the more troubling powers by requiring in the bylaws that the member couldn't do those things without unanimous support for instance. Well clearly that wasn't satisfactory because I don't really think that was their concern all along. I just believe that Jones Day, ICANN's Legal department are dead set against moving to member. I don't think the US Congress or the US Commerce Department care one way or the other about this.

They want the community to have consensus but it was clear we were not going to get consensus. And to bring us full circle I said at the beginning of the meeting that ALAC had proposed a - sorry, adopted a resolution yesterday saying they would no longer support the sole member. So this whole debate between member and the next best statutory enforcement, which is called designator. So designator gives certain rights - statutory rights - to spill the board and remove board members so it gives you sort of that ultimate power with a board that's not agreeing to go along with the community.

But it doesn't give you as many of the other explicit rights that membership would do. Yesterday - bless you - and yesterday afternoon Bruce Tonkin read out a statement from the board of directors where they walked back an earlier statement and said, at this point they are prepared to consider and support a

move to designator. So a lot of this is late breaking news and I circulated to the leaders of the constituencies last night what was said.

So we are currently planning two more working sessions, one tomorrow and one on Thursday in the CCWG, where we'll further explore putting meat on the bones of designator and assessing whether we think it's adequate in terms of enforcement. But I'm just trying to put enforcement in context. Whether you're a member or a designator never matters until the board has diss'd you two times and you have to go all the way to the step of enforcement.

There are multiple steps along the road but whether you're a member designator does not affect the day to day operation of ICANN and it doesn't affect any of the steps in the stairs until you get off the top step of enforcement. So with that happy to take questions.

Greg Shatan: Steve and then Lori.

Steve Metalitz: Steve Metalitz. I just want to thank you, Steve, for all the work you've done on this on our behalf and also your very clear explanations, very concise. Let me just say on the contract issue, the Stress Test 29 and 30 issue, the IPC's goal is to make sure that ICANN's ability to negotiate, interpret and enforce its contracts is enshrined in ICANN's fundamental documents. And it sounds as though the approach you're taking would do that by more or less the opposite way by saying you can't use these mechanisms to overturn enforcement of a voluntary contract. So that's great news.

Thank you also for listing the items that we need to talk about in the constituency meeting. I will say on the first one I think the wording of the Whois review that had just come out at the time we were preparing our comments. And I think we indicated in the comments that we were favorably inclined to it but we're waiting on, you know, to actually look through it a little bit more.

But I think - when I mention that we're taking the Whois review issue off the table and are meeting with the board it's really because of that. We've - it was in reaction to Crocker's comments. And I think it's pretty much been resolved. We certainly don't want to raise the profile necessarily on that issue. But we'll take a look at those other issues as well and thanks again for updating us on this.

Steve DelBianco: Steve, thank you. And if I could quickly reply on this notion of enforcing contracts. CSG also includes the ISPs and not clear yet what the ISP view is on this. Malcolm's been quite vocal. And we're not going to work out and have that debate right here and now. But we may end up CSG having somewhat different positions on whether the mission statement can be so confining that you couldn't even enforce a contract provision that went outside the mission even if it was a voluntary item proposed by.

So we don't have the time for the debate but just to give you a heads up IPC and BC could be one place, ISPs could be another. Thank you.

Greg Shatan: I'll just mention briefly the concept of a voluntary - use of the term voluntary contract or voluntary provision kind of creates perhaps some confusion between the voluntary PIC Specs, which were voluntarily entered - put in the contract by the registry party alone, and just accepted by ICANN and just general contract terms which in a sense are voluntary because you're signing onto them. So it's really the broader sense that we need to get to and not concentrate on the - solely on the voluntary PIC Specs because that actually leaves out the issue that I think, you know, we care about most.

Paul and then - well Paul. Oh sorry, Lori, and then Paul.

Lori Schulman: Hi, I really appreciate, too, all of you explanations but I'm still just a little confused. And I just want to make sure I understand. So in a designator

model there are designated powers to the board. And the designator is the community? Or that's what I'm trying to sort in my mind.

Steve DelBianco: Might be better - it's the community not the board.

Lori Schulman: Okay.

Steve DelBianco: And the community under designator model has unquestioned legal authority to dump the board. It has less legal authority to block a bylaw, block a budget, with me on that?

Lori Schulman: Right but...

Steve DelBianco: It's the community to answer your question.

((Crosstalk))

Lori Schulman: Okay so the designator...

((Crosstalk))

Steve DelBianco: ...definition later.

Lori Schulman: And I can ask you later too. I just want to make it clear in my own head that the community is the designator.

Steve DelBianco: The answer is yes.

Lori Schulman: Okay.

Steve DelBianco: And, Greg, circulate, if you don't mind, the two column version of the document from yesterday along with the board statement. I sent it to you yesterday. And I know that the IPC has it as well - the ISPs have it as well.

Paul McGrady: Steve, thank you for your amazing work on this. One question about the designator versus member, the member can sue; the designator can't? Is that right or am I...

((Crosstalk))

Steve DelBianco: If the designator said spill the board and the board didn't leave the designator can go to court and get a court order throwing them out of the building. So that's what they can do. What can the designator not do, let's suppose that the member wanted to block a budget. Well the member can go to court and get an injunction on blocking a budget. The designator doesn't have that power in California law.

Greg Shatan: Next in the queue I've got Jonathan Cohen.

Jonathan Cohen: Hi, Steve. Was any discussion had in your model of how the steps take place? You get to the top, we have an independent review panel. Was there any discussion about possibly amending the bylaws or creating the bylaws that says a decision of the IRP or any appeal thereof by creating an appeal process to a separate panel, let's say you have a three panel IRP, and a five panel appeal. And if you lose the board is required to...

Steve DelBianco: I can help move it along. You're getting to the notion of if it's a binding IRP any court that recognizes international arbitration will enforce a binding IRP. But, Jonathan, what if the board won't agree to be binding and therein lies the lack of power.

Jonathan Cohen: I understand.

Steve DelBianco: There's where we're stuck.

Greg Shatan: Olivier.

Olivier Muron: Yes, a small question. You mentioned many time a third draft. Are you sure there should be - or there will be a third draft? Because if there is a third draft then a comment period then we are over the track.

Steve DelBianco: Thank you, Olivier. So there's no question there'll be another draft. We've got so many public comments and tweaks and innovations this week so we know there will be a third draft. The question being evaluated now is do we go with that third draft and call it in cross community ICANN-ese you call it a final draft. It's an amazing oxymoron. And is it a final draft that gets handed to the five chartering organizations. And GNSO is a chartering organization.

So do we go to final draft where each chartering organization would say, you know, we're good with four of the five recommendations but we want to make some changes. The public might well find that it has an opportunity to work its comments through each of the ACs and SOs but there's no decision yet whether or not we have to do a public comment before a final final draft that then goes to the chartering organizations.

The introduction of a public comment period and the analysis of public comment adds at least two months to the process. So we've done two rounds of public comments and we're going to begin to discuss it. One of my jobs today is to find out from each of the constituencies in the CSG whether you think we have to do a public comment or can the final draft go directly to the chartering organization, the GNSO? So I'd be interested in lots of feedback on that from you.

Olivier Muron: And just another small question, concerning the removal of an individual board member, what you describe was not exactly what I heard yesterday from Chris at the meeting because I (unintelligible) that the appointing organization of that individual board member has all the power. I mean, initiate the process then there is a discussion...

Steve DelBianco: Of course, you're exactly right. And I'm sorry if I glossed over that.

((Crosstalk))

Steve DelBianco: We just didn't have the time to go through each and every power but you're exactly right. But please, Olivier, tell me what your opinion is by the end of the day about public comment. Do we need another round of public comment or do we go right to the chartering organizations?

Olivier Muron: I think we don't - we cannot have the time. I mean, so it's we're out of time. Yeah, okay we just go.

Greg Shatan: I've got - sorry, Anne, Tony and then Phil and then we're going to have to drop off.

Anne Aikman-Scalese: Very quickly, I think to answer Lori's question and I think it's a question a lot of people would have who haven't been directly involved, the big difference between the sole member and the sole designator is that the sole member has essentially specific performance enforcement powers to do the actual thing that's one of the five listed, you know, community powers other than director removal. And that's because in the membership corporation, and I'm not a California lawyer, but those powers reserve to the member it relieves the board of their fiduciary responsibility. And so that's why you can get specific enforcement.

With the sole designator model the board is never, you know, relieved of its liability to make an independent decision in the exercises of its discretionary judgment. So you go to arbitration or IRP in that context what you're looking at is did the board violate its fiduciary duty or not. And you're not really looking at the substance of the decision itself, you're looking at did they do it well procedurally.



And the ultimate enforcement mechanism in sole designator thus is actually just the threat of removing the whole board or dumping the whole board to try to get them to, you know, make the decision the community wants. So it's direct versus indirect enforcement. And we're talking through some examples in relation to the powers still.

Oh and I think it might be helpful for Jonathan to talk a little bit about what he did with the budget this week which was very constructive.

Greg Shatan: Unfortunately I think we're out of time. And we have two people...

((Crosstalk))

Jonathan Zuck: We got it all worked out and it's great.

Greg Shatan: That's very helpful. Thank you, Jonathan.

((Crosstalk))

Anne Aikman-Scalase: They divided it into discretionary and nondiscretionary. The nondiscretionary continues on forever and discretionary is all we can challenge. So it's perfectly reasonable. We're not going to stop ICANN from operating, it's just discretionary that can be challenged.

Greg Shatan: Like funding a save the penguins conference. So I've got Tony and then Phil that closes the queue.

Tony Holmes: Okay thanks, Greg. First thing is that I think as a group we all have a huge vote of thanks to all of those who worked on this so, Greg, Wolf-Ulrich and Steve, you've done an amazing job here. Really appreciate what you've done.

As a constituency I think thanks to your help and involvement we're pretty much aware of where we stand on issues. One of the things that bothers me is that for some of our members I think whilst they understand where we are, they don't always appreciate why we have opposing views even within the CSG on some of these issues.

That leads me on to my second worry which is what Olivier brought up, the issue of whether we have a public comment. It really bothers me that if we haven't got that understanding in the CSG we don't have a public comment period and we do this within GNSO as a chartering organization. We could have some much bigger problems there.

So one of the things that I think would help us get over this the next couple of months are really going to be intense, they're going to be vital for this. It would be a really good thing if we could actually maybe set up some CSG calls with you, Steve, as these next steps become apparent where we're all involved because I think it's just as important that we understand where we have differences and currently I don't think that is clear. So...

Steve DelBianco: I'm happy to join calls you already have, for instance, if the ISPs are having a...

Tony Holmes: No, that's not my point. My point is as ISPs we know where we are but we don't understand some of the nuances that other members of the CSG have got where they have opposing opinions. That's why I think we need at the CSG level.

Steve DelBianco: And I'll check with ISPs and BC today about that and I think it's a great idea. We could probably just host a conference call with or without Adobe and do something rather lightweight. Thanks, Tony.

Greg Shatan: I think that's a good idea as well if we have a FAQ - a Q&A session for members of the constituencies. I'm sure we can arrange, you know, the support for that. Phil.

Phil Corwin: Yeah thank you. And I'm speaking personally now. I think the accountability method, whatever it's going to be is important. But what's equally important I'm not quite sure how we get it, is how to change the mindset of the board and how to get board members who are in favor of much greater transparency and feel a much stronger connection to the communities they came from rather than going through this personality transformation that happens when we go on the board.

Now and I think - and how to create a culture of accountability among the staff where they see the community as someone they serve rather than an impediment to their plans. On whether we need a public comment, I think if we go with - again speaking personally I'll convey whatever message the BC reaches in consensus on Council.

But I think the difference in enforceability between sole member and designator is significant enough and following up on Tony - that we need to take the temperature of the community, make sure - use that public comment period to demonstrate that there is consensus support and to raise any final fine-tuning adjustments before we take it to the chartering organization.

I'm afraid that if we rush to the chartering organizations with a significantly different proposal than the one we had a comment on that closed last month that we might create more delay and trouble and wouldn't expedite things.

Steve DelBianco: Depends on what the public comments are. As somebody who's analyzed and read every single one of the 88 comments many of the comments suggest brand new ideas. Jonathan Cohen came up with a brand new idea. And then suddenly we don't really have consensus. And it's all constructive and creative but people entered the process very late and it's extremely

difficult to measure consensus from public comment. So there are risks either way.

Greg Shatan: Also I'd say in many cases you don't have a say in whatever 90-odd comments, you have 23 comments that even address the particular issue so that means that 70 didn't. And then out of those, you know, 11 supported, four were against and seven had completely new ideas. What you take from that is it's an idea-gathering process but it's not a consensus-building process. That's my take on it.

In any case we are out of time. So we've eaten up the all other business. I don't think we had any other business. But I think at this point I would suggest that we adjourn the meeting and move into the auditorium for our roundtable with the board. Thank you all for attending this meeting of the Commercial Stakeholder Group. The meeting is now adjourned and we can stop the recording. Thank you.

END